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NOTES

Dominican Republic's Investment Opportunities: A Survey

by Luis O. Beltré*

I. INTRODUCTION

TO MAKE A sound business decision concerning an overseas investment, the attitude of local government toward foreign investment has to be carefully reviewed in conjunction with traditional business considerations. As Professor Covey T. Oliver observed the “Mesozoic era of direct foreign investment has ended...” such that “the future belongs to the adaptables and their lawyers.”

The foreign investor must be vitally concerned with the laws of the country in which investment is to be made; this should, in fact be a continuing concern. It is also necessary to consider and to apply certain basic factors to each and every country where an investment is contemplated. Some of these factors include:

(a) government policy toward private and foreign investments, and the role of these investments in the host country’s development planning and goals;
(b) host government legislation affecting entry and repatriation of capital and net profit earnings;
(c) the existence of a treaty of friendship and establishment with the home country of the foreign investor;
(d) proximity of manufacturing site to raw material sources and export markets;
(e) incentives granted to new enterprises, and the types of business organizations allowed under the laws of the host country; and
(f) in the case of American investors, the availability of U.S. sponsored incentive programs relating to financing and insurance for investments in

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1 Oliver, The Andean Foreign Investment Code: A New Phase in the Quest for a Normative Order as to Direct Foreign Investment, 6 AM. J. INT’L L. 763, 784 (1972).

the host country. The investment itself may be one of capital, machinery and equipment, management skills, rights to industrial property, know-how, or a combination of these and other forms of foreign economic presence in the host country. Before entering a foreign market, however, an investor must examine all available alternatives and decide which form of investment will be most advantageous. This choice greatly depends upon the legal requirements and restrictions the foreign nation has placed upon the different investment opportunities.

The perceived effect of foreign investment on the economy of developing countries has been the subject of serious and intense discussions in international forums and has been reflected in the legislation of a number of developing countries, including the Dominican Republic. The Dominican Republic, a country with a substantial free market economy, is an important trading partner of the United States. In recent years, the Dominican Republic has enacted several laws governing the conditions under which foreigners may do business. The widest in scope of these pieces of legislation are the Industrial Incentive Law, the Tourist Development Law, and the Foreign Investment Law.

No business should be started in a foreign country unless a detailed marketing investigation has been undertaken. This investigation should include research into the type of activity most appropriate for the business enterprise and for the foreign country. Each form of activity, e.g.

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* For a discussion of these and other elements as they apply to Haiti, see Laham, Haiti: Investment Opportunities for the U.S. Manufacturer, 10 LAW. AM. 355 (1978).
market penetration, poses its own problems. Some of these problems arise in the field of indirect and direct taxes. This note, however, will not deal with the different types of business enterprises available in the Dominican Republic, nor with the tax consequences of doing business there. Instead, the scope will be limited to an examination of the impact of the aforementioned laws on U.S.-Dominican trade relations, on the development of Dominican trade in non-traditional products and on the overall state of the Dominican economy.

II. INVESTMENT ATTITUDES OF HOST COUNTRIES

Substantial changes have occurred with respect to the attitude of host countries toward direct foreign investment in their respective countries.\(^9\) The traditional open door policy has been replaced in many countries by restrictions subjecting foreign investors to government registration and review.\(^10\) As Henry T. King, Jr. has stated, "New patterns of control and decontrol appear to be emerging in key areas of the world. . . ."\(^11\)

While the policies of developing countries toward foreign direct investment ranges from active recruitment\(^12\) to complete rejection,\(^13\) generally, the developing nations are not convinced that unregulated private foreign investment will be beneficial to their interest, and many developing countries have adopted strong positions concerning the need to control, or even limit, foreign investment.\(^14\) This conviction reflects their historical experiences and their sensitivity to conditions which might

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\(^9\) See generally sources cited note 4 supra.


\(^14\) See sources cited in notes 2 & 12 supra.
potentially impinge upon their national independence or autonomy. Through these regulations, host countries hope to reduce the perceived disadvantages of foreign investment while improving the terms on which they gain access to foreign capital and technology and the degree to which their citizens benefit from a foreign investor's activities.

A. Dominican Republic's Attitude

The government of the Dominican Republic perceives the inherent benefits derived from foreign investment as an effective way of enhancing overall economic development. The government is aware that foreign investment can be particularly useful for the countries in the Caribbean zone because they are, with the exception of Venezuela, Columbia, and Trinidad-Tobago, at the lowest stage in the development process and their economies are most in need of foreign support.

The Dominican Republic has always been most receptive to foreign investment. The Government's expressed policy on foreign investment is that:

The Dominican State recognizes that foreign investment and technology are a necessary contribution to our country's economic development, insofar as they help to create jobs that promote the process of capital accumulation, facilitate the participation of national capital therein, without discouraging national private investment, which will result in a net savings of foreign exchanges and in efficient contributions of production methods, marketing and management. Both national and foreign investors must be protected by measures establishing their rights and obligations and determining foreign investment's sphere of action in this country.

The Dominican Republic's desire for foreign investment was reasserted on March 4, 1979 in a speech by the President of the Dominican Republic, Antonio Guzmán before the American Chamber of Commerce of the Dominican Republic, at which he said:

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16 For discussion of investment attitudes in Hong Kong, Singapore, Taiwan, Korea, and Mexico, see Baranson, Changes in the Investment Climate in Developing Nations, 7 VAND. J. INT'L L. 569, 570 (1974). See also Dempsey, supra note 4.

17 Dr. Joaquin Balaguer, Former President of the Dominican Republic (1966-1978) gave a speech at the second Annual Conference on Caribbean Investment on Dec. 19, 1977. In his speech he stated that foreign investment can be qualified as "capital" for Latin American Countries. See AMERICAN CHAMBER OF THE DOMINICAN REPUBLIC, DOMINICAN REPUBLIC: INVESTOR'S HANDBOOK 70 (1978).

18 Investment Law No. 861 (Preamble), [1978] 9487 G.O. 57 (Dom. Rep.).
We need direct national and foreign investment to cover the principal stages of change: those that create work and thus reduce unemployment and malnutrition that are our principal problems.

We need the businessmen that have given us support as well as that of friendly governments, among which we wish to mention the people of the United States of America, although we regret the treatment our sugar is receiving in that market. . . .

My government offers guarantees, stability and respect for national investment, and those foreign investments that contribute to our development. . . .19

The structure of the Dominican society is undergoing a profound revolution. As a nation with a market economy which encourages private initiative, the Dominican Republic today presents a most attractive situs for both trade and investment. The government has welcomed foreign business, and it has encouraged economic activities which have a favorable bearing on the balance of payments, on the development of national technology, job creation, and other forms of economic and social development.

B. United States' Role

During the latter half of the nineteenth century, investors from the United States and Western Europe were attracted to the underdeveloped sources and markets of Latin America. Investing experiences with unstable Latin American governments, however, soon led to conservative investment tactics, with agriculture and the extractive industries becoming the focal point of foreign investment.20

Since World War II, the United States has promoted the growth and development of the South, Central and Caribbean countries, as a means of ensuring a healthy international climate for trade and investment.21 At the same time the United States has been interested in improving the health of its own economy, protecting the assets of its citizens abroad, creating an open world trade and payment system, and guarding against unfair competition with its domestic industries and labor force.22

19 Part of that speech was translated and reproduced, see AMERICAN CHAMBER OF COMMERCE OF THE DOMINICAN REPUBLIC, DOMINICAN REPUBLIC: INVESTOR'S HANDBOOK 71 (1979).
21 Id. at 461. For an excellent discussion of the different forms of business enterprises in the Dominican Republic, see Heredia Bonetti, supra note 5, at A-3-A-7; D. Fenwick, ESTABLISHING A DOMINICAN BRANCH (1974); J. Russin & L. Heredia Bonetti, FORMING A DOMINICAN COMPANY (1970).
22 See Jova, supra note 20, at 487. See also statement by former Ambassador to India and the United Nations, Senator Patrick Moynahan, The U.S. in Opposition, COMMENTARY at 31 (Mar. 1975). U.S. export promotion efforts date back to the Roosevelt Administration,
With this goal in mind, the U.S. government has attempted to maintain and improve the access of developing countries, such as the Dominican Republic, to private sources of capital in the United States. Thus the investment incentive program, which originated in 1948, was designed to stimulate American investment abroad by protecting against the "political" or non-business risks of inconvertibility, expropriation and war, riot or insurrection. The program was administered by the agencies within the U.S. State Department responsible for the foreign aid program. The early program focused only on European recovery and was limited to guarantees against inconvertibility of currency. Guaranty coverage was expanded in the Economic Cooperation Act of 1950 to include "expropriation or confiscation." Through the next decade the program was administered by the Agency for International Development (AID), although the actual guaranties were executed by the Export-Import Bank in 1934, Exec. Order No. 6581, Feb. 2, 1934, reprinted in 3 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT: THE ADVANCE OF RECOVERY AND REFORM 1934 (1938). It was not until the 1960's, however, with the passage of the Agricultural Trade Development and Assistance Act, Pub. L. No. 83-480, 68 Stat. 454 (codified at 7 U.S.C. §§1691-1692, 1731 (1976)), and the establishment by commercial insurance companies of the Foreign Credit Insurance Association, that export promotion became an important feature of U.S. international trade policy. For discussion, see generally M. WHITMAN, THE UNITED STATES INVESTMENT GUARANTY PROGRAM AND PRIVATE FOREIGN INVESTMENT 1-7 (1959); Clubb & Vance, Incentives to Private U.S. Investment Abroad Under the Foreign Assistance Program, 72 YALE L. J. 475 (1963); Collins & Etra, Policy, Politics, International Law and the United States Investment Guaranty Program, 4 COLUM. J. TRANSNAT'L L. 240 (1966). But see, e.g., sources cited note 259 infra.

The program originated as part of the Economic Corporation Act of 1948, whose purpose was to promote world peace and the general welfare, national interests, and foreign policies of the United States through economic, financial, and other measures necessary to the maintenance of conditions abroad in which free institutions may survive and consistent with maintenance of the strength and stability of the United States. See SENATE SUBCOMM. ON MULTINATIONAL CORPORATIONS 93RD 1ST SESS., REPORT ON THE OVERSEAS PRIVATE INVESTMENT CORPORATION 2 (Comm. Print 1973) [hereinafter cited as SENATE SUBCOMM. ON MULTINATIONAL CORPORATIONS]. For the limits on the early program, see Economic Corporation Act of 1948, Ch. 169, §(6)(3), 62 Stat. 45. See also the Protection and Stimulation of Foreign Private Investment, 39 GEO. L. J. 1 (1950).


See note 24 supra.

The 1960's were to have been years of rapid development and growth in Latin America. The Alliance for Progress was based upon the notion that growth in Latin America could best be obtained by the encouragement of direct foreign investment to supplement local capital resources. In reflecting the attitude that secured investment should spread its benefits beyond Europe, Congress consolidated its program under AID and substantially changed its scope by the Foreign Assistance Act of 1961. This legislation specifically directed AID to encourage private investment in less developed countries, and expanded the range of guaranties available.

In order to encourage this class of participation, Congress authorized the creation of the Overseas Private Investment Corporation (OPIC) to conduct investment incentive programs which include investment insurance, investment guaranties, and direct investments. The official goal under the OPIC is:

to mobilize and facilitate the participation of United States private capital and skill in the economic and social progress of less developed friendly countries and areas, thereby complimenting the development assistance objectives of the United States...
U.S. investors in the foreign investment area may also take advantage of the Foreign Credit Insurance Association (FCIA), which consists of a group of insurance companies working as the quasi-private arm of the Eximbank, and also provides insurance for U.S. exports against commercial and political risks. The International Finance Corporation (IFC), the Inter-American Development Bank (IDB) and the World Bank are also major sources of financing for large projects and sales.

The above capsulization of the attitudes of the United States and the Dominican Republic toward foreign investments adequately serves to highlight the following chronological analysis of the recent pertinent foreign investment laws passed by the Dominican Republic.

III. INDUSTRIAL INCENTIVE LAW OF 1968

Until the promulgation of the Industrial Incentive and Protection Act (Ley de Incentivo y Protección Industrial) the Dominican Republic had not been successful in attracting the desired level of foreign investment. The Industrial Incentive Law provides for exoneration from income, export and "patent" taxes and custom duties and related excise taxes for specified periods of time.

The objective of the law is to attract local as well as foreign investment which actively contributes to the country's overall economic development, but which does not set out any requirement for local participation in eligible investments. Two governmental agencies have been created to administer this law: The Board of Industrial Development and the Industrial Technical Department, both of which are under the jurisdiction of the Secretary of State for Industry and Commerce.

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41 The Preamble states that former Law No. 4 of Oct. 8, 1963 lacked the desirable automatism to respond to the demand for domestic and foreign investment toward the industrial sector, and that it became necessary to enact a new legal instrument in that field, see Industrial Incentive Law No. 299, [1968] G.O. 3 (Dom. Rep.).
42 Id. art. 13 provides that all enterprises which qualify under this law will enjoy exoneration from the income tax established under Law No. 5911 of May 22, 1962, as modified by Law No. 152 of Feb. 20, 1964, [1964] 8837 G.O. 2 (Dom. Rep.).
44 Id. Industrial Incentives Law No. 299, art. 1, [1968] 9079 G.O. 3 (Dom. Rep.).
45 Id. art. 4.
46 Id. art. 5.
47 Id. art. 4 & 5.
A. Eligibility

The industries that fall under the protection of this law are those which manufacture new products, through the transformation of raw materials, national or foreign, semi-manufactured products or intermediary ones. Law 299 provides, however, that it shall not apply to other complementary activities, such as the commercialization of its product or the simple obtainment of agricultural, cattle or mineral raw materials where an industrial transformation process is lacking.

Law 299 also provides that certain economic activities be excluded from the benefits of this law. The affected activities include: the sugar industry; the extraction of petroleum and natural gas; the fishing activities in their capture phase; mineral activities in their extraction phase; agricultural and cattle activities; hotel activities; tourism activities; construction industry; services and transport; the simple packing of products; and handicraft industries.

B. Classification

Eligible enterprises under the law are categorized as Type A, B, or C, with different benefits afforded to each category. Class “A” comprises all industrial enterprises dedicated to the manufacture of products for export. The law provides that assembly plants may also be classified within this group. Industries in this class may only be established in Free Zones, where materials can be brought in duty-free processed by local labor and exported duty free. In exceptional cases, however, the President may authorize operation elsewhere provided the nature of the goods produced facilitates their physical control by the government and similar goods are not already being produced in the country.

In those industries classified under “A” (export), the President may also authorize that up to 20 percent of their production be marketed for domestic consumption, if the goods concerned are not being manufactured in the country. If any goods produced by a class “A” industry are

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48 Id. art. 2. For a discussion of some of the tax effects of assembly operations on American companies, see Klingman, Foreign Assembly Operations in the Dominican Republic Tax and Customs Consequences, 4 INT'L TAX J. 354 (1977).
49 Id. Industrial Incentive Law No. 299, art. 2, [1968] 9079 G.O. 3 (Dom. Rep.).
50 Id. art. 3.
51 Id.
52 Id. arts. 6 & 12.
53 Id. art. 7.
54 Id. Investors should be aware of Resolution 18 of July 17, 1975 of the Monetary Board which bans peso loans by Dominican banks to free zone class “A” enterprises. For discussion see Heredia Bonetti, supra note 5, at C-2.
55 Industrial Incentive Law No. 299, art. 10, [1968] 9079 G.O. 3 (Dom. Rep.).
marketed within the country under the aforementioned provision, then the 90 percent customs duties and excise taxes normally applicable to the importation of such goods will be payable.\textsuperscript{56}

All new industries considered of high priority to the development of the country are termed class "B" enterprises. They generally represent a saving in foreign exchange for the nation, create new jobs, and therefore require special stimulus from the government.\textsuperscript{57} Many Class "B" industries produce substitute goods, i.e. those not already being manufactured in the country.

Class "C" enterprises incorporate all new production activity, or the expansion of existing industries, dedicated especially to the transformation of local raw material or to the manufacture of products for the domestic market.\textsuperscript{58} The priority given to these industries is aimed at correcting a demonstrably inadequate capacity to produce similar goods within the country.\textsuperscript{59} The President is empowered to waive this provision, however, in cases where the industries produce materials that may be used in works of national interest.\textsuperscript{60} Class "C" may also include all new industries that produce articles for domestic consumption not yet made in the country.\textsuperscript{61} Although these industries may not be considered of high priority for the country's industrial development, they do provide new jobs and save foreign exchange.

C. Benefits Under Each Classification

Benefits under the act consist of complete or partial exoneration from the payment of customs duties and taxes according to classification.

Class "A" enterprises are exonerated from payment of:

(1) all (100 percent) duties and taxes on import and all other levies, including import tariffs, unified taxes, and internal consumption taxes, levied upon the importation of machinery and equipment necessary for production, raw materials and semifinished materials which enter into the manufacture or packaging processes, and all lubricants and fuels, except gasoline.

(2) all income taxes, in the case of an affiliate of a foreign company, or, in the case of an affiliate of a Dominican company, 75 percent of income taxes for 5 years and 50 percent of income taxes for the remainder of the exoneration period.

(3) all of the Business license (patent) tax and all municipal and produc-
tion taxes, and those on export, during the first five (5) years, and 50 percent during the rest of the concession period.

(4) all of the capital tax on the company and documentary tax relative to the formation of stock companies and limited corporations and on the capital increase of the same.\textsuperscript{43}

This exoneration, however, does not include the tax levied upon the partners of shareholders for the profits or dividends received from the enterprise. Nevertheless, even this shareholder tax may be waived if the enterprise reinvests its proceeds and if the dividends are paid in stock instead of cash.

The law provides that no class "A" enterprise which has its principal place of business outside the country will be granted foreign exchange by the Central Bank for the purchase of equipment and raw material,\textsuperscript{64} but as noted below, these enterprises are not subject to the Foreign Investment Law of 1978.\textsuperscript{64}

Class "B" enterprises are exonerated from the payment of:

(1) 95 percent of all taxes and import duties and all other related levies, including import tariff, unified taxes and internal consumption taxes, levied upon raw materials, semi-manufactured products entering into the composition or into the process of making the product, containers and packing materials, provided the same cannot be obtained from domestic production.

(2) 95 percent of all taxes and import duties and other related taxes including import tariff, unified taxes and internal consumption taxes, levied upon fuel and lubricants used exclusively for the industrial process, except gasoline (petrol).\textsuperscript{65}

Class "C" enterprises are exonerated from payment of taxes in the same manner as class "B" enterprises, except that the percentages shown range from zero to a maximum of 90 percent, at the discretion of the Board of Industrial Development.\textsuperscript{66}

The duration of the periods of exoneration are determined according to the geographical location of the industrial plant in conjunction with their classification as "A", "B" or "C" enterprises. The rates are as follows:

Urban and Suburban Zone of the city of Santo Domingo ......................... Eight (8) years.

Urban and Suburban Zone of Santiago ..................... Ten (10) years.

\textsuperscript{43} Id. art. 12 class "A" (a)-(d).
\textsuperscript{64} Id.
\textsuperscript{66} Industrial Incentive Law No. 299, art. 12 class "B" (a),(b), [1968] 9079 G.O. 3 (Dom. Rep.).
\textsuperscript{65} Id. art. 12 class "C" (a),(b).
Frontier Zone ................................ Twenty (20) years.
Any other locality within the territory .......... Fifteen (15) years.  

Moreover, a 20-year period of exoneration from customs duties, income tax, and other taxes mentioned herein has been established by separate decree for all companies in the Industrial Free Zones. Currently there are three such zones which are located at La Romana, San Pedro de Macoris, and Santiago. In regard to the duration of such tax benefits, the law distinguishes between class “A” enterprises which are affiliates of foreign companies and those which are not. The law stipulates that in the case of class “A” enterprises, the limitations on the period of benefits are applicable only to enterprises “legally constituted” in the Dominican Republic, but that in any other class, those same enterprises would nevertheless thereafter continue to enjoy the exoneration from custom duties described earlier until the 20 years have expired. Therefore, it is unclear why the distinction between foreign affiliates and local firms was ever mentioned. The intent of the provision would appear to be to allow exoneration from customs duties for any class “A” enterprise, of local or foreign origin, for a period of 20 years, but to limit the exoneration from income tax of local companies to the period allowable in accordance with the geographic location as mentioned above.

D. Restrictions on Eligibility for Benefit

Law 299 contains three specific restrictions regarding the eligibility of benefits granted thereunder. First, before approving a new investment, the investor must describe the capital goods and replacement parts proposed for importation. This is particularly necessary since the Directorate is prohibited from exonerating items which are ordinarily subject to custom duties and taxes, if satisfactory alternative goods and economically

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77 Id. art. 17.
82 Industrial Incentive Law No. 299, art. 17, [1968] 9079 G.O. 3 (Dom. Rep.).
83 Id. art. 20.
produced in the Dominican Republic and are available for substitution.\textsuperscript{74}

The second restriction stipulates that, although the capital goods which are imported by class “B” and “C” enterprises do not have to be new, they must represent the most modern technology in existence. Furthermore, the importing enterprise must show that the goods are necessary and not in excess of normal market price for similar goods in the country of origin.\textsuperscript{75} Although the insisting on the most modern technology in existence, may be too rigid, the Dominican Republic obviously does not want absolute or uncompetitive goods to have the benefits allowed under this law.

Finally, the third restriction involves two separate provisions. It prohibits the Directorate from conferring the benefits of this law on enterprises which are in competition with an existing or planned enterprise which would not, in turn, enjoy these benefits. Secondly, enterprises whose technology is less advanced than those of similar industries already in existence, will not receive the favored treatment.\textsuperscript{76}

These provisions are protective. By offering basic grounds for refusing any given proposal, the investor is put on notice that the Dominican Republic will not accept unfair and inferior practices. The law discriminates against any technologically inferior investments which would displace local enterprises which did not receive similar benefits.

\section*{E. Application for Classification}

The law provides that all persons or entities, national or foreign, desiring to receive the benefits of this law, are to file an application for classification\textsuperscript{77} and an accompanying technical study with the Industrial Technical Department.\textsuperscript{78} Once the application is registered in the Industrial Technical Department, the Department is required on two separate occasions, to publish a resume in one of the newspapers of major circulation.\textsuperscript{79} This is especially true when the applicant produces materials already being made in the country. This process allows persons who object to the classification requested to present their grievances to the Industrial Technical Department.\textsuperscript{80} The Department then begins to study the application and to evaluate the proposed project. Within 30 days the Department must file a report on the project to the Board of Industrial

\begin{itemize}
\item \textsuperscript{74} Id.
\item \textsuperscript{75} Id. art. 21.
\item \textsuperscript{76} Id. art. 22(a)-(c).
\item \textsuperscript{77} Id. arts. 25-27.
\item \textsuperscript{78} Id. art. 24.
\item \textsuperscript{79} Id. art. 29.
\item \textsuperscript{80} Id. art. 30.
\end{itemize}
Development. The Board, in turn, in view of the report submitted must approve or disapprove the classification within 15 days. The application for classification which has been accepted, then becomes the object of a resolution which contains the results of the technical and economic analysis that served as the basis of its approval. This resolution is then submitted to the President for final consideration. If it is approved, the President's approval is signaled by a decree validating the resolution.

F. Legal Form of Investment

All foreign investment must be represented by nominative registered shares transferable upon inscription in the corporate records upon previous authorization. Therefore, any existing bearer shares must be converted into nominal shares within six months of the effective date of the law. Although the law does not explicitly so stipulate, new investments must take on a corporate form. This requirement of the corporate form might eliminate sole proprietors and foreign owned branches, since Dominican law requires that a corporation must have a minimum of seven shareholders, the one-man corporation does not exist under Dominican law. Therefore, the foreign corporation seeking to create a wholly-owned Dominican subsidiary would require additional shareholders. This provision actually is not as restrictive as it might originally appear, since shareholders may be natural or legal persons of any nationality. Of the seven shareholders needed, nominal ownership of one share each by the other six shareholders will fulfill the requirement.

IV. Tourism Incentive Law of 1971

The enactment of the Tourism Incentive Law was prompted by the growing tourist industry in the Dominican Republic. In 1957 less than 50,000 tourists visited the country as compared to 460,000 visitors in 1978. These figures represent one of the highest growth rates in the

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81 Id. arts. 33-34.
82 Id. art. 36.
83 Id. art. 37.
84 See Investment Law No. 861, art. 9, [1978] 9487 G.O. 57 (Dom. Rep.).
86 Id., see also Heredia Bonetti, supra note 5, at A-4-A-5.

The Industrial Development Corporation (IDC), a government agency created to stimulate industrial development and private enterprise has developed two industrial zones outside of Santo Domingo: the Herrera Industrial zones which was established in 1967 is occupied by about 150 industrial facilities, and the Haina Industrial zone which is under development and a number of industries are established there. Industries established in these industrial
hemisphere. In the late 1960's the government recognized the important potential of a tourism industry. The government responded by issuing several decrees giving the tourism industry first priority and organizing an appropriate structure for its development, which culminated with the enactment of Law 153 of June 1971 which offers guidelines and incentives for investment in tourism developments.

The law is designed to establish an accelerated pace for the development of the tourist industry by defining the objectives and goals of national interest, any by coordinating action by the public and private sectors in establishing incentives granted to stimulate investment. The law provides that the granting of incentives and benefits thereunder are to be strictly limited to the regions, areas or tourist poles declared as such by the President. The law also decrees that the Dominican government assumes responsibility for providing the eligible tourist areas with basic service infrastructure. The incentives and benefits specified in this law are not limited to individuals and may be granted to individual or corporate entities, domiciled in the country, who undertake to promote or invest capital or acquire participation, as landowners, investors, borrowers, or operators of hotels or other enterprises.

A. Requirements and Procedure

In order to receive benefits under the law, new or extension projects proposals must be filed with the Planning and Program Office of the National Tourism Department which in turn presents the proposal to the Tourism Development Board. Each application must include an architectural design of the project prepared by a Dominican architect and an economic feasibility study prepared by a Dominican analyst. The Tourism Development Board is then required to accept or reject the petition within the following 60-day period. Unlike under the Industrial Incentive Law, zones produce primarily for the Dominican market and many are benefited as class “C” industries under the Industrial Incentive Law. Id.

American Chamber of Commerce of the Dominican Republic, supra note 19, at 49.

Id. at 52.

Id.


Id. art. 2.

Id. art. 3.

Persons making investments in qualified tourism projects can deduct from their net taxable income the amount of those investments. Id. art. 4.

Id. arts. 16-20.

The investment must also be of at least $100,000 in the form of Dominican currency of foreign investment registered at the Central Bank. Id. art. 14(a), (b).

Id. art. 17.
tive Law of 1968, which requires the issuance of a decree by the executive, the resolution approving the project does not require issuance of such a decree.99

B. Benefits

Eligible projects receive the following incentives and benefits for a period of 10 years, computed as of the date of completion of all construction work and of the installation of the equipment thereof.100 The law also provides that the exemption period may be extended if the feasibility study accompanying the request shows that the total size of type of investment requires a longer period for its repayment. Under no circumstances, however, shall the period of exoneration last longer than 15 years.101

The law provides 100 percent income tax exemption for all the purposes specified under the law, its amendments and extensions, derived by an enterprise, individual or juridical person; exemption from taxes on construction, incorporation or capital increases, national and municipal taxes on licenses and public spectacles; and 100 percent exoneration of all import duties and taxes and other related charges, including tariff duties, unified taxes and excises on articles and materials which are not obtainable in quality and at competitive prices from local manufacturers.102

In addition to these benefits, persons investing in companies engaged in qualified tourism projects may deduct from their net taxable income the dividends, interest or profits derived from the projects. The investor may also deduct the amount of his initial investment.103

The law further specifies that eligible projects may receive the proceeds from loans to the Dominican Government or its institutions extended by international organizations, foreign governments, or guaranteed by the Dominican states.104 The statute also stipulates that the Central Bank will guarantee the supply of foreign exchange required for the import of goods and services required by the classified tourist project.105 It shall also guarantee repatriation in the original foreign currency of all foreign investment tourist activities. Repatriated funds may include capital

98 Industrial Incentive Law No. 299, art. 38, [1968] 9079 G.O. 3 (Dom. Rep.).
100 Id. art. 12. The Law also provides that the Monetary Authority will guarantee the supply of foreign exchange required for the importation of goods and services required by the classified tourist project. Id. art. 11.
101 Id. art. 12.
102 Id. art. 2(a)-(e).
103 Id. art. 13.
104 Id. art. 10.
105 Id. art. 11.
amortization, interest and commissions, dividends, and capital gains, provided these funds are produced from a real property investment over a period of no less than 10 years, or in regards to equipment and furniture over a period of no less than 5 years.¹⁰⁶

V. FOREIGN INVESTMENT LAW OF 1978

A. Scope

The most important piece of legislation passed by the Dominican Republic in recent history is the Foreign Investment Law of 1978.¹⁰⁷ This law has been criticized as a detriment to foreign investment, and defended as being merely a registration law.¹⁰⁸ There is, however, a general feeling that the law is unclear and that its scope of interpretation is too broad.¹⁰⁹

The new foreign investment law applies to direct investments of foreign capital in the country, credit obligations with foreign lenders and contracts or agreements of any kind that give rise to an obligation to make remittances, including contracts involving technology transfers, transportation and insurance.

The law provides certain guidelines, exempts designated sectors, and indicates maximum percentages of registered capital which may be transferred abroad in the form of profit or capital. It should be noted, however, that the law is new and that it pertains only to foreign investment established to remit profits or dividends outside the country. Those willing to accept a profit in Dominican currency are not within its purview, nor are free zone manufacturing or assembly operations.¹¹⁰

Consonant with the Mexican code, the Argentinian code and emerging attitudes in much of the developed world,¹¹¹ the new foreign investment law is regulatory and restrictive in nature. In contrast the previous codes of the Dominican Republic were basically promotional and enacted

¹⁰⁶ Id.
¹⁰⁹ AMERICAN CHAMBER OF COMMERCE OF THE DOMINICAN REPUBLIC, supra note 19, at 98.
¹¹¹ See sources cited, note 4 supra. Even countries such as Canada have considered their traditional open door policy to foreign capital by adopting policies of regulation and control. See generally Glover, Canada’s Foreign Investment Review Act, 29 BUS. LAW. 805 (1974).
to attract capital by offering preferential conditions to the foreigners willing to invest in the country. In fact, prior to the enactment of this law, the Dominican Republic did not have a coherent statute especially devoted to foreign investment. The Foreign Investment Law limits the areas open to foreign investment and codifies Central Bank regulations covering registration of investments. In addition, this law also establishes a Foreign Investment Directory to register foreign investment, i.e., grant capital and repatriation facilities, and to regulate the transfer of technology.

Companies are divided into three categories depending upon the percentage of capital contributed by what the law defines as foreign or national investors. The category affects the treatment afforded the firm under the law in a variety of ways, including the manner in which the initial investment must be approved and the economic sectors in which the company may participate.

National enterprises are those whose national capital exceed 70 percent and thus limits foreign investor's participation to up to 30 percent. The national capital must possess effective legal decision-making power as well as prove that national investors exercise management control. These enterprises have exclusive rights in: national defense industries; mass communications; internal transportation (except those directly related to the import/export sector); and forestry.

National and mixed enterprises are those whose national capital, whether private or state, ranges from 51 percent to 70 percent thus allowing foreign participation of 30 to 49 percent. Again, the national capital must have real control. Enterprises in this category have exclusive operational rights in agriculture, animal husbandry, fishing, banking and insurance.

In contrast, foreign enterprises are those with less than 51 percent national capital and more than 49 percent foreign capital. Any fraction over 49 percent foreign capital produces a foreign enterprise. This is true, although control remains in national hands. The regulations issued by the Foreign Investment Directorate set forth guidelines for the types of investment that will be allowed, as well as conditions under which investments must be made.

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113 Id. tit. II, arts. 2, 4.
114 Id. art. 2.
115 Id. tit. X, arts. 29-38.
116 Id. tit. I, 1(g).
117 Id. tit. VIII, art. 23(a)-(d).
118 Id. tit. I, art. 1(b).
119 Id. tit. VIII, art. 23(2)(a)-(d).
B. Areas Open to Foreign Investments

In order to stimulate investment in export related activities, the Directorate, in reviewing a registration application of a direct foreign investment gives priority to those participating in enterprises dedicated to the exportation of goods or services which benefit the balance of payments. Moreover, under Title VIII, the Directorate is prohibited from authorizing the registration of direct investment in areas that, in its judgment, are adequately covered or do not contribute to the economic development of the country. This restriction would seem to be ineffective in that the Directorate is guided by its own judgment which results in overly broad discretionary powers.

The Directorate may not authorize foreign direct investment in areas which are regulated exclusively by the state, including (1) public services, (2) the exploration of radioactive materials, minerals, and hydrocarbons, which are regulated by special law, and (3) direct foreign investment used to acquire shares or property rights of national investors. Areas which are considered to be reserved exclusively for national enterprises include:

1. The production of materials and equipment directly linked to national defense and security.

2. Publicity, radio broadcasting, television, newspapers, magazines, publishings, and mass communications.

3. Internal surface transportation, except freight directly related to importation/exportation; internal air transport, coastal shipping and internal shipping.

4. Forest exploitation.

The areas considered to be open to national and mixed enterprises include:

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120 Direct foreign investment is defined as "[c]ontributions proceeding from abroad, owned by natural or legal foreigners or by non-resident dominicans. . . ." Id. tit. I, art. 1(a).

121 Id. tit. VIII, art. 23.

122 Id.

123 Id. art. 23(a), (b), (c).

124 A national enterprise is defined as "[a]ny company founded in the country in accordance with the laws of the Dominican Republic, more than seventy percent (70%) of whose capital belongs to national investors, provided that that portion is reflected in the technical, financial, administrative and sales management of the enterprise." Id. tit. I, art. 1(g).

125 Id. tit. VIII, art. 23(a)-(d). For discussion of the foreign investment law of the Socialist Republic of Viet-Nam, a law which did not include these kind of reservations, see Comment, supra note 12, 19 HARV. INT'L L. J. 681 (1978).

126 A mixed enterprise is defined as "[a]ny company organized in the country in accordance with the laws of the Dominican Republic, fifty-one percent (51%) to seventy percent (70%) of whose capital is owned by national investors." Investment Law No. 361, tit. I, art. 1(h), [1978] 9487 G.O. 57 (Dom. Rep.).
1. Agricultural, poultry and cattle exploitation;
2. Fishing;
3. Commercial and investment Banks and other financial institutions.
4. Insurance.\textsuperscript{137}

One crucial consideration regarding foreign investments is the definition of a “foreign enterprise.” According to Title I, Article 1(i), it is defined as “any company organized in the country in accordance with the laws of the Dominican Republic less than fifty-one percent (51\%) of whose capital is owned by national investors or any greater proportion if not reflected in the technical, financial, administrative and commercial management of the enterprise.”\textsuperscript{138}

Article 24 also restricts investment in real estate for speculative purpose, and provides that it should not be registered as direct foreign investment. Nevertheless, purchases of real estate for the construction of tourist projects or for establishing private residences in the Dominican Republic will not be considered speculative.\textsuperscript{139}

\subsection*{C. Assets that May Be Registered}

In addition to the investment of freely convertible foreign currency, the Directorate is empowered to authorize registration of direct foreign investment of machinery or equipment, tools, instruments, accessories and parts contributed in kind for the establishment and operation of enterprises in permitted fields if the interested party provides the necessary documents required by the Directorate.\textsuperscript{140}

Practically any tangible or intangible asset with the exception of land purchased for speculative purposes,\textsuperscript{131} may qualify as foreign investment. Tangible property includes, but is not limited to, equipment, machinery, tools, means of transport, and technical materials necessary for establishing new installations, or expanding existing ones.\textsuperscript{132} The language of the law does not exclude used equipment. Government screening prior to approval of a project, however, should make it unlikely that the importation of inferior equipment, either used or unused, will be acceptable.

Intangible property, such as trademarks, patent, licenses, technological process and know-how, also qualifies for foreign investment registration.\textsuperscript{133} Under Title X licensing contracts for the exploitation of patents, the use of trademarks, the leasing of machinery and equipment, and the

\textsuperscript{137} Id. tit. VIII, art. 23(2)(a)-(d).
\textsuperscript{138} Id. tit. I, art. 1(c).
\textsuperscript{139} Id. tit. VIII, art. 24.
\textsuperscript{140} Id. tit. IV, arts. 13, 14.
\textsuperscript{131} Id. tit. VIII, art. 24.
\textsuperscript{132} Id. tit. IV, Arts. 13, 14.
\textsuperscript{133} Id. tit. X, arts, 29-38.
providing of technical know-how, must be submitted for study and approval or refusal to the Directorate. The government then considers the effective contribution of the technology to be transferred to the country and how to quantify the effect of the technological transfer.134

The law provides that in licensing contracts, the agreement should contain clauses specifying at least the following matters:
1. identification of the means of transferring the imported technology,
2. contractual value of each element involved in the transfer of technology, and
3. duration of the contract.136

Under article 33, an application for the registration of licensing contracts for the exploitation of patent, use of trademarks, leasing of machinery and equipment and know-how transfers must be accompanied by a Spanish copy of the contract, and if in a foreign language, by a translation done by a legal interpreter.136

An investor must remember that although intangible technological contributions will be entitled to royalty payments, they may not be credited under this law, as capital contribution to the concessionaire.137 As previously mentioned, the definition of “foreign enterprises” should be kept in mind, because the Directorate may not approve the registration of contracts for the transfer of technology for “foreign enterprises.”138 Under article 39 they are not entitled to the tax exemptions provided in Article 13 of Law 299 on industrial incentives,139 nor are they entitled to the exemptions provided in Law No. 587 of 1977.140 Article 39, however, will apply to capital held by national investors in foreign enterprises141 a distinction which on its face appears to discriminate in favor of national investors. Furthermore, payments derived from licensing contracts between a technology grantor and another concessionaire relating to the exploitation of patents, trademarks, lease of machinery and equipment, and know-how transfers, may not exceed a given percentage of the net annual

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134 Id. art. 29.
136 Id. art. 32(a)-(c).
138 Id. art. 33.
139 Id. art. 34.
136 Id.
138 Id. tit. XI, art. 39. See also Industrial Incentive Law No. 299, Art. 13, [1968] 9079 G.O. 3 (Dom. Rep.).
sales of the licensed products. This percentage is at the option of the
Directorate who is given the power to make each individual
determination.\footnote{Id. tit. X, art. 36.}

Another fact in the discussion of transfers of technology, is prime at
this time; that is, no contract or concession may contain any clause which
removes possible conflicts or controversies from national jurisdiction and
competence, nor which would permit the subrogation by a state of the
rights and properties of its national investors.\footnote{Id. art. 38.}

D. Application Procedures

Foreign investors wishing to invest in the Dominican Republic must
submit a written application to the Directorate and same must be in com-
pliance with the Directorate’s internal regulations.\footnote{Id. tit. III, art. 5. Investors exempted under art. 42 are not required to comply with
this procedure.} Approval of the application empowers the foreign investor to register the direct investment
with the Central Bank of the Dominican Republic.\footnote{The Central Bank cannot register new investments that have not received the Direc-
torate’s prior approval. \textit{Id.}} This procedure also applies to foreign reinvestment.\footnote{Id. art. 6. Foreign reinvestment is defined as a “[d]irect foreign investment for pur-
pose of being registered through all or part of the profits derived from a registered foreign
investment in the same company that has generated them.” \textit{Id.} tit. I, art. 1(b).}

Upon approval by the Directorate, the foreign reinvestment or new
investment may be registered at the Central Bank.\footnote{Id. tit. III, art. 7. Registration must be requested within a period not to exceed one
year from date of approval. \textit{Id.} art. 5.} The law provides
that the amount of the direct foreign investment registered must be in
national currency,\footnote{Id. art. 8.} and that any existing bearer shares in the particular
enterprise must be converted into nominal shares within six months of
the effective date of this law.\footnote{Id.} Registration of the foreign investments is
at the Central Bank, which is designed to facilitate the centralization of
the statistical, accounting, information and control registries pertaining to
foreign direct investments and licensing contracts for the transfer of
technology.\footnote{Id. art. 12, para. 1(a).}

Registration of the direct foreign investment at the Central Bank au-
thorizes the foreign investor to exchange local currency for freely convert-
ible foreign exchange. In order to transfer abroad the value of the regis-
tered investment and the profits it generates, the conditions established
by the statute must be complied with.181

E. Existing Investments

The law takes into account the discomfort of foreign investors whose investment predated the 1978 law. The law adopts a relatively lenient and flexible approach toward foreign investments already operating in “prohibited” sectors of the economy. The legislation provides that the prescriptions of Article 23 do not apply to foreign investors who registered prior to the promulgation of the law.182 Although the older investments may be operating in an area now limited to a particular class of enterprise, the government apparently intended to allow those investments to continue to operate.

The law, however, does provide that direct investment made between January 14, 1972 and the effective date of the law, which had not yet been registered at the Central Bank, would be subject to the provisions established in the Fifth Resolution of January 13, 1972183 as modified by the First Resolution of April 13 of the same year.184 These resolutions were passed by the Monetary Board to establish permissible areas of investment. A four month grace period after the effective date of the law was granted for the registration of those investments, which complied with the aforementioned resolutions.185 Contracts or licenses for importing technology which were signed before the effective date of the law, and were not registered at the Central Bank, enjoy a six month registration grace period following the effective date of the law.186

F. Profits and Capital Remittances

1. Profits

Only registered investors are guaranteed the right to remit profits abroad in freely convertible foreign exchange provided the net profits of each fiscal period do not exceed 18 percent of the amount of the regis-

181 Id. tit. V, art. 15; art. 12, para. 1(b) empowers the Central Bank to authorize the transfer abroad, in freely convertible foreign exchange, of any amounts to the remittance of which foreign investors are entitled under this law. See also Foreign Exchange Control Law, Law No. 251 of May 11, 1964, [1964] 8859 G.O. 13, as amended by Law No. 188 of Sept. 13, 1967, [1967] 9052 G.O. 20; and Law No. 303 of June 30, 1966, [1966] 8994 G.O. 2 (Dom. Rep.).


186 Id. art. 47.
tered foreign investment. In defining profits eligible for transfer and thus eligible for reinvestment, the law establishes a percentage limitation based on the amount of previously authorized capital investments. Therefore, in no case will the value of repatriated funds, plus foreign reinvestment, and investment in other companies exceed 18 percent of the registered foreign investment in the same fiscal period. Profits exceeding the stipulated percentage automatically become Dominican transfer rights, such that profits above 18 percent of the registered foreign investment cannot be added to the profits of other fiscal periods to complete this percentage.

The law provides further that in cases where foreign investments have been registered for less than a full fiscal year, the date of the registration with the Central Bank will be used to establish the proportionate level of annual profits from the registered foreign investment. An additional restrictive measure of this law provides that remittable profits not remitted or reinvested within two years from the closing date of a fiscal year, will become blocked. Once this deadline has expired, the foreign investor will have no right to remit via the Central Bank or reinvest in another enterprise, the profits of aforesaid fiscal year. Under this law, however, the Directorate, may allow annual profits exceeding the 18 percent ceiling to be lent in national currency to enterprises that meet the following criteria:

(a) if such investments made in the capital of export enterprises in the agri-business or tourism sectors;
(b) if more than eighty percent (80%) of the sales of such enterprises represent an influx of foreign exchange to the Central Bank;
(c) if these enterprises turn over to the Central Bank, through commercial banks, the total amount of foreign exchange generated by them; and
(d) when the participation of the foreign direct investment in the capital of the enterprises does not exceed thirty percent (30%) of the said capital.

Loans are additionally limited in that they may not be granted for less than eight years, are to be paid in proportional amounts, may not bear more than six percent interest, and during any year, amortizations may not exceed twenty percent of the originally loaned capital. After complying with these requirements, remittances in foreign currency of the

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157 Id. tit. V, art. 15; Id. tit. VI, art. 16.
158 Id. tit. VI, art. 16.
159 Id. art. 17.
160 Id. art. 18.
161 Id. art. 19.
162 Id. art. 20(a)-(d).
163 Id.
profits, amortization and interest will be allowed. As with other regular
direct investment, however, the foreign exchange generated and ex-
changed by the enterprise is limited to 30 percent per annum.164

2. Capital

The aforementioned restrictions, however, only apply to profits. Any
foreign investor has the right to remit the registered capital upon sale of
its shares, participations or rights to national or foreign investors, or
when the enterprise in which it made its investment is liquidated. Such
remittance is allowable provided that the selling investor has complied
with all tax and exchange obligations.165 The lack of automatism in the
prior law was the primary reason for the change. Law 299 emphasizes
predictability, while still allowing some latitude in its administration.

In the cases of a sale, transfer or cession of shares, participations or
rights of the foreign investor to another, the transaction must be reported
to the Central Bank within 30 days. Upon notification, the new investor
will be registered and will inherit the same rights as its predecessor.166
Under this law capital repatriation will be allowed, however, capital gain
thereon will be limited to two percent per annum on the registered for-
eign investment dating from the time of registration. The two percent per
annum is cumulative up to a maximum of 20 percent of the foreign in-
vestment registered at the time of the transaction.167

Finally it is important to note that the transfer of technology will
entitle the transferee to receive royalties. The royalties, however, may not
be credited as capital contribution to the concessionaire.168

VI. THE DOMINICAN ECONOMY

A. Background

The Dominican Republic's economy is vitally dependant upon for-
eign trade. The United States is its single most important trading part-
ner, accounting for more than 50 percent of all imports and averaging
over 60 percent of the exports.169 Thus, the Dominican Republic has be-
come the single largest market for U.S. goods and services in Central

164 Id.
165 Id. tit. VII, art. 21.
166 Id.
167 Id. art. 22.
168 Id. tit. X, art. 34.
America and the Caribbean.\textsuperscript{170}

Because its economy depends primarily on agriculture,\textsuperscript{171} particularly sugar, the Dominican Republic has greatly profited from the U.S. embargo of Cuba.\textsuperscript{172} In 1974 the Republic shipped 813,739 short tons of sugar to the United States under the quota system, and although the United States Sugar Act\textsuperscript{173} expired that year, the United States continues to be the principal market for Dominican sugar.\textsuperscript{174}

General trade statistics have focused on traditional Dominican exports such as sugar, coffee, cocoa, ferronickel, gold and silver, tobacco, and bauxite which amount to 92 percent of total exports.\textsuperscript{175} In 1978, export earnings totaled only $675.5 million, a drop of a 13.5 percent from

\begin{table}
\centering
\begin{tabular}{|l|c|c|c|c|c|c|c|c|}
\hline
\hline
\% of total exports shipped to the U.S. & 84\% & 74\% & 63\% & 66\% & 66\% & 67\% & 70\% & 73\% & 61\% \\
\% of total exports supplied by the U.S. & 45\% & 52\% & 50\% & 50\% & 68\% & 50\% & 48\% & 44\% & 44\% \\
\hline
\end{tabular}
\end{table}


\textsuperscript{171} About 25,000 sq. kms. out of the total 48,442 sq. kms. of land is cultivable, although considerably less than a third of this area is presently being cropped. \textit{See Caribbean Year Book, Dominican Republic} (1978).

\textsuperscript{172} Formerly, the Dominican Republic had the largest quota in the Western Hemisphere for the supply of sugar to the U.S. market. For discussion, see Berman & Heineman, \textit{Lobbying by Foreign Governments on the Sugar Act Amendments of 1962, 28 Law & Contemporary Problems} 416 (1963).


\textsuperscript{174} U.S. DEPT. OF STATE, \textit{BACK GROUND NOTES: DOMINICAN REPUBLIC} 7 (1978) [hereinafter cited as \textit{BACK GROUND NOTES}].

\textsuperscript{175} Year
\begin{tabular}{|l|c|c|c|}
\hline
Year & 1977 & 1978 & 1979 \\
\hline
Sugar & & & \\
Sugar Products & 278.6 mil. & 211.2 mil. & 233. mil. \\
Coffee & 174.7 & 96.8 & 158. \\
Cocoa & 93.8 & 87.7 & 78.5 \\
Ferronickel & 91.4 & 72.7 & 123. \\
Gold & Silver & 54.9 & 76.9 & 130.8 \\
Tobacco & 28.1 & 46.5 & 55.5 \\
Bauxite & 22.0 & 23.4 & 20.9 \\
\hline
TOTAL & 713.5 mil. & 615.2 mil. & 799.7 mil. \\
\hline
\end{tabular}

Total exports in 1977 were $780.1 million, and $675.5 for 1978, for 1979 $871.1, \textit{see note 178 infra}. 
In 1978, export earnings for sugar and sugar products declined to $211.2 million. The 1979 figures, however, increased 28.9 percent to $871.1 million. The decline in 1978 resulted, in part, from the further deterioration in the average selling price of sugar to 8.5 cents, a half cent cheaper than in 1977; the volume of sugar exported also fell from 1,099,000 metric tons in 1977 to 935,000 metric tons in 1978, which was the country’s export quota under the newly formed International Sugar Agreement (ISA). For 1979, however, the Dominican Republic was granted an extra 100,000 metric tons quota allotment under the ISA. Most of the 1979 sugar was sold during the first half of the year, before the climb in world market prices. Thus the Dominican Republic received an average of 87 cents per pound, and total exports totalled $233 million for this commodity.

In 1977 record export earnings for coffee and cocoa helped to counter the falling sugar prices, but in 1978 prices for these commodities reversed direction and they too fell significantly. In addition, ferronickel declined in price and bauxite remained relatively steady. Only gold and silver exports rose significantly so as to surpass, for the first time, the export earnings of ferronickel shipments.

In 1979 the export position of the Dominican Republic greatly improved. Ferronickel exports increased to $123 million. Total imports of $859.2 million in 1978 represented an $11.6 million increase over the 1977 import total of $847.6; in 1979 imports reached $1,055.0 million.

The Dominican Republic in 1978 exported $536.9 million worth of goods to the United States and in turn, imported items valued at $473.2 million thereby retaining the United States as one of the few countries with which the Dominican Republic still enjoyed a trade surplus. In 1979,
however, Hurricane David had a negative effect on the Dominican Republic's balance of trade position. Total exports totalled $603 million while total imports rose to $667 million.\textsuperscript{187} The Dominican government is attempting to end the country's dependence in sugar production since this commodity is at the mercy of fluctuating prices and foreign-imposed quota systems. General trade statistics herein presented have focused on traditional exports, i.e. sugar, coffee, cocoa, ferronickel, gold and silver, tobacco and bauxite, since these comprise the bulk of export earnings. For the past several years, however, the Dominican Republic has concentrated on increasing the production of nontraditional commodities.\textsuperscript{188} Efforts to diversify have been made within the agricultural sector and in other sectors such as mineral development, light industry and tourism. Dominican trade policy aims to substitute imported foodstuffs for locally made staples. This policy involves a diversification of local agricultural crops to broaden the country's export base, which in turn should eventually result in a decreased reliance on traditional commodities such as sugar, coffee, cocoa and tobacco. The Dominican Republic is a party member of the International Fund for Agricultural Development,\textsuperscript{189} an agreement which focuses on mobilizing additional benefits for agricultural development thus further aiding its objectives. The Dominican Republic has also been promoting increased local production of a wide range of consumer goods by allowing industrial machinery and agricultural equipment and spare parts to be imported subject only to a single import tax of 10 percent of the C.I.F. cost, insurance and freight value.\textsuperscript{190}

B. Growth of the Economy

In the early 1970's, the economy of the Dominican Republic enjoyed one of the highest growth rates in Latin America. Since 1976, however, the country has experienced an economic slowdown caused by a fall in sugar prices and rises in petroleum costs.\textsuperscript{191} Thus, real gross national product (GNP) growth in 1976 was 6.4 percent, 4.4 percent in 1977, and only 3.6 percent in 1978.\textsuperscript{192} In 1978 continued low world prices for sugar,

\begin{footnotesize}
\textsuperscript{187} Hurricane David struck the Dominican Republic on August 31, 1979, followed shortly by storm Frederick. 1,380 persons were found dead, over 4,000 injuries and up to 200,000 were left homeless. Preliminary loss estimates stand at $837 million. See note 178, \textit{supra}.  
\textsuperscript{188} Russin, \textit{Increasing Obstacles Affecting Trade In Non-traditional Products with the United States: The Dominican Experience}, 4 \textit{Int'l Trade L. J.} 43 (1978).  
\textsuperscript{190} The \textit{Bureau of National Affairs, Dominican Republic} (1979).  
\textsuperscript{191} \textit{Back Ground Notes}, \textit{supra} note 174, at 6.  
\textsuperscript{192} In 1978, the Central Bank changed its base year for computing economic statistics
\end{footnotesize}
coupled with substantial declines in world prices for coffee, and cocoa, the country's principal export, caused a decline of $105 million in total export earnings. Nevertheless, real gross national product for 1979 increased to 5.3 percent, an improvement over the 1978 total of 3.6 percent. In 1979, however, imports of petroleum and its derivatives totalled an estimated $306 million. This greater petroleum bill plus added imports for foodstuffs and reconstruction material necessitated by destruction in the wake of Hurricane David, resulted in a merchandise trade deficit of $252 million, thereby pushing the current account deficit to $397.3 million.

The Dominican peso remains pegged at the 1947 rate of RD$1-U.S.$1, and all exchange transactions through the Central Bank occur at this rate. Exporters are required to exchange all overseas earnings at the Central Bank, and foreign investment and foreign loan inflows are also exchanged at the par rate by the monetary authority. During the past 10 years, however, a "parallel market" has developed in the Dominican Republic. This formal market operates freely and has the semi-official approval of the government. It provides foreign exchange for non-priority imports, investments, and overseas travel by Dominican residents. The source of foreign exchange for this market are remittance from Dominicans living abroad and the exchange rates vary from RD$1.10-1.25 for U.S.$1 depending on the availability in the country.

In January of 1979, the president proposed that the Congress regularize and expand this two-tier exchange system, by asking that certain non-traditional exports such as remittance from Dominicans abroad and tourist earnings be placed officially on the parallel market. Under this plan commercial banks would also be allowed to participate in the parallel market. But the bill has not been acted upon by the Dominican legislature. At present, between 40 and 45 percent of all of the Dominican Republic's international transactions are financed through the parallel market, including all imported consumer goods and Dominican tourist expenditures abroad. The market is currently estimated at about $350-500

from 1962 to 1970. This has the effect of raising slightly the growth rate, see note 170 supra. See also Law No. 764 of Apr. 22, 1978, [1978] 9467 G.O. 133 (Dom. Rep.), under which the peso no longer has an official value in gold, which in turn destroys free convertibility.

183 See note 178 supra.
184 Id.
185 Id.
186 Id.
189 See note 178 supra.
million.\textsuperscript{200}

C. Industrial Free Zones

The Dominican Republic has attempted to increase non-traditional exports through the implementation of an industrial free zone program.\textsuperscript{201} The governing legislation, enacted in 1969, was formulated with the technical assistance of AID. There are three\textsuperscript{202} industrial free zones presently in operation in the Dominican Republic, and others are under development. Most of the industries presently in operation within these zones are of U.S. origin.\textsuperscript{203} Industries located in these free zones are given the "A" classification and thus are exempted from taxation under the industrial incentive law. In 1978 the three industrial free zones, where materials are brought in duty-free, processed by local labor and re-exported duty-free, registered exports of $82.1 million, an increase of 13 percent in 1977, and employed over 14,000 Dominicans.\textsuperscript{204} In order to further maximize the benefits, in 1978 the Dominican government also established a National Council for Industrial Free Zones to coordinate the promotion, operation, and development of the zones.\textsuperscript{205} In 1979, the National Council for Industrial Free Zones was also placed in charge of administering the United States-Dominican Republic Textile Agreement.\textsuperscript{206}

D. Non-Traditional Products

1. Textiles

Textiles are a non-traditional item which can profitably be exported to the United States. In August 1979, the Dominican Republic reached a textile agreement\textsuperscript{207} with the United States which will permit continued

\textsuperscript{200} Id.


\textsuperscript{202} (1) La Romana industrial free zone, located about 82 miles East of Santo Domingo, (2) San Pedro Macoris industrial free zone, located in the city of San Pedro De Macoris and (3) Santiago Industrial free zone, located in Santiago. See notes 68-71 and accompanying text supra.

\textsuperscript{203} See note 169 supra.

\textsuperscript{204} See note 178 supra.

\textsuperscript{205} The council is headed by the Secretary of Industry and Commerce and includes the Secretary of Finance, the Technical Secretary of the President, (Secretary of Industry) and the General Director of the Industrial Development Corporation (FOMENTO). See Industrial Incentive Law No. 299, art. 4, [1968] 9079 G.O. 3 (Dom. Rep.).

\textsuperscript{206} Agreement on Trade in Textile and Textile Products, Aug. 7 & 8, 1979, United States-Dominican Republic, U.S.T. 1, T.I.A.S. No. 9454.

\textsuperscript{207} Id.
growth at non-disruptive rates over the next four years of Dominican exports to the United States of man-made fiber brassieres, cotton shirts, cotton nightwear, and man-made fiber shirts and blouses for women, girls and infants. All of these products are manufactured in the free zone areas. Therefore, the agreements will help to assure the continued success of the industrial free zones.

2. Beef

Beside the increased exportation of textiles and other non-traditional products from the industrial free zones for the past several years, the Republic has devoted substantial resources to the beef cattle industry, through loan programs administered by the Agricultural Bank and the Agricultural Development Fund of the Central Bank. In recent years this non-traditional product has proven to be a growing source of foreign exchange with the United States, earning over $4.7 million in 1975, $9 million in 1976, $1.9 million in 1977, and $1.7 million in 1978. Although exports for this non-traditional product have grown, under the provisions of the Agricultural Act of 1956 the United States has required the Dominican Republic and other parties to the agreement to enter into annual voluntary restraint agreement. This agreement places a ceiling on the Dominican Republic's ability to export beef and beef products to the United States from 11 million pounds in 1970 to the 1979 limit of 18.5 million pounds.

Although these quota limits have not been reached except for the year 1976, they serve to further restrict investment in this product. As the 1977 and 1978 figures reveal, the trend seems to be that the Dominican Republic's beef and beef products exports to the United States has been declining, and as long as ceiling restrictions on the amounts which can be imported to the United States remain, investors will be discouraged from

208 See note 178 supra.
209 For a different conclusion, see Russin supra note 188.
213 See generally Multilateral Trade: Meat Imports Mar. 9, 1970, U.S.T. 1092, T.I.A.S. No. 6865 (which limits 1970 to 11 million pounds); Multilateral Trade: Meat Imports, Mar. 9, 1979, U.S.T. 1, T.I.A.S. No. 9376 (which limits 1979 to 18.5 million pounds). The United States in all of these agreements, however, always reserves the right to increase the permissible quantity of imports allowable for any specific year.
extending the development of this non-traditional product.\textsuperscript{214}

3. Tourism

Tourism is another non-traditional industry which the Dominican Government hopes to exploit by capturing substantially more of the Caribbean tourist trade. This potential for greater foreign exchange earnings has been promoted through the enactment of the aforementioned Tourist Incentive Law.\textsuperscript{215} The Dominican Republic attracts tourists because of its pleasant climate, excellent beaches, proximity to the United States, relative low prices and the absence of violence affecting foreigners. For the past several years the government has been working on such problems as infrastructure and limited accessibility to many points on the island.\textsuperscript{216}

In December 1979, President Guzman inaugurated the island's second airport - a new international airport at Puerto Plata,\textsuperscript{217} capable of handling Boeing 747 aircrafts.\textsuperscript{218} Despite past hurricanes and a general malaise in the Caribbean tourism industry primarily caused by economic uncertainty and inflation in the United States and Europe, it is estimated that about 500,000 tourist generated about $125 million in earnings for the 1979 calendar year.\textsuperscript{219}

VII. U.S.-DOMINICAN COMMERCIAL AGREEMENTS

U.S.-Dominican relations have a relatively long history which dates back to the nineteenth century. In 1867, the two nations mutually resolved and concluded a general convention of amity, commerce, navigation, with an added provision for the surrender of fugitives.\textsuperscript{220} In this agreement they stated the intentions of continuing a firm, inviolable, and universal peace, and a true and sincere friendship between the contracting parties.\textsuperscript{221} This condition continued and in 1869 a Treaty of Annexation\textsuperscript{222} was signed. The annexation of the Dominican Republic to the

\textsuperscript{214} See Russin, supra note 188.
\textsuperscript{215} See notes 88-106 and accompanying text supra.
\textsuperscript{216} See note 176 supra.
\textsuperscript{217} The Puerto Plata International Airport was built with aid from the United States, see Nov. 6, 1976, U.S.T. 1, T.I.A.S. No. 8693.
\textsuperscript{218} See note 178 supra.
\textsuperscript{219} Id. See also A Business Diaglogue: The Dominican Republic, Nation's Bus. Sept. 7, 1979.
\textsuperscript{221} Id. art. 1.
\textsuperscript{222} For history of the Dominican Republic, see J. Gimbernard, Historia De Santo Domingo (6th ed. rev. 1976); B. Pichardo, Resumen De Historia Patria (6th ed. 1974); C. Onis, The Hispanic Caribbean, The U.S. and the Caribbean, 157 (1971); A. De La Rosa, Las Finanzas De Santo Domingo Y El Control Americano (1969); S. Rodman, Quisqueya:
United States never materialized however, due to protracted and bitter battle in the U.S. Senate which defeated the ratification of the treaty in 1870. After that time, the financial condition of the Dominican Republic continually worsened until 1916 when U.S. troops landed in the Dominican Republic and a U.S. military government was established. This occupation lasted until 1925, when the Republic regained its independence.

From the very beginnings of U.S. treaty practice, the bilateral commercial treaty has been a multipurpose investment fostering objectives of American foreign economic policy, creating a basis for mutual understanding and contact between the signatories, and attempting to establish standards on a long-term basis for the favorable treatment of American goods, shipping and citizens.

The United States and the Dominican Republic have concluded a series of bilateral agreements which constitute the basis for commercial relations between the two countries. In 1891, after the Congress of the United States enacted the Tariff Law of October 1, 1890, a commercial relations agreement was entered into, whereby each country promised mutual tariff reductions for the purpose of establishing reciprocal commerce upon a basis of encouraging the development of trade and strengthening the relations of sincere friendship. One of the most important of U.S.-Dominian agreements is the 1924 trade agreement which was signed in Washington by the minister of the Dominican Re-

A History of the Dominican Republic (1964); S. Welles, Naboth’s Vineyard: The Dominican Republic 1844-1924 (1928).


223 Ratification of Plan of Evacuation, June 12, 1924, T.S. 729, 44 Stat. 2193 IV Trenwith 4077, 7 Bevans 206. Under this treaty, however, the United States was to maintain control and supervision over customs finances until the debts owed to the United States had been paid. Although, the debts were not yet paid, in 1941 an agreement, T.S. 965, 55 Stat. 1104, 7 Bevans 224, was signed giving to the Dominican Republic complete economic dependence and terminating United States' operation of the customs. See also Collection and Application of Dominican Customs, Feb. 8, 1907, T.S. 465, 35 Stat. 1180, I Malloy 418, 7 Bevans 196, see generally sources cited note 222 supra.

224 Setser, Treaties to Aid American Business Abroad, 40 FOR. COM. WEEKLY NO. 11, at 3 (Sept. 11, 1950).


226 Id.

227 Id.


230 Id.

231 Most-Favored-Nation Treatment in Customs Affairs, Sept. 25, 1924, T.S. 700, IV Trenwith 4088, 7 Bevans 216.
public, Mr. José Del Carmen Ariza. The agreement, which lasted until May 19, 1950, provided for the reciprocal granting of Most-Favored-Nation (MFN) status in respect to imports, exports and other duties and charges affecting commerce, as well as in respect to transit, warehousing and other facilities.

In addition to bi-lateral agreements, effective international trade agreements often depend on an institutional framework within which countries with divergent interest can examine specific trade problems, identify their common interests and work out mutually acceptable solutions. The introduction of the reciprocal trade agreement program by U.S. President Roosevelt during the 1930's, the creation of the General Agreement on Tariff and Trade (GATT) in 1947 and the passage of the Trade Act of 1974 as well as the unconditional Most-Favored-Nation (MFN) agreement, has been the basis of commercial agreement between the two countries.

One of the pillars of the post-war trading system has been the most-favored-nation principle embodied in GATT to which both the United States and Dominican Republic are signatories. GATT stipulates that "... any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties."

For many years, developing countries such as the Dominican Republic sought some modification of the principle that would permit some form of special treatment for less developed countries (LDC) exports. A breakthrough came about with the international acceptance of the Generalized System of Preferences (GSP), by which selected exports from developing countries are allowed to enter the markets of developed countries, such as the United States, at lower duty rates than those applicable to the same products from developed countries. The concept of a sys-

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383 Date on which the Dominican Republic became a contracting party to the General Agreement on Tariffs and Trade (GATT). See note 235 infra.
385 Roosevelt's insistence that the mutual reduction of trade barriers was an essential means for bringing about America out of the depression culminating in the passage of the Trade Agreement Act of 1934. See generally Hawkins & Norwood, The Legislative Basis of United States Commercial Policy, [1963] STUDIES IN U.S. COM. POL. 69.
388 GATT, supra note 235, art. 1.
389 Id. art. 36.
tem of international trade preferences — an exception to the principles of most-favored-nation — as an effective method of stimulating growth in developing countries grew out of the United Nations Conference on Trade and Development (UNCTAD) in 1964. With the passage of the GSP in the Trade Act of 1974, the United States became the last developed country to adopt such a system. Under this statute, the president has the authority to extend duty-free customs treatment to imports of any “eligible article” from any “Beneficiary Developing Country” (BDC), to establish dollar value and import percentage limits and establish exceptions for “import sensitive items.” This program, however, will expire within 10 years. Under the Trade Act, Congress neither selected eligible countries nor settled on any one definition, instead, it granted the President the authority to maintain a list of Beneficiary Developing Countries according to criteria set forth in the Act. It did, however, specifically deny eligibility to 17 countries and to the European Community member states. In addition, the Senate report on the trade act listed 101 countries to be actively considered for Beneficiary status and the Dominican Republic was among those in the list.

Implementation of the GSP, authorized by the Trade Act was first announced on March 24, 1975, with respect to beneficiary developing countries, and on November 24, 1975, with respect to eligible articles and

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241 President Johnson in April 1967 at the Summit Conference of American Chief of States announced the willingness of the U.S. to consider possible systems of nonreciprocal preferential treatment for export of the developing nations, 56 DEPT. OF STATE BULL. 717 (1967), however this did not come about until seven years later. The United States was the 23rd country to adopt a generalized system of tariff preferences, see Office of the Special Representative for Trade Negotiation Exec. Off. of the President Press Rel. No. 211, 4 (Nov. 24, 1975).


243 Id. §504(C), 19 U.S.C. §2464(C).

244 Id. §503(C), 19 U.S.C. §2463(c)(1).

245 Id. §505(a), 19 U.S.C. §2465(a).

246 Tit. V of the Trade Act begins with a grant of authority to the President. Id. §501-505, 19 U.S.C. §§2461-2465.

247 Id. §502(B), 19 U.S.C. §2462(B).


249 40 FED. REG. 13, 455 (1975).

changes in the beneficiary list.\textsuperscript{251} The GSP system has emerged as a program of major importance to many developing nations.\textsuperscript{252} Adherence to the GSP reflects the U.S. effort to bring developing countries more fully into the international trading system. The Dominican Republic has registered most of its gains under the GSP in agricultural products.\textsuperscript{253}

As emphasized by the statement of U.S. Ambassador William D. Eberle, the primary purpose of the GSP has been to "increase the export earnings, promote the industrialization, and to accelerate the rates of economic growth of developing countries."\textsuperscript{254} Although this may be true, the GSP was not designed solely for the benefit of the developing countries, since the developing countries tend to spend their increased export earnings in the United States for goods necessary to their economic development.\textsuperscript{255} This is especially true in the case of the Dominican Republic.

One of the most important factors which prompted the United States to define its trade policy for the 1970's by instituting the GSP system was the constant erosion of the MFN principle during the 1960's.\textsuperscript{256} In order to remedy this situation, one of the purposes of the GSP was to provide an alternative to the proliferation of preferential trading agreements which often involved "reversed" preferences which discriminated against exports of the United States.\textsuperscript{257} In addition to prohibiting designation of certain developed and communist countries,\textsuperscript{258} the Act also directs that unless the President determines designation is in the economic interest of the United States, BDC status may not be granted to countries

\textsuperscript{251} Designated as beneficiaries developing countries were 98 independent countries and 29 dependent countries and territories. \textit{Id.} at 205.

\textsuperscript{252} In the Tokyo Round Table Negotiations, there has been suggested adoption of an "enabling clause" making the possibility of special treatment for LDCs a permanent feature of the international trading system. \textit{See} Graham, \textit{A Practioner's Guide to the Tokyo Round Table Negotiations}, 4 N. CAROLINA J. INT'L L. & COM. REG. 225 (1979).


\textsuperscript{255} \textit{Id.} at 322.


\textsuperscript{258} Preference grants are prohibited for any country which is a member of OPEC and for members of similar cartel-like arrangements which withhold vital material from world trade or unreasonably raise prices to levels that would seriously disrupt the world economy. \textit{Id.} \textsection 502(B)(2), 19 U.S.C. \textsection 2462(B)(2) (Supp. V. 1975). Unsuccessful attempts have been made in Congress to provide LDC status to Venezuela and Ecuador inspite of their OPEC membership. \textit{See generally} S. 394, 94th Cong., 1st Sess. (1975); H.R. 5585, 94th Cong., 1st Sess. (1975).
which have expropriated U.S. property without making prompt, adequate compensation or agreeing to binding arbitration of the dispute. The value of the GSP does not lie in its impact on the total U.S. import market, but rather in the trade opportunity that it offers to developing countries such as the Dominican Republic to take advantage of the system's incentive to diversify. GSP has allowed the Dominican Republic to concentrate its resources on such diversification for the past several years.

Under the Trade Act the President also selects the articles to be made eligible for duty-free entry from the BDCs, however, various limitations have been placed on non-traditional products. Limitations such as those under U.S.T.S 807.00, which provide that U.S.-made components of assembled articles must be "exported in conditions ready for assembly without further fabrication" and must not have been "advanced in value or improved in condition abroad except by operations incidental to the assembly process," have resulted in decreased rate of utilization, and therefore the potential benefit of the GSP system has not been fully realized. In the case of the Dominican Republic, the utilization rate for the year 1977 under the GSP system was only 59 percent, whereas without U.S.T.S 807.00 it would have been 83 percent. Even with products

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261 See Russin, supra note 188.


265 Id.

266 See Smith, supra note 253.

267 Id.
to which UST S 807.00 applies, however, the Dominican Republic has attracted a significant number of assembly operations which produce a variety of non-traditional exports. These plants are beneficial to the Dominican Republic in that they contribute to the balance of trade and provide needed training for the unskilled Dominican labor pool.\footnote{Russin, supra note 188.}

VIII. Conclusion

In international trade, law is not an end but a technique to achieve certain economic and political goals. In the final analysis, actual expansion depends primarily upon political and economic factors.

While recognizing a need for foreign investment capital in their economies, many countries have created specific statutory schemes for its regulation. Foreign investors will be attracted to the Dominican Republic because of its national commitments and its generally positive attitudes toward foreign investment and private enterprise.

Although the Dominican Republic's economy still retains its traditional dependence on agriculture, it is in the process of developing new agricultural, mineral, tourism, and high industrial products for which it has a competitive advantage. Although some non-traditional exports to the United States have been subject to a number of restraints, these have resulted from individual U.S. decisions affecting single products rather than a concerted policy to erect obstacles to Dominican exports. Dominican foreign investment laws seek to foster and protect established industrial and trade incentives, and clearly defines the requirements that foreign investors must fulfill in order to participate in the country's economy. Although these laws may be considered a progressive one according to trends presently prevailing in Latin American countries, they cannot be considered excessively nationalistic, chauvenistic or anti-foreign. In fact, the laws are merely a modernized legal instrument through which the Dominican Republic is trying to promote its independent economic development as a developing nation.

Government officials have repeatedly stressed that the Dominican Republic welcomes direct foreign investment and that it does not have an isolationist attitude regarding foreign capital investment. The laws do not deny the foreign investor the right to make a profit. Instead the laws propose to make foreign investment mutually beneficial to the Dominican Republic and to its investors within the constraints of its laws and policies.