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Assessment of the Border Development Law: Between Obscurity and the Need for Progress

Greidys Joel Roa Chalas

Public Policy Series

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Assessment of the Border Development Law: Between Obscurity and the Need for Progress

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OBSERVATORIO POLÍTICO DOMINICANO
Editorial FUNGLODE

Observatorio Político Dominicano

The Observatorio Político Dominicano (OPD) is an initiative of the Fundación Global, Democracia y Desarrollo (FUNGLODE) that furthers its mission to:
a) Analyze vital issues for promoting human development and fortifying democracy. b) Develop public policy proposals and action plans that offer answers to national problems from a comprehensive and multidisciplinary perspective. c) Contribute to the formation of a critical nucleus in Dominican society.

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Preface

Global Foundation for Democracy and Development (GFDD), in the United States of America, and Fundación Global Democracia and Desarrollo (Funglode), headquartered in Santo Domingo, Dominican Republic, are honored to present to the international English-speaking audience the studies developed by the Dominican Political Observatory (OPD by its Spanish acronym), under the guidance and leadership of the former President of the Dominican Republic and President of the foundations, Dr. Leonel Fernández.

GFDD/Funglode is dedicated to promoting research and awareness in the areas crucial to the democratic, social and economic sustainable development of the Dominican Republic and the world. The two think tanks organize meetings and educational programs as well as generate studies and publications that contribute to the development of new perspectives, searching for innovative solutions and creating transformative initiatives.

These selected works present scrupulous analysis, introduce innovative ideas and transmit inspiration. We hope they will contribute to a better understanding of the world, empowering us to act in a more informed, efficient and harmonious way.

On this occasion, GFDD/Funglode showcases the work entitled *Assessment of the Border Development Law: Between Obscurity and the Need for Progress*, which presents an analysis of Law 28-01 on Border

Development fourteen years after its enactment. The study, that highlights the controversial nature of this legislation as a development instrument, uses statistic data to establish whether the law has fulfilled its mission and its results in terms of employment and productive development.

Natasha Despotovic
Executive Director, GFDD

Summary

Fourteen years after its enactment, Law 28-01 on Border Development remains a controversial development instrument. This analysis uses available data to examine whether the law has fulfilled its mission; its results in terms of employment and productive development; problems surrounding its implementation; and how these data contrast with the opinions of involved actors. This study reveals that the arguments for and against the law both have merit, and that the law itself has come up short in attaining its objectives, thus warranting a comprehensive reform that takes into account the changed circumstances in the country at present.

Keywords: border, Law 28-01, exemptions, tax expenditures, development

Introduction

The Dominican Republic is characterized by differing levels of development across its thirty-one provinces and the National District. Social, cultural, and economic inequalities are quite marked from one province to another, especially between the border zone areas and the rest of the country. Historically, the border provinces have been the poorest and most marginalized in the nation, reflecting an absence of public policies aimed at the development of this important region.

The National Congress, aware of this reality and seeking to promote compliance with Article 7 of the 1994 Dominican Constitution ("the economic and social development of the territory of the Republic along the length of the border is of supreme and permanent national interest"), in 2001 enacted Law 28-01, which created the Special Border Development Zone covering the provinces of Pedernales, Independencia, Elías Piña, Dajabón, Monte Cristi, Santiago Rodríguez, and Bahoruco.[1]

The central section of this ordinance is summarized in its Articles 2 and 3. The sole paragraph in Article 2 states:

[1] Santiago Rodríguez and Bahoruco do not lie along the border line, but display the same features of underdevelopment and extreme poverty as the other provinces, for which reason they have been included in Law Nr. 28-01.

> Industrial, agroindustrial, farming, free zone, touristic, metalworking, and energy firms, and all types of firms allowed by current and future Dominican laws, that operate within the limits of the provinces of Pedernales, Independencia, Elías Piña, Dajabón, Monte Cristi, Santiago Rodríguez, and Bahoruco, shall enjoy an exemption of one hundred percent (100%) on the payment of internal taxes; customs duties on raw materials, equipment, and machinery; as well as any type of tax, for a period of twenty (20) years. In addition, a discount of fifty percent (50%) is granted on the payment of transit rights and the use of ports and airports.

In addition, throughout the twenty years of exemption, Article 3 of the law grants firms "a reduction of fifty percent (50%) on any other tax, fee, or contribution in effect on this date or that is established in the future."

Now in its fourteenth year in effect, this law has been the subject of many debates, many of them questioning both the distortions it generates in the national market and its effectiveness in fostering border development overall. This analysis, which aims to clarify the panorama in the face of such polarization of opinion, begins with a diagnosis of the poverty situation in the border zone, the raison d'être for the enactment of the law; it then analyzes the results of the ordinance, in particular its impact on the target provinces and the basis of the opposing opinions.

To this end, the study examines selected economic and social indicators for each province and the country overall; consults the opinions of the different involved sectors; and finally compares the law with other norms that support specific economic sectors with exemptions on payment of taxes.

1. Poverty in the Border Region

1.1. Quality of Life Index (QLI) on the border

According to poverty maps of the Dominican Republic for 2005 and 2014, the country's poorest provinces are found along the border. Table 1 presents the Quality of Life Index (QLI)[2] for these areas for the indicated years.

Table 1. Quality of Life Index (QLI) 2005/2014

Province	Year	
	2005	2014
Elías Piña	38.2	49.1
Bahoruco	44.6	57.1
Independencia	48.5	57.8
Pedernales	49.0	52.3
Santiago Rodríguez	51.2	63.0
Monte Cristi	51.8	58.3
Dajabón	52.3	62.4
Country average	53.4	64.6

Source: OPD-FUNGLODE production, 2015, with data from the Poverty Map 2005 and 2014, MEPyD.

The table shows that the poorest province in the country in both years was Elías Piña, with an average QLI of 38.2 in 2005 and 49.1 in 2014. The border province with the highest QLI for 2005 was Dajabón (52.3), displaced in 2014 by Santiago Rodríguez, with an average of 63. The figures indicate that the low quality of life levels in that region are persistent: all areas fall beneath the country's average QLI in both years.

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[2] The indicator par excellance for measuring poverty is the Quality of Life Index (QLI), which is "a synthetic index on a scale of 0 to 100 the brings together a set of variables establishing the living conditions of each household, which have a lower quality of life as their QLI approaches zero and a higher QLI as it approaches one hundred" (Morillo, A).

1.2. Characteristics of homes and households in the border region

Poverty is a multifactor situation, the specific circumstances of which, makes it difficult to measure or even formulate a universal definition. The magnitude of the poverty of citizens on the Dominican border can be perceived with a certain ease by analyzing the characteristics of their homes and households, many of which present marked symptoms of underdevelopment, with conditions of indigence that contrast with the widespread modernity of the twenty-first century.

Table 2 provides information on some characteristics of homes in this area. Among the most striking are the details on access to sanitary facilities: 53% of homes still use a latrine, and even worse, some 17% have no sanitary facilities whatsoever. In terms of cooking fuel, 23% still cook over a wood fire and 10% with coal. Some 64% of border homes have no running water in the house, 48% have walls made of wood or other low-quality material, and 14% have dirt floors. Likewise, 17% of homes have no access to the public electricity grid, meaning their occupants must fulfil their lighting needs with gas lamps (propane or kerosene) or use their own generators.

Table 2. Characteristics of homes and residences in the border region

Features	Figure (%)
Use of latrines	53
No sanitary facilities	17
Use wood for cooking	23
Use coal for cooking	10
No potable water within the home	64
Walls of wood or low-quality material	48
Dirt floor	14
No public electricity access	17

Source: OPD-FUNGLODE production, 2015, with data from the ONE IX National Population and Housing Census.

These depressing conditions reflect the level of vulnerability of a large number of people exposed to contracting various intestinal and respiratory diseases, not to mention the enormous damage done to the environment with deforestation from the felling of trees for use in stoves and cookers, and the incidence of forest fires.

The seven provinces that make up the border area benefited by Law 28-01 cover 10,823 square kilometers of territory, equivalent to 22% of the national geography. Its population, however, is just 475,556 residents (ONE, 2010), with a population density of 44 inhabitants per square kilometer. The poor living conditions and scant economic development opportunities in the region lead many of its residents to migrate to other cities in search of better conditions.

This situation is underlined by Dionis Sánchez, senator for Pedernales province, who notes:

> (...) a professional from the border region must migrate, the border is being abandoned and we don't realize the social element entailed in this situation. The spaces ceded by border residents are in turn occupied by Haitians. The border plays a role that's still not been fully understood by the country. We have small communities where more than 70% of the population is Haitian. We're suffering the Haitian issue now because it's become a national problem, while before it was only we border residents who talked about the Haitian problem. I'm actually glad that it's a national problem so that the country will worry about the matter.

The low level of development in the border region prompts the cords of misery to stretch even further, with increases in delinquency in the big cities receiving the migratory flows, as noted by Manuel Antonio Paula, senator for Bahoruco province:

> (...) when you come from a poor town, and you have no development capacity, you're not a professional, you're not a technician, you're not anything, and you set yourself up on one of those poor riverbanks, what are you going to do? What you do is go out into the street and get into trouble.

For that reason, reducing the enormous delinquency and increasing citizen security will be guaranteed when we guarantee that the border has development that people can invest in the border and that students, young people and professionals can dedicate themselves to working there on the border.

2. Results of Law 28-01

According to data from the Coordination Council for the Border Special Development Zone (CCDF), by August 2014 there were 95 active firms under the remit of this law, distributed across the seven provinces; the creation of 9,774 direct jobs and investments worth $14.913 billion Dominican pesos were also reported.

2.1 Established firms

2.1.1. Geographical distribution of firms

Table 3. Number of firms established on the border under the remit of Law 28-01

Province	
Monte Cristi	51
Dajabón	19
Santiago Rodríguez	12
Independencia	5
Bahoruco	3
Pedernales	3
Elías Piña	2

Source: OPD-FUNGLODE production, 2015, with data from the Coordination Council for the Border Special Development Zone (data updated through August 2014).

The distribution of these firms displays enormous assymetry at the provincial level, as can be seen in Table 3. Monte Cristi has the most firms covered under Law 28-01, with 51. One of the main explanations for this is the province's easy access to the port at Manzanillo, which attracts export firms to set up there. At the opposite extreme is Elías Piña, with the fewest firms covered under the law: just two.

2.1.2. Type of established firms

In terms of the type of activity to which they are dedicated, the 95 firms benefitted by the exemptions of Law 28-01 fall into three production or economic sectors: agroindustry, manufacturing, and services. Table 4 offers information on the number of firms within each sector: the agroindustrial sector predominates (54), followed by the services sector (22) and finally manufacturing (19).

TABLE 4. CLASSIFICATION OF FIRMS UNDER THE REMIT OF LAW 28-01 BY ECONOMIC ACTIVITY

Type of industry		Type of industry		Type of industry	
Agroindustrial	54	Services	22	Manufacturing	19

Source: OPD-FUNGLODE production, 2015, with data from the Coordination Council for the Border Special Development Zone (data updated through August 2014).

Among the main activities in the agroindustrial sector, the production of bananas, avocados, coffee, cacao, tomatos, melons, rice, and other cereals stands out.

In the services sector, the most frequent activities involve hospitality, media (radio stations and television channels), and retail, such as hardware stores and other shops.

Activities in the manufacturing sector include the production of doors and metallic structures, cosmetics, soft drinks and alcoholic beverages, juices, bottled goods, plastics, motorcycle assembly, manufacture of shoes and disposable diapers, assembly of electrodomestic items, and limestone and clay quarrying.

Table 5 presents the distribution of firms by province. It can be noted that the agroindustrial area covers all provinces in the region except Bahoruco, where the three firms covered by Law 28-01 are in manufacturing; in Elías Piña agroindustry is the only sector present, and in Pedernales there is one firm from each sector.

Table 5. Classification of firms under the remit of Law 28-01 by economic activity and province

Province	Type of firm/number			
	Agro-industry	Manufacturing	Services	Total
Monte Cristi	30	9	12	51
Dajabón	9	2	8	19
Santiago Rodríguez	8	3	1	12
Independencia	4	1	0	5
Pedernales	1	1	1	3
Elías Piña	2	0	0	2
Bahoruco	0	3	0	3

Source: OPD-FUNGLODE production, 2015, with data from the Coordination Council for the Border Special Development Zone (data updated through August 2014).

2.2. Jobs created

2.2.1. Direct jobs

Seventy-four percent of the 9,774 direct jobs created by these firms are held by Dominicans, while the remaining 26% are held by foreigners, mainly Haitian nationals, and citizens of other nationalities who provide skilled labor and are brought in by foreign investors to operate special machinery.

The distribution of these jobs displays a marked asymmetry that at the same time reflects the geographical distribution of the firms. In this sense, Monte Cristi is the most benefited province, with 43.3% of the direct jobs created, while Independencia has the lowest percentage: 2.1%.

There is a direct relationship between the number of jobs and the number of established firms; that said, it is worth noting that the province of Elías Piña is atypical in this respect, as despite hosting the fewest firms it comes third in number of jobs. This is due to the importance of the agroforestry group MACAPI,[3] a firm that produces, sells, and exports Hass-variety avocados and guacamole to markets as demanding as the United States and Europe, and that contributes 1,891 direct jobs (CCDF, 2014). MACAPI's strong weight is owed to the combination of the significant number of jobs created and the small resident population in the province.

Table 6. Percent direct jobs created by firms established on the border under the remit of Law 28-01

Province	Number of jobs	% of total
Monte Cristi	4,234	43
Santiago Rodríguez	1,951	20
Elías Piña	1,891	19
Pedernales	695	7
Dajabón	521	5
Bahoruco	279	3
Independencia	203	2
Border Region Total	9,774	100

Source: OPD-FUNGLODE production, 2015, with data from the Coordination Council for the Border Special Development Zone (data updated through August 2014).

The number of jobs currently contributed by firms that fall under Law 28-01 might at first seem like a modest number. Nonetheless, if the number of jobs created in each province is compared with its occupied population (OP)[4], the actual situation is better understood. The results of such a comparison are displayed in Table 7, which shows, in general terms, that firms benefitting from Law 28-01 employ just 8 of every 100 employed residents in the border region.

[3] The data reported for Elías Piña correspond exclusively to MACAPI Agroforestal. The other established firm in Elías Piña had not sent its information to CCDF by August 2014.

[4] Persons aged 15 years and older and resident in the province, who provided labor in the production of economic goods and services for at least one hour during the week prior to the carrying out of the interview.

Table 7. Occupied population (OP) in direct jobs created under the remit of Law 28-01, by province

Province	Total population	Working-age population	Occupied population (OP)	% OP in Law 28-01 direct jobs
Monte Cristi	109,607	79,267	33,809	13
Elías Piña	63,029	38,612	11,361	17
Santiago Rodríguez	57,476	41,742	15,609	12
Pedernales	31,587	20,415	10,451	7
Dajabón	63,955	44,183	19,016	3
Independencia	52,589	33,602	12,164	2
Bahoruco	97,313	62,493	21,426	1
Border Region Total	475,556	320,314	123,836	8

Source: OPD-FUNGLODE production, 2015, with data from the CCDF Business Directory and the ONE IX National Population and Housing Census.

Table 7 reveals that 17 of every 100 jobs in Elías Piña fall under the remit of Law 28-01; it is followed by Monte Cristi and Santiago Rodríguez, with 13% and 12%, respectively. For the southern border provinces the impact of the law on employment has been scant, as Independencia and Bahoruco barely reach two and one jobs per hundred occupied workers.

2.2.2. Indirect jobs

The setting up of new firms in the border region has had favorable repercussions for the region's development, not just because of the jobs the firms create directly, but also because of the indirect jobs they generate, which help energize the region's economy. By August 2014, the firms benefited by Law 28-01 had contributed 4,838 indirect jobs, whose percentage distribution is displayed in Table 8.

In the table it can be seen that Monte Cristi is the province where the most indirect jobs have been created: 32.1% of the total for the border region. It is noteworthy that while Pedernales is one of the provinces that has seen the smallest benefit from the law, it occupies second place in indirect jobs created (27.2%). The figures for that southern border province are highly enhanced by the firm Cementos Andino Dominicanos, which has had an impact in the creation of 1,300 indirect jobs. The provinces that have generated the fewest jobs of this sort are Independencia and Dajabón, with 0.9% and 2.3%, respectively. By adding the indirect to direct job figures, the total shows that approximately 14,600 jobs have been created by Law 28-01.

Table 8. Percent indirect jobs created by firms established on the border under the remit of Law 28-01

Province	% of indirect jobs
Monte Cristi	32.1
Santiago Rodríguez	27.2
Elías Piña	19.9
Pedernales	9.5
Dajabón	8.0
Bahoruco	2.3
Independencia	0.9

Source: OPD-FUNGLODE production, 2015, with data from the Coordination Council for the Border Special Development Zone (data updated through August 2014).

2.3. Investments made

The establishment of the 95 firms covered by Law 28-01 has entailed an investment of $14.913 billion pesos, which has energized economic activity on the border. Nonetheless, the impact of this influx of currency has been highly disparate between the provinces, as seen in Table 9, which shows that the province receiving the greatest share of this capital is Santiago Rodríguez, with 29.3%, closely followed by Monte Cristi and Pedernales, with 29.2% and 28.2% respectively. Those receiving the smallest shares of total investment are Elías Piña (2.5%), Independencia (2.7%), and Bahoruco (3%).

Table 9. Percent capital invested for the establishment of firms under the remit of Law 28-01

Province	%
Santiago Rodríguez	29.3
Monte Cristi	29.2
Pedernales	28.2
Dajabón	5.1
Bahoruco	3.0
Independencia	2.7
Elías Piña	2.5

Source: OPD-FUNGLODE production, 2015, with data from the Coordination Council for the Border Special Development Zone (data updated through August 2014).

2.4. Results by region

Data offered by the Coordination Council for the Border Special Development Zone (CCDF) show a marked difference in economic advances between the northern and southern regions of the Dominican border, with the balance significantly tilted in favor of the former. The difference between the areas can be noted more clearly in Table 10, which compares the impact of Law 28-01 in the northeast provinces (Monte Cristi, Dajabón, and Santiago Rodríguez) and the southeastern ones (Pedernales, Independencia, Elías Piña, and Bahoruco).

Table 10. Dominican Republic results of Law 28-01 by region

Region	% firms	% jobs	% investment
Southeast	14	31	36
Northeast	86	69	64

Source: OPD-FUNGLODE production, 2015, with data from the Coordination Council for the Border Special Development Zone (data updated through August 2014).

The northeast, despite including fewer provinces and covering a smaller territorial extension, eclipses the southeast on all three economic criteria from which the impact of Law 28-01 is evaluated. Eighty-six percent of the firms have set up in the northeast, while just 14% are located in the southeast. The fact that most firms have set up in the north has also meant that it is the region that has generated more jobs, with 69% of the total, while the south has had to settle for just 31%.

In the face of this situation, the question arises: why have the southern provinces been left so far behind compared with the northern region? To answer it, the OPD decided to contact the senators from each province, who expressed their points of view in separate interviews held in March of 2015 in the Senate of the Republic.

Adriano Sánchez Roa (Elías Piña) noted that "in the case of Elías Piña, the original problem, now fixed, was that we had a very low-voltage electricity supply, meaning that firms who wanted to set up here had to invest in a generator, which increased their costs."

The senators from the northern border region state that the reasons their provinces have benefitted more from the law have to do with the favorable conditions in their areas. In that regard, senator Antonio de Jesús Cruz Torres (Santiago Rodríguez) argued:

> What happens is that those looking to invest their money look for the most strategic area to be able to develop their market and to access the docks, here in the northern part of the border we have the pier at Manzanillo. The world is open, and democracy—in terms of both politics and trade—is free.

Rosa Sonia Mateo Espinosa (Dajabón) noted that:

> (...) when the law was created, most of the officials in charge of the Border Development Council were from Monte Cristi, so they directed almost all businessmen toward Monte Cristi. And in the south at that moment there was no intention to fight to globalize and improve the whole border region.

It's clear that the law does not focus on incentives for the southern areas nor does it take into account the special conditions in each province that determine investment flows, such as the provision of public goods (electricity, highways, communications, education, and security), transport facilities, and quality of the labor force.

3. Tax expenditures

3.1. Tax expenditures under Law 28-01

The benefit to the border region provinces thanks to Law 28-01 has entailed an expense to the country, measured by the appearance of the Border Development Law exemptions in estimates of the nation's tax expenditures. This type of expenditure is defined as the total revenue forgone by the state in granting tax concessions that benefit particular taxpayers, activities, or regions and that are intended to finance specific public policies (ECLAC).

Table 11. Estimated tax expenditure, country total and Law 28-01 total (2009–15)

Year	Tax expediture for Law 28-01			Tax expenditure country total	
	Total (million RD$)	% TE total	% GDP	Million RD$	% GDP
2009	2,618.4	2.5	0.15	104,778.2	5.9
2010	258.2	0.2	0.01	104,691.4	5.8
2012	5,349.7	4.5	0.23	118,882.7	5.0
2013	1,913.5	1.3	0.08	147,188.7	5.9
2014	1,078.6	0.6	0.04	181,455.2	6.6
2015	1,214.3	0.6	0.04	201,751.9	6.7
Total/ average	12,432.7	1.6	0.09	858,748.1	6.0

Source: OPD-FUNGLODE production, 2015, with data from the Directorate General of Internal Taxation (DGII).

According to data from the General Directorate for Internal Taxation (DGII), from 2009 to 2015 the Border Development Law has cost the country $12.4327 billion pesos, that is, 1.6% of total tax expenditures for that period and 0.09% of GDP, as reflected in Table 11, which presents data on this type of expenditure more generally.

Despite the fact that Law 28-01 exonerates border firms from payment of the tax on the transfer of industrialized goods and services (ITBIS), the firms themselves declare they have indeed had to pay that tax, according to Manuel Taveras, president of the Dominican Association of Border Firms (ADEFRO), who maintained that they remit RD$700 million annually to the state, arguing that they make this payment because they were forced to do so by the ex-director of the DGII, Juan Hernández (*El Caribe*, 2013).

It was not possible to confirm these statements; if they are true, it would be necessary to deduct those 700 million pesos from the cost to the state of the Border Development Law, which means that the tax expenditures under that law are lower than those estimated by the DGII.

3.2. Tax expenditures across different production sectors

It's important to note the composition of the Dominican Republic's total tax expenditures to view the fiscal cost of Law 28-01 in context, as there are 30 legal regulations that grant tax incentives to different sectors.[5]

Table 12 presents the tax expenditures for the free zones, the industrial sector, Law 28-01, and textile manufacturing over the period 2009–15.[6] These four sectors are alike in that they are operated by private-sector business institutions, with national or foreign (or mixed) capital. It can be seen that the free zones, subsidized under Law 8-90 on the Stimulus to Export Free Zones, have seen the greatest benefit

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5 Estimate of Tax Expenditures for the 2015 State General Budget. Treasury Department.

6 Data not available for the year 2011.

in fiscal exemptions: in 2012 their share of tax expenditures was 30.8% and in 2015, 18.7%.

Table 12. Estimated tax expenditure by benefited sector, 2009–15

Sector	Years					
	2009	2010	2012	2013	2014	2015
Free Zones	5.3	4.0	30.8	27.8	25.3	18.7
Industrial	2.7	6.2	5.1	3.5	2.9	1.4
Border Development	2.5	0.2	4.5	1.3	1.2	0.6
Textile Manufacturing	0.6	0.1	2.2	0.4	0.3	0.2

Source: OPD-FUNGLODE production, 2015, with data from the Directorate General of Internal Taxation (DGII).

The industrial sector, covered under Law 392-07 on Industrial Competitiveness and Innovation, has also obtained exemptions, reflecting its greater importance in 2010, when it was supported with 6.2% of total tax expenditures. In 2015 this sector represented 1.4%, while the support for Law 28-01 reached its peak in 2012, with 4.5%, and currently represents just 0.6% of total tax expenditures. The textile manufacturing sector, subsidized under Law 56-07 on Textile and Footwear Chains, is the one that has seen the smallest benefit in tax exemptions.

The tax expenditures regime in the Dominican Republic will face structural changes driven by the National Development Strategy (END 2030), which in Article 36 expresses "the need for political, economic, and social powers to reach a fiscal pact aimed at financing sustainable development and guaranteeing fiscal sustainability in the long term."

This fiscal pact should prompt a reduction in fiscal exemptions, as one of its aims to relieve revenue pressures to make possible the achievement of the sustainable development objectives laid out in the END. Given the opposition of economic sectors and civil society to an increase in the tax burden, it is very likely that the corresponding authorities attempt to make greater resources available to the state by eliminating certain exemptions.

Statements from Guarocuya Félix, director of the DGII, note that "the number of fiscal exemptions the country currently has makes the task of taxation administration difficult" (Atento RD, 2013).

4. Does Law 28-01 foster unfair competition?

The tax exemptions granted under Law 28-01 to firms that set up in the border region have spawned a debate on the law's constitutionality and prompted confrontations between various public- and private-sector actors. Among the latter, some have opined that the law fosters unfair competition.

4.1. Private-sector opinion opposed to the law

Sarah Burgos, technical manager of the Dominican Republic Industry Association (AIRD), offered the association's opinion on Law 28-01 in an interview with OPD's Public Policy Unit in December 2014: "The law is discriminatory and discretional and represents a commercial threat to other industries that fulfill their obligations; it offers an example of what is meant by fiscal inequity and unfair competition."

AIRD maintains that the law

> (...) has reduced the state's tax-collection capacity, making it miss out on millions of pesos that could be invested in social welfare programs in those and other regions, thereby distorting the objective of the National Development Strategy to rationalize fiscal incentives and minimize their negative effects on tax collection.

When asked whether AIRD had taken advantage of the incentives in the law to motivate its member firms to set up on the border, Burgos noted that "Law 28-01 on Border Development has flaws and inadequacies in its incentives to attract quality investments to the border region." Among the reasons for her response, she offered that "it does not guarantee the long-term sustainability of investment projects and represents an obstacle for existing investments outside its geographic area of application."

AIRD and private firms have filed several suits before the Supreme Court of Justice (SCJ) and the Constitutional Court, seeking to have the law declared unconstitutional and the tax exemptions to border firms withdrawn, on the basis that such exempetions constitute unfair competition and violate Article 50 of the Constitution of the Republic, which deals with business freedom.

These actions against the Border Development Law led the National Congress, in 2005, to modify Article 2 with Law 236-05, which added several paragraphs mandating the payment of ITBIS on national transfers of processed goods and services rendered. It also limited the exemption on payment of exchange commissions on the import of capital goods.

Nonetheless, Article 1 of Law 236-05 was declared unconstitutional by the SCJ with a ruling on March 7, 2007. More recently, the Soft Drink Industry Association and AIRD requested that Article 2 of Law 28-01 be declared unconstitutional, but that suit was deemed inadmissible by the Constitutional Court with Ruling TC/0 184/14.

4.2. Opinion of benefited firms

In order to present all points of view, opinions were sought from some of the firms that opted to take advantage of Law 28-01. Among the respondents is Industrias San Miguel del Caribe, a soft drinks producer in the province of Santiago Rodríguez that has become known around the country for its Kola Real brand.

Industrias San Miguel del Caribe's finance and administration manager, Mario Medina, supports Law 28-01 and its principle of border development, noting that the region's economy has been strengthened and energized. Medina states that

> (...) this economic strengthening is seen in our province, Santiago Rodríguez, where more than 40% of formal employment in the province comes

> from our firm, with an average salary of $22,000 per month, not counting the training, education, and health program benefits we have as a company. Although in theory the Law fulfills this principle, there are economic interests from other sectors that have put pressure so that the law do not work as intended.

When asked the opinion of Industrias San Miguel del Caribe on arguments deeming the law to be an instrument of unfair competition, Medina replied:

> That is a distorted argument, as the law has been a mechanism to compensate for lack of resources, basic services, and specialist labor supply in the border region. The final benefit of the law has been to the consumer, who has had the opportunity to access a quality product; the other beneficiary has been the state with the increase in tax collection (ITBIS) as the beverages sector has doubled over the past ten years.

The Dominican Association of Border Firms (ADEFRO), for its part, has stated via its president Manuel Taveras that "we don't understood how one can speak of unfair competition when firms on the border have to produce while assuming elevated production costs, and when they do not have qualified personnel. Or when the quality and supply of electricity is not sustainable" (*El Caribe*, 2013).

Taveras says that

> (...) it would be unfair competition if we had privileges and exemptions that covered these extra costs, but currently the only way in which Law 28-01 differentiates us from the Pro-Industry law is in income tax. Bringing a container of raw materials from the docks to the production centers on the border represents a cost of $35,000, while to move that same merchandise to production centers in the capital the cost is $7,000. The law is not exclusive, anyone who wants to can set up on the border (*El Caribe*, 2013).

In the opinion of Industria Licorera La Altagracia, the border development sought by the law has been affected by the many judicial appeals that have split the private sector into factions and have created a climate of uncertainty for the firms considering setting up on the border.

Licorera La Altagracia is dedicated to the production, sale, import, and export of rums and other alcoholic beverages, with a factory in Galván, Bahoruco province. The firm makes nine types of reserve rums marketed under the brand GROG; it began its Bahoruco operations in 2011. Omar Bros, representing the company, notes that the firms received the incentives of Law 28-01 in June 2012, but due to obstacles that have arisen, it has been unable to use the benefits that come along with it.

A document provided by Industria Licorera La Altagracia summarizing the institution's sequential count within Law 28-01 outlines the difficulties faced by the firm in benefitting from the law, difficulties they claim have prompted the need to apply policies to reduce production costs, even to the point of reducing numbers of staff. The document notes that "at the start of 2014 the firm operated with 157 employees in the Social Security Treasury, and today, due to problems caused by not being permitted to import tax-free raw materials, it has 84 employees, all of Dominican nationality, mostly women."

These difficulties are seconded by Manuel Antonio Paula, senator from Bahoruco province, who states,

> (...) the obstacles the law has had to face as a result of several challenges to its constitutionality have negatively impacted firms in deciding to set up in Bahoruco and the rest of the southern border region, and at the same time have limited the expansion of existing firms, which would translate to development for the province.

Nonetheless, the senator hopes that the verdicts issued by the SCJ and the Constitutional Court in favor of the law provide incentives and guarantees for the firms that remain undecided to feel secure in setting up on the border.

4.3. Opinion of lawmakers

The public sector position, represented by the border province senators, is that Law 28-01 and its content do not foster unfair competition. Juan Orlando Mercedes Sena, senator for Independencia province, holds that “there is no unfair competition because nothing keeps anyone from going to set up there, any private-sector firm can enter the exemptions regime of Law 28-01. What happens is that some are uninterested in setting up on the border because the setup costs are high.”

Senator Paula endorsed this position, noting that “the doors of the border are open for them to set up there under the same conditions as provided by Law 28-01, but they don’t do it.”

Senator Dionis Sánchez (Independencia province) opines that

> (...) the country’s business sector has ruthlessly attacked this law, and has even presented challenges before the Supreme Court of Justice... if there were unfair competition that was so beneficial for those who set up on the border, they would be there themselves. The law seeks a way to create balance, because those who have the most and earn the most don’t realize that in this country we have two or three countries in the same territory. The law has done nothing to affect the private sector.

Adriano de Jesús Sánchez Roa, senator for Elías Piña, referring to private-sector representatives opposed to Law 28-01, notes that “they produce in the capital and they know that producing on the border, even with the law, is more costly. Firms that criticize the law have lots of exemptions and their production is expensive anyway. I’d agree with getting rid of all incentives at the same time, but they don’t dare accept that!”

5. Should the law be changed?

The results of Law 28-01’s fourteen years in effect and the accusations that it fosters unfair competition have led to the discussion of whether it needs to be modified. To that end, the Observatorio Político Dominicano (OPD) has consulted the three sectors involved and all agree that it should be reformed. But all express different positions with regard to how it should be changed.

5.1. Opinion of lawmakers

The congresspeople consulted separately presented common positions; they would favor a change to the law based on two objectives: 1) to increase the incentives to make them attract more firms to set up on the border; and 2) to more equitably distribute the firms that set up on the border, such that the whole border region benefits, not just part of it.

In that regard, Adriano de Jesús Sánchez Roa notes that

> (...) far from getting rid of it, as some have wished, we need to expand the content of the law's exemptions; it's no longer as motivating as it was in its beginnings, it should be revised to be improved, the incentives should be expanded so that the border region develops, because the distance of the border from the major sales centers means that border firms face a high cost in transporting their products.

For his part, Antonio Cruz Torres (Santiago Rodríguez) states that

> (...) if it's going to be reformulated it should be for the better, not to take away anything we've won, always to protect what we have and motivate more people to invest in our town. The law has six years left in effect, we want to extend it because several firms have set up in the province of Santiago Rodríguez and have energized the economy in our town and have helped reduce poverty in this province. I believe it's a very important law for the development of the towns in the border region.

Manuel Antonio Paula (Bahoruco) supports a change to the law aimed at both increasing incentives and at spreading the benefits of the measure across all the border provinces:

> We understand that the law should be reformulated, but for the well-being of the border, adding things that the border still needs, not removing them. To have greater incentives for the border... to legislate so that the businesspeople who are going to set up on the border under Law 28-01 are distributed along the entire border, not just in two places: Monte Cristi and Santiago Rodríguez.

Dionis Sánchez (senator for Pedernales) argues that the law should be reformulated in the direction of balancing its benefits across all the provinces:

> It should involve creating a balance because business owners, always with the aim of earning more, have basically installed in the part that's closest to Santiago, as in the case of Monte Cristi. It should be evened out so they are distributed along the entire borderline, because the poorest and most extensive part of the country's border is the southern one, and that's where the fewest border firms have set up.

The representative of Independencia province, Juan Orlando Mercedes Sena, stated: "I have suggested modifying the law such that to the extent that firms plan to establish they can be differentiated in the provinces equally, so long as the provinces fulfill the necessary requirement for the firm to be established." He noted that an effective method should be sought to distribute them evenly, as otherwise "the same good old boys take the firms to the same area, leading some provinces to be disadvantaged, going against the spirit of the law, which is to achieve the development of the border equally across all the provinces."

The senator for Dajabón province, Rosa Sonia Mateo Espinosa, said that a possible reform to the law should deal with the issue of staff employed by firms under the remit of 28-01. Senator Mateo commented that "the law has helped energize the border economy a bit, but it's necessary to try to improve some things. The firms should not bring so many foreigners to work in them, they bring lots of people from abroad, and we have lots of well-prepared Dominicans."

5.2. Private-sector opinion opposed to the law

The private sector maintains a different stance from that of the legislators in the debate on the reformulation of Law 28-01. In that regard, the Dominican Republic Industry Association (AIRD) notes that

> (...) for more than a decade, business organizations representing the country's industrial sector have called for the modification of Law 28-01 as a matter of national priority, given that the results of its application have led to greater damages to the country than benefits. Law 28-01 has not truly benefited the border, and has been harmful to national industry.

When asked what should be changed in the law under discussion, AIRD's representative stated: "Faced with different fiscal conditions for similar firms competing in the same market, industrial organizations have been coherent in expressing that the national productive sector cannot develop sustainably." They thus propose the law be modified in the following aspects:

1. The incentives should be aimed at the production of goods different from those produced in the country to avoid the displacement or disappearance of existing firms that pay taxes.
2. Customs exemptions that hurt national production and production chains should be eliminated. Firms should not be permitted to import products that are manufactured in the country.
3. It should be guaranteed that fiscal incentives are aimed at stimulating investment and employment on the border and not at the sale and distribution of products across the national territory.
4. The administration and management of the law's application should be strengthened and improved, such that the decisions on the law's beneficiary firms be taken by governmental institutions constitutionally charged with carrying out the respective public policies.

5. The composition of the Border Council that approves the firms should be changed, as it is currently composed of lawmakers from the border, constituting an unconstitutional interference by one branch of the state in another.

6. The future of the border

Within the framework of the difficult socioeconomic reality being experienced by the border provinces arose the Quisqueya Binational Economic Council (CEBQ), a Dominico-Haitian business initiative to promote and stimulate joint investment projects between the private sectors and governments of both nations to fortify and develop trade, infrastructure, security, logistics, and social development in the border region.

According to a document explaining the project, its basic purpose is a) to effectively catalyze the border's economic potential via sustainable and inclusive investments, in a superstructure with logistical and productive components that allow the creation of wealth and job opportunities in the area; and b) to implement sustainable policies that respect the environment, help energize the economy, and reduce the demographic concentration of the large Dominican urban areas resulting from high internal migration (*El Dinero*, 2015).

The CEBQ has four set areas for inclusive development to be pursued on both sides of the border. The first is to be Dajabón-Ouanaminthe-Pepillo Salcedo-Fort Liberté, focused on industrial development; the Codevi fabrics cluster; solar panels, energy, and housing; the Manzanillo free trade zone; and trade.

The second development area is to be comprised of Belladerie and Comendador, with a focus on agriculture: mango farming for export, palm oil, greenhouses, intensive farming of peas, tomatoes, and other crops; bananas and ranching activities; goats, cattle, and tilapia.

The third area is Jimaní-Malpasse, focused on energy via hydraulic projects, potential solar and wind energy sources, and transmission lines. It also includes farming, toll roads, and the binational market.

The fourth area is to be Pedernales-Anse-a-Pitres, where the intent is to develop general and specialist tourism, an international festival, and energy, taking advantage of the wind power potential in that section of the border.

Different segments of the population view the aims of the CEBQ positively. Speaking for the Senate of the Republic, its president Cristina Lizardo sees the initiative as "[seeking] the wellbeing of all Dominicans ... [it] is a project full of wisdom, as it puts the national interest above all particularist interests and involves the defense of sovereignty" (CDN, 2015).

Some institutions, despite having also manifested their support for the CEBQ, present certain questions that they would like to see clarified. Such is the case of the Fundación Gerencia en Acción ("Management in Action Foundation" – FUGAC), a nonprofit organization with influence in the country's southern region, which asks: On which side of the border will the businesses be set up? Under what criteria will the created jobs be contracted? Will cheaper Haitian labor be preferred? What is the participation of the Dominican state in this private initiative? Will the Dominican state leave the border development initiatives in a binational council in the hands of the private sector? What is the legal framework that will be used for these investments? Will the Dominican state give up its responsibility to direct the country's development policy? (*Tirapiedras*, 2015).

7. Conclusions and recommendations

Upon objectively observing of the results of Law 28-01 one can appreciate that in its fourteen years of existence it has served as an impetus for generating better living conditions for residents of the border provinces, although not at the levels expected. If measured based on the number of jobs on a general scale, it can be said that its impact has not been that significant. Nonetheless, when viewed on the provincial scale, it can be noted that in some districts the law has contributed to improving living conditions, creating employment for a considerable portion of their citizens.

The marked disparity in takeup of the law between the northern and southern border regions is a signal that should not be overlooked by the corresponding authorities when it comes to designing policies to invigorate the southern border. The results reflect the need to create mechanisms and incentives that can more equitably distribute the investments across all the provinces.

The achieve these aims, it is proposed to split the incentives into sectors, taking into account the economic activity and features of each province such that the potential markets in each area can be identified and exploited. A promising sector to be tapped in the south is tourism, a virgin sector in an appealing area with many attractive beaches. Stimulating the development of ecotourism in the south could help directly energize the economy and generate commercial markets that, in taking advantage of the benefits of Law 28-01, could attract greater numbers of investors.

In addition, both the Coordination Council for the Border Special Development Zone (CCDF) and the senators from the southern border provinces should increase their efforts to publicize the benefits of the law and to promote, both inside the country and out, the business opportunities in those provinces.

Private-sector representatives argue that it would be more beneficial if the revenue lost by the state on tax exemptions was instead charged to firms and invested in social service projects on the border and around the country. It's clear that the lack of basic services has a strong impact on opportunities for the border region.

Nonetheless, there is no guarantee that residents of that area will significantly benefit from the taxes gathered by the state, given the noticeable bias in the distribution of public investment, while the establishment of firms generates jobs that directly feed back into improving the living conditions of residents of those provinces.

Likewise, it's clear that one of the main problems with the border is its obscurity and it is not simply the adaptation of incentives that limits these provinces taking off. In its objective of developing the border, the state should not attempt to delegate its responsibility for protagonism to the business sector; it much act more as a player and less as a referree, which entails leaving behind neoliberal conceptions and putting interventionist Keynesian policies into practice, focused on boosting public spending.

Greater and better social spending is required in education, health, and infrastructure; the provision of the necessary public goods would make the border region much more attractive for investment and would greatly reduce the marginality of those populations. This implies improvements to electricity, citizen security, job training, and maintenance of highways, streets, bridges, and dams.

While it is true that from a strategic and market point of view, the observations of the private sector opposed to Law 28-01 are valid, it's no less true that the situation of poverty and backwardness that the border region has suffered for years warrants the implementation of appropriate public policies to change the face of this area, even when that means economic sacrifice for the country.

Law 28-01 is the initiative that, for the time being, has gone furthest in reachest this objective. Nonetheless, the need for its modification and adaptation is clear, with the rationalization of its incentives to focus on reinforcing strategies to attract greater investment to the entire border region, and thereby increase its results.

The analysis of the country's overall tax expenditure and of the sectors that compose it yield the consideration that the fiscal benefits provided by the Border Development Law do not appear disproportionate in comparison with similar initiatives focused on other areas of the country; however, a deeper investigation on fiscal exemptions and their effects on the country's industrial organization would be appropriate to shed light on the question of unfair competition.

To manage to increase the development level of the border provinces a consensus is needed between the state and the private sector, in order that a suitable sustainable development program be implemented with the backing of all the nation's productive areas—a program that generates better living conditions in the region and stimulates both the return of many of those who have migrated and the arrival of new families and firms.

The absence of such a pact between the involved sectors limits the use and advantages of the diversity and resource abundance found in the border provinces, in turn prompting mass exoduses that lead to depopulation, intensification of poverty, and a spike in the risks that the desolation of such an important zone could produce for the entire Dominican population.

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