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ECONOMIC AND LEGAL STATUS OF FOREIGN INVESTMENTS IN SELECTED COUNTRIES OF LATIN AMERICA

(Prepared by the Secretariat)

FOREIGN INVESTMENTS IN HAITI

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I. THE NATURE AND SIGNIFICANCE OF FOREIGN INVESTMENTS IN HAITI

Haiti gained its independence from France in 1805. French recognition was not obtained until 1825, and then only on the condition, inter alia, that an indemnity of 150 million francs be paid to the French Government in five equal instalments so that the former French property owners in Haiti could be indemnified. A loan of 30 million francs floated in France was used to pay the first instalment. After Haiti had failed to meet subsequent instalments and defaulted on interest payments on the loan raised in France, its liability was reduced by an arrangement with France in 1838.

Three government loans were raised between 1875 and 1910. The first loan, of 26 million francs, was floated in Paris in 1875 to meet current obligations of the Government; the debt was written down to 21 million francs in 1876. A 50 million franc loan was floated in Paris in 1896 for the same purpose. Finally, a syndicate of French, German and United States bankers arranged a 65 million gold franc loan in August 1910 for the purpose of (a) liquidating the Government's short-term obligations to the National Bank, (b) carrying out a monetary reform and (c) refunding a portion of the internal debt. This loan was secured by a tax on the export of coffee and a surcharge on import tariffs. Between 1911 and 1914, several internal bonded loans were raised, secured by receipts from customs duties. Many of the bonds were acquired by German merchants residing in Haiti. Short term debts were also incurred to English and French merchants. Failure on the part of the Haitian Government to meet the obligations in question led to repeated armed interventions by the European powers concerned. The fiscal situation of the Haitian Government in 1914 was precarious and service on the external and internal debt absorbed four-fifths of the Government revenue.1/

An intervention by the United States naval forces, undertaken with a view to forestalling further interference by European powers, resulted in a treaty with the United States, proclaimed on 15 November 1915 and ratified by the United States Senate on 28 February 1916. The treaty established a "financial protectorate", with wide powers exercised by a Financial Adviser and a Receiver General appointed by the United States. The Receiver General was put in charge of the collection of customs duties and their use for meeting the foreign

1/ United Nations, Mission to Haiti, Lake Success, July 1949, p. 297.

/financial

financial obligations of the Haitian Government. One of their first tasks was the settlement and liquidation of all foreign financial claims. It was estimated that on 31 August 1915 a total debt of 122 million francs, including accumulated interest arrears, was outstanding on the three French loans. In addition, internal bonds held largely by foreigners were estimated at roughly $2.4 million.1/ In October 1919, the American Financial Adviser authorized the Haitian Government to raise up to $40 million by issuing bonds in the United States for refunding the old French debts and for paying all other foreign claims as approved by a specially established Claims Commission. The first portion of the bond issue was floated in 1922 and amounted to $16 million. This amount was sufficient to refund the three French loans, primarily because the French franc had depreciated in terms of dollars during World War I. However, many holders of the 1910 bonds insisted on payment in gold francs, and refused to accept payment in current francs offered by the Haitian Government. Out of a total of 65 million French francs of bonds originally issued in 1910, about 25 million francs remained outstanding. Although the Haitian Government after 1922 did not consider this loan outstanding, it offered in 1938 $26 in non-interest bearing scrip for each outstanding bond of 1,000 francs. No figures are available as to how many of the 1910 bonds were exchanged in accordance with that offer.2/

In 1923, a second (and last) portion of the bond issue authorized in 1919, amounting to $2.7 million, was floated in New York for the purpose of redeeming the government-guaranteed bonds of the foreign-owned Haitian National Railroad which was thereupon taken over by the Haitian Government. Both these loans were fully serviced until redemption except from 1938 to 1941 when amortization payments were suspended with the approval of the United States Government. The financial position of Haiti improved greatly during and after World War II, and the Government retired all outstanding dollar bonds in 1947. With the payment of the dollar bonds, the United States supervision of the Haitian customs revenue ended and Haiti regained full financial independence.

On the subject of Haiti's foreign debts, the report of the United Nations

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1/ Arthur C. Millspaugh, Haiti Under American Control, 1915-1930 (Boston, 1931), p. 18.

2/ Foreign Bondholders Protective Council, Inc., Report 1946 through 1949, (New York, 1950), p. 236.

/Mission to

Mission to Haiti contains the following statement:

> "For many decades, the primary objective of the Haitian fiscal system, apart from that of providing for the essential needs of the public administration, has been to assure the service of foreign debt of the past, rather than to help promote the economic development of the country. This orientation has been determined in the main by extraneous political factors imposing certain limitations on the Government's own choice in the matter. The foreign debt liquidation effected in 1947 implied in practice an emancipation on the part of the Haitian Government from these limitations on its fiscal policy, in which, therefore, greater emphasis than in the past may now be placed on fostering expansion of the national economy."1/

The report adds that "The policy of the past has been criticized in certain quarters as having involved unduly rapid amortization, it being alleged that slower amortization would have made it possible to allocate funds to productive public investment while prices were still relatively low, and that such investment would have been capable of increasing Haiti's capacity to pay."2/

Since 1938 Haiti has obtained from the United States Export-Import Bank credits totalling $24.5 million.3/ The first credit of $5.5 million was granted in June 1938 for the purchase of construction material needed for public works. As of 30 June 1950, all but $470,000 of this credit had been repaid. A loan of $5 million was granted in May 1941 to the government-owned development company, the Société haïtiano-américaine de développement agricole. This enterprise, organized at that time to promote the production of strategic agricultural materials, obtained the loan for the development of rubber and other tropical products needed in the United States. By June 1950, about $1 million of this loan had been repaid out of earnings. In December 1948, a loan of $4 million was approved for a comprehensive development project in the Artibonite Valley. Another $10 million was authorized for the same project on 23 April 1951.

Foreign business investments in Haiti, almost entirely of United States origin, have been of importance only in railways and agriculture. The most recently published figures of United States "controlling interests" in enterprises in Haiti relate to 31 May 1943 and are as follows:4/

1/ United Nations, op. cit., p. 275.

2/ Ibid., p. 297.

3/ Export-Import Bank of Washington, Tenth Semi-annual Report to Congress for the Period January-June 1950, Washington, D.C., 1950, p. 32; and the New York Times, 24 April 1951.

4/ United States Treasury Department, Census of American-owned Assets in Foreign Countries, (Washington, D. C., 1947), p. 70.

/Millions of

	Millions of US dollars
Agriculture	7.5
Finance	3.0
Public utilities and transportation	2.3
Miscellaneous	1.4
Total	14.2

Since then there has probably been a moderate increase in investments in agriculture due to reinvestment of earnings, but there does not appear to have been any appreciable inflow of fresh capital from private sources.

The figures shown above relating to the distribution of business investments in 1943 do not reflect the past importance of foreign investments in railways in Haiti. The National Railroad, established in 1904, was a private enterprise financed largely by bonds issued with the guarantee of the Haitian Government. According to one estimate, all foreign capital invested in Haitian railways reached a peak of $10.4 million in 1914 and declined to $2.3 million in 1929 and $1.0 million in 1935.[1] The figure for 1914 presumably includes the bonded debt of the National Railroad redeemed in 1923. The financial history of the National Railway has been described in the following terms:

> "From the financial point of view, participation by the Haitian Government in the National Railroad of Haiti was one of the most disastrous ventures in the history of the Government. The railroad was a failure from the beginning; misfortune and mismanagement added to the difficulties both of the government and of the individuals interested in the project."[2]

A large portion of the United States direct investments in Haiti is accounted for by the Haytian American Sugar Company, S. A. This company was incorporated in 1943 and in 1949 took over most of the assets of the Haytian Corporation of America, which was dissolved. This company now owns or leases about 23,000 acres of sugar cane land near Port-au-Prince and operates a sugar mill, a sugar refinery and a distillery for alchol and rum. In addition, it owns the following three subsidiaries: (a) Compagnie des Chemins de Fer de la Plaine du Cul de Sac, which operates 55 miles of railways; (b) Compagnie Haïtienne du Wharf de Port-au-Prince, which under a government consession owns and operates

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1/ Cleona Lewis, America's Stake in International Investments, Brookings Institution, (Washington, D. C., 1938).

2/ "Report of the Financial Adviser-General Receiver, 1923-24" as quoted in Millspaugh, Haiti Under American Control, 1915-1930 (Boston, 1931), pp.21-22.

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the wharf at Port-au-Prince and collects a fixed charge of $1 per ton and a service charge on all goods imported and exported through that port; (c) Haiti West Indies Company, which maintains warehousing facilities and operates a banking business in Haiti.

Aside from the investments of the Haytian American Sugar Company, foreign investments in agriculture and other branches of the Haitian economy are small. Few mineral deposits have been found in the country. The Reynolds Metal Company has obtained a concession for the mining of bauxite but operations were suspended in 1949 because the bauxite was not of a type easily handled in smelters in the United States.

Foreign investments in banking were substantial until 1935 when the National Bank, owned by the National City Bank of New York, was sold to the Haitian Government. The National City Bank had acquired ownership of this bank in 1922 from the Banque de L'Union Parisienne of Paris, France. The Royal Bank of Canada is now the only foreign bank which maintains a branch in Haiti.

The only relatively complete official estimates of Haiti's balance of payments available refer to the early 1930's and apart from merchandise trade and official debt transactions little is known. The following unofficial partial estimate[1] for two recent years excludes information on the yield of business investments, which is likely to amount to several million dollars annually, the inflow of private long-term capital and various other items:

Inward (+) or Outward (-) Payments
In millions of US dollars

	Year ending 30 September	
	1947	1948
Merchandise: Exports (f.o.b.)	+31.5	+30.9
Imports (c.i.f.)	-27.2	-32.2
Interest on government debt	- 0.5	- 0.1
Repayment of government debt	- 4.8	- 0.7
Short-term capital	+ 3.5	+ 2.2
Balance of above items	+ 2.5	+ 0.1

1/ United Nations, Mission to Haiti, Lake Success, July 1949, p. 213.

/It is possible

It is possible that the balance on account of the items shown in the year ending September 1947 reflects not only net outward payment of yield on foreign investments but also some flight of capital believed to have occurred in connexion with internal political disturbances of 1946.1/ There is some indication of an outward movement of capital also in the following years. The net income in recent years of the Haytian Corporation, the major foreign enterprise in the country, was as follows:2/

	Millions of United States Dollars
1945	0.9
1946	1.0
1947	1.8

The economic development of Haiti has been slow. The situation was described by the United Nations Mission as follows:

> "Situated in the economic problem area of the Caribbean, whose relative contribution to world production and commerce has diminished on the whole over the past century and a half, Haiti lags in respect of economic development even more markedly than other countries and territories of the region with which it may be compared. 3/
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> "New bases for the legal, social, and economic institutions were laid during the early decades of the nation's independence. A system of small holdings succeeded the plantation system of colonial times. The population would appear to have increased at a rapid rate during the succeeding century, but the economic development lagged as agricultural methods came to be enveloped in the traditionalism of an illiterate peasantry. Independence was maintained, but mistakes were made in the internal management of the State. Chronic political instability, inefficiency in the financial administration of the country and in the organization and equipment of its economy, and the unyielding pressure of a too-heavy external debt burden militated against the creative development efforts of earnest leaders." 4/

1/ United Nations, op. cit., p. 212.

2/ Moody's Industrials, New York, 1948, p. 189.

3/ United Nations, Mission to Haiti, Lake Success, July 1949, p. 27.

4/ Ibid., p. 26.

II. GOVERNMENT POLICY AND FOREIGN INVESTMENTS

There is relatively little legislation in Haiti specifically concerned with foreign investments or enterprises as such. Certain laws, however, provide for different treatment of foreign and domestic enterprises and nationals in minor respects.

There is no exchange control, and the transfer of foreign capital and income thereon is not supervised by the government. For a generation Haiti has been relatively immune from foreign exchange shortage of the type that is usually referred to as "pressure on the balance of payments". This is the result of the fact that the Haitian monetary and banking system has linked the domestic money supply very closely with the country's foreign exchange position. Rigid provisions for coverage of the note issue by foreign exchange exist.[1] While under this system the deterrent to foreign investments that exchange control may involve is avoided, the resulting lack of flexibility in the domestic money supply may tend to render the domestic economy very sensitive to fluctuations in the price and volume of exports and hence to produce a domestic economic climate which in some respects is favourable to domestic and foreign investments alike. Recommendations to introduce greater flexibility in the monetary system have been made by the United Nations Mission to Haiti. These would allow the foreign exchange reserves, within limits, to fall or rise without affecting the domestic monetary supply.

Subject to general licensing requirements applicable to all business enterprises, foreign interests have the right, not restricted by any law, to engage in any kind of activity other than trade. The Haitian law fixes no limit on the percentage of foreign capital that may be invested in industrial or commercial enterprises. Despite the absence of general laws on the entry of foreign capital, however, it would appear that in practice the establishment of any sizeable foreign enterprise is subject to specific approval, since any enterprise, domestic or foreign, having a paid-up capital of one million dollars or more may not engage in business without obtaining previous authorization by the President of the Republic.[2]

1/ For details, see United Nations, <u>Mission to Haiti</u>, Lake Success, July 1949, pp. 227-274.

2/ Inter-American Development Commission, <u>Laws of Haiti</u>, Washington, 1947, p. 9.

/There are

There are no specific laws pertaining to the nationality of directors, officers or employees of enterprises operating in Haiti. In practice, however, when the Government has negotiated certain concession contracts with foreign-owned enterprises, such contracts have frequently contained provisions that a specified proportion of the employees of the enterprise be Haitian nationals. For example, one such contract provided that during the first year of operations 75 per cent, and by the end of the second year 90 per cent, of the office employees must be Haitian.1/

The Constitution of 1946 provides that only native-born Haitians may engage in retail trade, direct the operation of "small industries" and devote themselves to professional activities. It is reported, however, that numerous foreigners carry on retail trade in Haiti and that this provision of the Constitution has not been enforced.2/ There appears to be no official definition of the scope of "small industries" but it is believed that the term is intended to apply to the sisal and the mahogany handicraft industries.2/

Article 10 of the Constitution of 1946 provides that foreigners may own landed property needed for agricultural, commercial, industrial or other enterprises, but this right ceases within two years after the foreigner leaves the country or the operations of the company have ended. Foreigners are prohibited from renting real estate to others.

The Constitution (Article 7) contains a general clause establishing the right of the Government to expropriate private property for reasons of public necessity or utility, provided the owner is promptly and fairly compensated. It is also stipulated that the use made of land must be in the public interest and that a landowner has a duty to cultivate and develop the soil; penalties are provided by law if this obligation is not fulfilled.

Haitian law contains no special restrictions on foreign enterprise in mining. However, regulations applicable to both domestic and foreign mining enterprises are contained in a decree law of 1943. According to this all minerals other

1/ United States Department of Commerce, Establishing a Business in Haiti, Washington, 1948, p. 4.

2/ Ibid., p. 4.

/than those

than those that can be exploited by open surface operations belong to the sta Provision is made for exploitation of mineral deposits through the extension concession contracts, and the terms of such contracts according to foreign an domestic enterprises could presumably differ. It is reported that employment foreign concessionaires of foreign technicians or skilled workers must be authorized by the Government and that the contracts usually specify the percentage of employees that must be of Haitian nationality.

The Haitian Government's main sources of revenue are customs duties, expo taxes and, since 1948, a general income tax.

The export tax on coffee contributes heavily to the Government's revenue. Of secondary importance are export taxes on bananas, sugar, cotton, sisal, essential oils and goatskins. The main purpose of import duties is to raise revenue for the Government. However, in order to encourage new industries, th Government has frequently concluded contracts exempting the enterprises concer from import duties on raw materials or machinery.

The income tax is levied on personal and corporate incomes and profits earned in Haiti; it is progressive, rising from 5 per cent on taxable income of 3,000 gourdes ($600) or less, to 30 per cent on taxable income of over 200,000 gourdes ($40,000). This tax applies to foreigners and Haitians without discrimination. It is an established feature of Haitian fiscal policy to grant tax exemptions to newly-established businesses. In order to attract new investments contracts have been concluded by the Haitian Government exempting new enterprises, both domestic and foreign, from certain or all taxes or guaranteeing the new enterprise against an increase in taxes. These contracts run from five to sixty years. There is also a provision under which 75 per cent of net incomes not exceeding 100,000 gourdes ($20,000) may be deducted as non-taxable when reinvested in the business in certain circumstances. This provision, however, appears designed to encourage small domestic enterprises rather than foreign enterprises.

The Haitian Government has established monopolies of domestic trade in tobacco, sugar and bananas and of production of cement. The tobacco monopoly was established in 1948 in order to ensure a fair price to tobacco producers and to provide revenue for the Government; it is in charge of the purchase and sale of tobacco. The sugar monopoly handles the wholesale distribution and sale of sugar for internal consumption at fixed prices. The Government grants specific

/concessions to

concessions to Haitians for the purchase of bananas from the peasants in given areas and at fixed prices. The cement monopoly, established in 1948, is engaged in the production of cement which private capital had not found profitable. It is the intention of the Government to sell the facilities to private enterprise if opportunity should arise.
