

**SUPPORT FOR INVESTMENT FRAMEWORKS  
IN THE CARIBBEAN COMMUNITY**

**SUMMARY REPORT AND REFORM PROPOSALS**

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**Prepared by:**

**Siegfried Marks  
Sigmar International**

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# **SUMMARY REPORT AND REFORM PROPOSALS**

## **I. Introduction**

This Report has been prepared for the Community (CARICOM) Secretariat under a technical cooperation project --- Investment Frameworks in the Caribbean Community: Toward a Regionally Harmonized "Best Practices" Regime as part of on-going efforts to create a Single Market and Economy for the CARICOM region.

This Summary Report is designed to provide decision-makers in the region with an overview of the existing institutional and organizational framework for private investors in the Caribbean Community. The Report summarizes key issues outlined in detailed national diagnostic studies, legal and investment incentives reports, and a region-specific study that were prepared separately for this Project. The Summary Report also identifies key bottlenecks to private investment in the Community and provides proposals for their removal within the context of formulating a harmonized investment policy framework for the region.

Chapter II traces the efforts undertaken and proposed to align the treatment of private investment within the Common Market and subsequently to the proposed creation of a Single CARICOM Market and Economy. Chapter III summarizes briefly the existing regulatory framework in CARICOM countries. Chapter IV describes the investment incentives regimes in CARICOM countries. Chapter V reports on planned revisions of laws and regulations related to private investment in some Member States. Chapter VI outlines reform proposals aimed at removing constraints to private investment activity and offers proposals for institutional reform to organize for improving private investment flows to the region. Chapter VII outlines some elements of an appropriate macro-economic environment in support of private investment. Economic consultants and legal consultants from all of the member states were involved in developing the legal, diagnostic, and investment incentives reports and the region-specific study.

The overall Project is designed to facilitate the decision-making process among CARICOM national and regional authorities related to the formulation of investment policies by providing a comprehensive overview of the existing institutional and organizational framework for private investors and by proposing reforms and an action plan for a harmonized investment policy framework. The action plan would include harmonized investment principles and standards, an appropriate regime of incentives, reform of the institutional aspects of administering an investment policy, a new emphasis on investment promotion abroad, and introduction of wide ranging reforms designed to improve the prospects for increased private investment inflows. Reform proposals relate to what needs to be done at national as well as at regional levels.

## **II. Efforts to Align Treatment of Private Investment to Create a Single Market and Economy**

### **1. Harmonized Treatment of Investment Flows**

Past initiatives<sup>1</sup> to harmonize investment incentives in CARICOM were part of the overall effort to create a Caribbean common market and to pursue the areas for economic cooperation as set out in the Treaty of Chaguaramas. Whereas the initiative to establish a common external tariff system and intra-regional free trade was more or less successful, harmonization of investment incentives has not been as successful overtime.

In order to stimulate intra-regional investment flows and to discourage competitive bidding for foreign investments, agreement was reached in 1973 to establish a harmonized system of fiscal incentives for industrial/manufacturing investments. This initiative offered tax holidays, tariff exemptions, and export allowances to businesses able to expand local content and the export component of their production. Less developed states in the region were allowed to offer more generous incentives.

The 1973 Agreement, although signed, was not binding for the member countries. Many countries that had initially modeled their incentives legislation in accordance with the provisions in the Agreement, moved away from it. Notwithstanding, the scheme has been credited with being successful in encouraging manufacturing investments primarily in the OECS sub-region. However, the incentives structure of the 1973 Agreement was deemed insufficient and too narrowly based. It contained no industry wide investment incentives and it was largely focused on increasing domestic value added. These types of incentives are now largely out of date. They do not comply with WTO rules and will probably also be disallowed under a future FTAA.

In a separate effort parallel to the 1973 Agreement, the concept of a “CARICOM Enterprise Regime” (CER) was elaborated in 1976 to accord preferential treatment to companies owned and controlled by CARICOM nationals and doing business within the region. It was hoped that such preferential treatment would encourage specialization and complementarity to enhance the competitiveness of exports from CARICOM countries. Although the agreement for the CER was signed by the member states, it never entered into force in many countries. It was discontinued in 1995, because the provisions were no longer relevant given the 1992 decision to establish a CARICOM Single Market and Economy. In any event, probably as a result insufficient publicity, companies in the region did not apply for the preferential treatment and incentives offered under the Regime.

Yet, after having failed to harmonize, Governments realized that incentives that are effective in attracting investments are now even more important than when the 1973

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<sup>1</sup> The two initiatives (Harmonized Scheme of Fiscal Incentives to Industry and the CARICOM Enterprise Regime) outlined below are discussed in more detail in the Region-Specific Analysis.

Agreement was conceived. Aggressive competition for foreign investment has intensified in the global market place. Regional free trade agreements with the United States have given countries such as Mexico a competitive edge compared to CARICOM to attract more foreign investment because of their preferential access to the U.S. market.

The creation of a future hemispheric free trade area will require that CARICOM offer an attractive investment climate for foreign investors with access to the regional market in order to benefit from hemispheric free trade. In a regional free trade environment, the administration and approval process of incentives, minimum establishment and operating permit requirements, less bureaucratic procedures and delays, national treatment for foreign investors, low cost and reliable public services, and strict observance for the rule of law, and appropriate macro-economic policies will be mandatory for attracting desirable foreign investments.

## **2. Harmonized Treatment of Intra-Regional Investment Flows**

In 1992, CARICOM Heads of Government made the decision to deepen the integration movement and establish a Single Market and Economy based on the free movement of goods, people and factors of production. Accordingly, the Treaty of Chaguaramas was amended in 2000 by a series of protocols to take account of the new focus. These protocols have since been incorporated into the Revised Treaty of Chaguaramas.

### **• CARICOM Establishment, Services, and Capital Movement Policies**

The main Protocol with direct implications for investment was Protocol II which provided for the free movement of capital, rights of establishment, and the provision of services. The immediate liberalization provided for in this Protocol was to be limited by an agreement on a programme for the removal of those restrictions on the three rights embodied in the Protocol which could not be removed immediately. Also provided in the Revised Treaty in Part 3 is a set of common supportive measures.

Protocol II provides for:

- National treatment to national investors from other Member States by abolishing all restrictions on their right of establishment and ownership, provision of services, movement of capital and payment for goods and services;
- A commitment not to introduce new such restrictions on national investors of other Member States;
- Terminating all distortions with similar negative effects on intra-area investment flows, such as multiple registration requirements to start a business in more than one member state;
- Removal of discriminatory restrictions on banking, insurance and other financial services by nationals of other Member States;

- Removal of restrictions on the free movement of non-wage earners who provide services or establish businesses, including managerial, supervisory, and technical staff, and their spouses and immediate family members; and
- Unrestricted equity and portfolio investments, dividend remittances, interest payments, capital repatriation, and other payment transfers for nationals of other Member States.

In order to facilitate the right of establishment, provision of services, and free movement of capital, the Council for Trade and Economic Development (COTED) and the Council for Finance and Planning (COFAP) will adopt measures for:

- Abolishing exchange controls throughout CARICOM and establishing free convertibility of Member States' currencies;
- Setting up an integrated capital market in CARICOM;
- Harmonizing the legal and regulatory requirements for the operation of businesses;
- Establishing market intelligence and information systems;
- Establishing efficient infrastructure services throughout CARICOM; and
- Coordinating or harmonizing monetary and fiscal policies, relating to interest rates, exchange rates, tax structures and national budget deficits.

Member States are “to coordinate their foreign exchange policies in respect to the movement of capital between them and third States”. In cases of serious balance-of-payments difficulties, Member States are allowed to introduce temporary (no more than 18 months) quantitative restrictions on imports, on capital movements and payments, on the right of establishment, and the right to provide services. Such measures should not be introduced for purposes of protecting a sector from competition.

The effectiveness of the provisions in Protocol II will depend on the willingness of Member States to follow through with implementation. The basic concept of establishing a system of preferences for nationals of Member States that excludes national treatment for foreign investors is contrary to established international principles increasingly being implemented in other developing countries. CARICOM may obtain exemption from applying national treatment to foreign investors, but this would be viewed as a negative element in the investment climate by foreign investors.

- **CARICOM Industrial Policy**

The goal of a Community Industrial Policy, as outlined in Protocol III, is to promote market-driven, internationally competitive and sustainable production of goods and services. This calls for cross-border employment of resources, capital, technology, and management capabilities; linkages among sectors and enterprises among Member States; public-private sector partnerships; and creation of regional enterprises to achieve economies of scale in production. To attain these objectives, it is deemed necessary to establish and maintain “an investment-friendly environment, including a facilitative administrative process.”

According to the Protocol, the CARICOM Council for Trade and Economic Development (COTED) will design “appropriate policy instruments to support industries, which may include effective export promotion policies, financing policies, incentives and technology policies”. Member States are called upon to establish appropriate macro-economic policies, such as arrangements to avoid double taxation, elimination of bureaucratic impediments for investment, improvement of air and maritime transport, communication systems, and dispute settlement. To facilitate a CARICOM Industrial Policy, COTED will “develop strategies for the development and dissemination of market information.”

In terms of sectoral priorities, the COTED will promote development of the service sectors, specifically to increase investment, trade, and competitiveness in services. It will establish an incentives regime for trade in services. Priority will be accorded to efficient telecommunications, road, air, maritime and river transportation. Proposals will be advanced for sustainable tourism, research and technology, promotion of intellectual property and environmental protection, and development of human resources and a standardization programme.

Chapters 8 and 9 in Protocol III call for a CARICOM Investment Policy and Harmonization of Investment Incentives. Article 49 promotes national incentives for “sustainable export-led industrial and service-oriented development,” investment facilitation through removal of bureaucratic impediments, and “non-discrimination in granting incentives among Community nationals”. Appropriate macro-economic policies are to be set up and laws and administrative practices harmonized in the areas of intellectual property rights protection, standards, labeling, sanitary regulations, subsidies, and commercial arbitration.

Article 49e relates to Double Taxation Agreements. Member States are to conclude agreements to avoid double taxation in order to facilitate intra-regional capital movements. Double taxation agreements are to be concluded also with Third Parties on the basis of mutually agreed principles “determined by COTED”. Furthermore, COTED will promote the modernization of Government bureaucracies by encouraging closer contacts between public sector administrations and industry and other stakeholders to



ensure that challenges from the global environment are understood and cooperative solutions developed.

Protocol III is all embracing in its acknowledgement of the requirements to foster economic development in the Caribbean Community. Its effectiveness in establishing a sound CARICOM Industrial Policy will depend on the efforts Member States are willing to make in implementing the provisions specified in the Protocol. However, measures requiring legislative action could constitute a major hindrance to implementation.

One such measure which is yet to be fully implemented relates to the Intra-CARICOM Double Taxation Agreement which was signed in 1995, sometime before the revision of the Treaty. This Agreement provides for the taxation of income from investments at source thereby disallowing taxation twice in the host country and home country. To date, eleven (11) member states have ratified the agreement and eight (8) of them have introduced the implementation regulations thereby making the agreement effective amongst those countries. The effectiveness of this measure in promoting intra-regional investment flows has, however, not been assessed as yet.

- **CARICOM Competition Policy**

Protocol VIII establishes a CARICOM Competition Policy, Consumer Protection, Dumping and Subsidies policies. The goal of the CARICOM Competition Policy is to ensure that the benefits from the creation of a CARICOM Single Market and Economy will not be undermined by anti-competitive business conduct. The Member States agreed to “establish and maintain institutional arrangements and administrative procedures to enforce competition laws” and to “provide for the dissemination of relevant information to facilitate consumer choice.” Each Member State will appoint a Competition Commission with the tasks to apply the rules of competition, to promote competition, to monitor and investigate anti-competitive behavior, and to make recommendations to the COTED to enhance the effectiveness of the implementation of the CARICOM Competition Policy.

Article 30i of Protocol VIII prohibits:

- (b) “agreements between enterprises, decisions by associations of enterprises, and concerted practices by enterprises which have as their object or effect the prevention, restriction or distortion of competition within CARICOM,”
- (c) “actions by which an enterprise abuses its dominant position within CARICOM” or
- (d) “any other like conduct by enterprises whose object or effect is to frustrate the benefits expected from the establishment of the CARICOM Small and Medium Enterprise.”

Anti-competitive business conduct is defined as:

- (a) price fixing;
- (b) limitation or control of production, market, investment or technological development;
- (c) artificial driving up of markets or restriction of supply sources;
- (d) application of unequal conditions to parties undertaking equivalent engagements in commercial transactions thereby placing them in a competitive disadvantage;
- (e) unauthorized denial of access to essential infrastructure;
- (f) predatory pricing;
- (g) price discrimination;
- (h) loyalty discounts or concessions; and
- (i) bid-rigging.

It is not clear how far the individual Member States are prepared to go in applying these very broad definitions of what constitutes punishable anti-competitive behavior. The application of unequal conditions to commercial transactions, for example, can be subject to very broad or very narrow interpretation. Are volume discounts considered illegal loyalty discounts? Is a foreign investor required to share his technological advances with national enterprises to avoid charges of “limiting technological development”? Does an investor have to allow competitors access to his storage facilities or port facilities to avoid charges of placing others at a competitive disadvantage? These and other issues subject to interpretation will create uncertainty among private investors that could be removed by further clarification of the above definitions. This Protocol apparently does not apply to state-owned companies, thus allowing them to engage in anti-competitive conduct.

- **CARICOM Agricultural Policy**

Protocol V establishes a CARICOM Agricultural Policy with the goals of transforming the agricultural sector toward market-oriented, internationally-competitive and environmentally-sound agricultural production; improving income and employment generation in the agricultural sector; efficient and increased production. To attain these goals, CARICOM will promote and support production, diversification, processing, and marketing; creation of an effective agricultural financial system; linkages among Member States; appropriate land use and land tenure systems; and a policy environment designed to attract investments in the agricultural sector.

### **3. Harmonized Treatment of Extra-Regional Investment Flows**

Plans are to encourage more foreign investment by harmonizing the treatment of investment flows from outside the region and by converting the individual economies of the 15 CARICOM member states increasingly to a single larger-sized market and investment location. Foreign investors would encounter essentially the same treatment throughout the region rather than different rules, regulations, and incentives in each country. Some flexibility, however, would allow for national differences that individual states may require.

As members of the WTO all CARICOM states will have to adjust their incentives regimes to the WTO rules on disallowed subsidies by the extended deadline, that is, by 2010. While the CARICOM Heads of Government have recently agreed to remove all barriers to intra-regional investment flows, they have decided not to extend full national treatment to foreign investors. A future CARICOM investment policy framework will need to conform to WTO rules on the treatment of foreign investment, but it is not clear whether or to what extent exceptions will be allowed to persist beyond the deadline.

The CARICOM countries have agreed to participate in a future FTAA and to negotiate the entry terms as a group under CARICOM. A future FTAA agreement will likely require conformance with WTO rules on incentives and other treatment of foreign investment as a condition for participation in the FTAA. While they are willing to accept all entry conditions that will be negotiated in the future, they have negotiated for, and obtained agreement that special and differential treatment for smaller states would be incorporated into the FTAA Agreement. The US Government appears to support this position. In the Draft Agreement of the FTAA, proposed wording for special and differential treatment is incorporated as the last paragraph of each clause. Thus, for example, in paragraph 4 of Article 4 on Exceptions to National Treatment and Most-Favored-Nation Treatment states that “special arrangements between smaller economies, who constitute a common market, shall not be obliged to be extended to Third Parties”.

Harmonizing investment policies throughout CARICOM that will stimulate intra-regional private investment flows will obviously represent a notable positive step forward toward creating a single, integrated market. The additional volume of intra-regional investment flows generated within the region will remain small, however, compared to the potential size of future investment flows from outside CARICOM that could result from adopting appropriate harmonized investment policies without discrimination for all private investors.

### **III. Existing Regulatory Framework in CARICOM Countries**

The following summary describes the existing regulatory framework for private investment in the CARICOM countries treated in greater detail in the country Diagnostic and Incentives Reports. Major bottlenecks for private investment have been identified and proposals included in later sections of this Report to remove these impediments.

#### **1. Investment Policy Issues**

In addressing issues related to the investment policy framework in the member states, major findings were as follows:

- All CARICOM countries maintain a private enterprise economy. They maintain investment incentives and other policies, such as investment promotion and facilitation services, focused on activities that expand non-traditional exports, tourism, employment, and local value added. The governments want to stimulate more private national and foreign investments given that trade preferences, protection, subsidies, and incentives may have to be phased out in future years.
- Government policies have become more business friendly in recent years and this trend continues. The regulatory process, however, is not as transparent as in a number of Latin American countries where the investment approval process has become increasingly automatic applying simple, clearly defined legal and regulatory provisions. The process has been mostly delegated to lower levels in government and some countries have set up a One-Stop-Shop for Investors (“ventanilla unica”) to handle all paperwork related to the establishment of a company and to administer incentives. Ministers get involved and may exercise discretionary power only in special cases involving a very large investment, a politically sensitive controversy, or other cases that require a ministerial decision or recommendation beyond the mere application of the rule of law. In CARICOM countries, on the other hand, there is generally a lack of transparency in the application of laws relating to foreign investments. Ministers and cabinets get involved and exercise full significant discretionary power in granting investment incentives while promotion agencies act mostly as facilitators for incentives applications, make recommendations, but with no approval authority.
- Discriminatory treatment of foreign investments has been eliminated, but persists in some areas. National treatment is not fully available to foreign investors in tax laws, land transfers, permit renewals, and access to financing. Foreign investors are excluded or restricted from most purely commercial and many service sectors. Belize, St. Lucia, and The Bahamas require a special license for foreign investors to invest in any of a long list of service sectors. Such a license may or may not be granted. In Barbados, small businesses must be at least 75% owned by nationals or from CARICOM countries. In Haiti, national companies are preferred over foreign investors on bids for state enterprises that are being privatized. Suriname

and Trinidad and Tobago are reported to have applied pressure on foreign investors to agree to joint ventures with national firms. In Trinidad, incentives under the Income Tax Act are not available to foreign investors and the Tourism Development Act stipulates preferential treatment to national investors. Access to rural land ownership is restricted for foreigners often to preserve very limited agricultural land for nationals. There remains some tax discrimination against foreign investors, such as dividend withholding and remittance tax. Foreigners are restricted to some extent from borrowing locally, particularly for investment purposes.


- The right to compensation in cases of expropriation is recognized in the law, but there is no unequivocal legal requirement for adequate and prompt compensation in convertible currencies in most member countries. Market rate interest is generally not paid in the case of delayed compensation payments or remittances. Recourse to binding external arbitration in cases of unresolved disputes between governments and foreign investors is accepted by some countries.
- There has not been extensive government ownership over the economy in CARICOM countries, except in Suriname. In the other CARICOM countries, state ownership was mostly concentrated in the infrastructure sectors, in natural resources, and some service sectors. Privatization commenced in the mid-1980's in CARICOM countries with dominant or important private sectors, but progress has been uneven. Trinidad and Tobago, unlike Jamaica, limits private companies to a minority equity position in the telecommunication sector. Haiti shows a preference for national companies in bids to privatize state companies. Where governments prefer to maintain a substantial equity position in privatized companies in infrastructure sectors, they generally forego the opportunity to attract the potential interest of important foreign companies. An alternative would be to establish an effective supervisory or regulatory body/agency to prevent exploitative practices where privatization converts a state monopoly to a private monopoly.
- Virtually all CARICOM countries suffer from inadequate, unreliable, and high cost, mostly government-owned infrastructure sectors. A poor infrastructure raises the costs of exporting and importing and doing business in general. A poor infrastructure reduces competitiveness and discourages potential investments.
- CARICOM states have concluded double taxation agreements with a number of countries, including the United Kingdom, Canada, Venezuela, Colombia, the Dominican Republic, Cuba, and the latest with Costa Rica to further attract foreign investors. Double taxation treaties encourage private investment flows because a foreign investor becomes eligible for foreign tax credits in his home country for the income tax paid in the foreign country. An investor may have to pay the income tax prevailing in both countries where a bilateral double tax treaty does not exist.

- CARICOM countries enjoy the benefits of the Caribbean Basin Initiative (CBI), CARIBCAN, and the OPIC Investment Insurance Program. All, except The Bahamas, are members of the World Trade Organization (WTO) and the Agreement with the European Union to continue the Lome IV trade accords until 2007. The CARICOM countries participate actively in the negotiations of a future Free Trade Agreement of the Americas (FTAA). The five Central American Common Market countries will obtain improved access to the U.S. market and attract more foreign investment if the CAFTA is concluded and implemented. The benefits from CBI will be diminished for CARICOM countries. The existence of CAFTA, similar to NAFTA, will be detrimental for the economy of the CARICOM countries until CARICOM can negotiate a similar free trade agreement or until FTAA is concluded.

## **2. Establishment and Operating Regulations**

The review of the legal, regulatory, and operating framework for investments in CARICOM states was undertaken with the aim of identifying the bottlenecks which private investors encounter as they seek to conduct business activity. All CARICOM countries maintain the legal and regulatory framework necessary for establishing and operating a business. Regulations and processes vary among countries and are quite elaborate in some cases to the point of being burdensome for investors. The major findings are as follows:

- The judicial system applied to the private sector is based on English common law (except in Haiti and Suriname), with effective protection of ownership rights, except for land titles.
- Registration of a business is generally simple. A license to start operating is obtained from the appropriate Ministry or the Central Bank, in the case of financial institutions. Foreign investors must register the amount of their investments in order to establish the legal right to foreign exchange for profit remittances and future capital repatriation.
- Private ownership and transfers of land are restricted for foreigners in most CARICOM countries or licenses must be obtained that can be denied. Operating permits must be obtained and renewed annually in some cases. Environmental impact studies and building permits are increasingly required prior to authorizing construction. The process of applying for and granting permits and licenses is mostly slow, cumbersome, bureaucratic, and frustrating for national and foreign investors. It is very burdensome to small investors
- The process of obtaining clear title to land ownership is often difficult and lengthy in CARICOM countries. In Guyana, transfers of government-owned land to private ownership is mostly restricted, but long term leasing is available.

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- Import and export permits are still required for some products in some countries. Customs uses invoices and product catalogues to determine the value of imports for assessment of import tariff rates.
  - Import duties range from 0% to 40%, plus surcharges of up to 5%. Average import tariff levels and high end tariff rates have been reduced by all CARICOM countries, but rates remain relatively high compared to levels in many Latin American countries. The aggregate tax level on imports is higher still if consumption and other taxes applied to imports are added. Customs handling fees in most CARICOM countries is far above the cost of this “service” and contrary to WTO rules.
  - The customs administration has not been reformed sufficiently in most CARICOM countries to avoid opportunities for evasion, contraband and other corrupt practices. Customs inspection is most effective and efficient if performed at ports of entry. Frequent rotation of customs officials to other locations can reduce instances of corruption.
  - There are no legal limits to financial remittances abroad by foreign-owned companies, but a special profit or dividend tax is applied on remittances abroad. It ranges from 0% in The Bahamas to 40% in Antigua and Barbuda, but mostly 15%. In some states, foreign exchange for remittances is under exchange control regulations and delays are encountered during periods of foreign exchange shortages.
  - Corporate tax levels are generally high, although they have been reduced in some cases. The basic corporate tax rate varies from 0% in The Bahamas to 40% in some countries, with most rates exceeding 30%.
  - Stamp taxes or other land transfer taxes are relatively high in most CARICOM countries. Several countries charge foreign investors a higher transfer tax.
  - Consumption tax, sales tax or value added tax rates range from 0% to 65%. Several countries maintain different rates for specific products. Belize and Haiti have imposed higher rates on imported than domestic products.
  - Labor laws are quite extensive and detailed in most countries; deemed burdensome and inflexible by some investors.
  - Companies must obtain temporary, renewable work permits for foreigners. In most CARICOM countries work permits are granted upon proof that equivalent local talent is not readily available. In Belize, The Bahamas, and Trinidad and Tobago a company bringing in skilled foreigners must commit to train local nationals for those positions. In the case of Trinidad and Tobago, there have been complaints that such limits placed on the number of skilled specialists allowed to enter and work have created difficulties for some large investments. In other

cases, it was reported that discretionary restrictive practices of granting work permits have been used for the benefit of competitors.

- Commercial banks are authorized to maintain dollar bank accounts for foreign investors. Local borrowing by foreign investors is restricted and requires prior approval from a Ministry.
- Most developing countries have adopted flexible exchange rate systems. Several CARICOM countries, however, maintain a fixed exchange rate regime that has provided exchange rate stability and predictability, but caused the local currency to become overvalued in terms of foreign currencies. An overvalued exchange rate hampers the competitiveness, growth, and diversification of exports. Overvalued fixed exchange rates make imports cheaper relative to domestic goods and usually require some form of import or exchange restrictions and relatively high real interest rates in order to maintain balance of payments stability.
- Some CARICOM countries maintain relatively high real rates of interest. They elevate the costs of doing business and should be brought in line with international levels in real terms to assist producers to export, but also to compete fairly against imports.
- The laws governing protection of intellectual property rights are adequate, but enforcement of compliance is lax in some countries.
- Observance of international accounting standards is required in CARICOM countries. Some countries have laws designed to restrict unfair competition and to safeguard consumers, but enforcement of compliance is generally lax. Efforts against corruption, particularly fraud, and greater transparency in the administration of regulations and approval of incentives vary among countries, but more needs to be done in these areas. Effective supervision and enforcement of good corporate governance is important for protecting the interests of consumers, for ensuring fair competition, for abiding by a country's tax laws, and for contributing to a positive business environment. An independent court system that operates effectively, fairly, and free from political pressures is a prerequisite that good governance will be enforced.



## **IX. Investment Incentives Regimes in CARICOM Countries**

The current investment incentives programs in most member states emerged from the 1973 CARICOM Agreement on the Harmonization of Fiscal Incentives to Industry. The main goals were to reduce competition among the States for foreign investment and to work toward a harmonized incentives system by periodically revising some of the programs. Proposals for a revised CARICOM Harmonized System of Incentives for Industry, Tourism, other Services, and Agriculture were developed but they were not approved for implementation. Instead, each State went ahead and developed its own investment incentives program that mostly deviated in some respects from the original Agreement or the subsequent proposed revisions. With the revision of the Treaty of Chaguaramas to incorporate the Protocols to provide for the establishment of CARICOM Single Market and Economy, a decision was taken that a CARICOM Investment Code along with a harmonized system of incentives should be formulated for the Community.

### **1. Purpose and Objectives of Incentives Laws in CARICOM**

Each CARICOM country now has fiscal incentives laws designed primarily to encourage investments that increase exports, foreign exchange earnings, jobs, and other added domestic value as well as investments in highly capitalized projects. Fiscal incentives for a specified time period are available for investments in specific economic sectors, such as manufacturing, tourism, exports, and assembly in free trade zones. "Approved" enterprises producing "approved" products are offered tax holidays and other tax incentives and duty exemption on imports of machinery, equipment, and materials for production and/or exports.

Some states, especially the OECS countries, have departed quite far from the original tax harmonization scheme by expanding tax relief into industry sectors and geographic regions and into very specific and narrow areas, such as on income earned by commercial banks on long-term mortgages, income earned from constructing homes, or rental income from leasing industrial buildings.

The decision by CARICOM countries to offer investment incentives is based on the assumption that the benefits from incentives will outweigh the costs associated with incentives. The governments are willing to forego collecting corporate taxes temporarily from investments that increase business activity, jobs, income, resource development, production, and/or exports. Positive multiplier effects throughout the economy generated by a new investment result in permanent additions to tax revenue and foreign exchange earnings that outweigh a temporary loss of corporate income tax from the new investment, particularly if that investment would not have been made in the absence of incentives. Foreign investors have introduced new skills in their work force in CARICOM countries and provided technical, managerial, and marketing training. Foreign investors have established market outlets abroad that have absorbed new export development from CARICOM countries. Often foreign investors have been mainly responsible for the creation and dynamic expansion of a new export sector, such as the

hotel/resort industry in CARICOM countries and the oil industry in Trinidad and Tobago. Governments compete for such investments sometimes with generous investment incentives. CARICOM countries will fail to attract new investors and thus forego these benefits if they do not offer such incentives and have no other special attractions for foreign investors. Thus Governments should weigh the permanent loss of these and other benefits to the economy if potential investors are being turned away by the absence of incentives against the temporary tax loss plus other costs of attracting these investors with incentives.

Opponents to investment incentives argue that incentives are discriminatory against those who are not eligible to receive them, that they could induce a transfer of resources from more to less productive uses, and that the investments would have been made in any case because most investors are motivated to invest by factors other than a 10 or 15-year exemption from a 35% or 40% corporate tax rate offered by CARICOM countries. In short, they consider many incentives a redundant, wasteful, costly, and undesirable form of subsidy. Their analysis and condemnation does not seem to adequately differentiate between large and small countries, with large or small internal markets, an abundant or relatively scarce labor force, favorable or unfavorable geographical location, resource rich or resource poor countries, and other positive or negative factors that can, to some extent, be offset by investment incentives.

## **2. Laws and Regulations of Investment Incentives**

Trinidad and Tobago offers incentives for projects by “approved enterprises” that generate employment and foreign exchange, effect technology transfers, expand exports or decrease imports, and offer skills training. A local value-added formula is usually applied to determine the level of incentives to be offered. Investments in hotel/resort construction can qualify for income tax and duty exemption on some imports.

Jamaica offers tax exemption on profits generated from export. Profits from exports are calculated according to the share of export sales in total sales.

Barbados has the most elaborate and detailed investment incentive regime in the CARICOM region. Under the Fiscal Incentives Act, “approved” manufacturers of “approved products are eligible for an income tax holiday with duration varying according to the percent of local value added in production. Under the Income Tax Act, a manufacturer may be eligible for a tax rebate on profits from exports. The share of the exempt profit from exports varies according to the share of profits from exports to total corporate profits earned in a given year in Barbados. Companies are eligible for duty-free imports of machinery, equipment, spare parts, raw materials, and packaging materials. Companies can also add 20% to the tax-deductible cost of imported plant and machinery in the first year. It is 40% for companies that qualify for export profit exemption. There is a research and development allowance equal to 150% of the actual cost incurred. Eligible projects in the tourism sector are able to deduct 150% of an array of capital costs and associated investment expenses from their taxable profits.

In the Bahamas, a manufacturer of an “approved” product is entitled to exemption from export tax, property tax, and import duties. In Belize, tax holidays and duty exemption are available for up to 25 years for companies engaged in labor intensive manufacture for export, agriculture, agro-industry, food processing and other industries. An applicant for incentives, however, has to submit excessively detailed information describing the planned project, project financing, a marketing plan, the economic benefits of the project, and even projected remittances abroad of royalties, commissions, fees, and other payments, and a two-year forecast of cash flow and profit of the project, certified by an accountant. The size of the export tax allowance depends on the proportion of exports in total production.

Haiti’s tax incentives regime starts with a 100% income tax exemption on profits in the first five years of operation. In the following years a rising share of profits becomes taxable until all are taxed. Firms located outside the Port-au-Prince metropolitan area enjoy the longest period of income tax reductions. Suriname has no legally established, clearly defined investment incentive regime. Antigua grants a 15-year tax holiday to export industries and a tax holiday of varying length to other investors depending on the level of domestic value added in production. The other Eastern Caribbean states generally have a similar incentives structure as Antigua.

Thus, the incentives offered in CARICOM countries differ widely among countries and they have departed from those in the 1973 Agreement. It may be difficult, therefore, to arrive at a harmonized system of incentives. A harmonization of incentives regimes could be simplified by phasing out those that do not conform with WTO rules.

- **Tax Holidays for Manufacturing and Agriculture**

CARICOM countries tend to focus their incentives regimes on investments in the manufacturing sector, although incentives are also offered for hotel construction, financial services, and shipping by some countries. This preference for manufactures is probably the result of past policies of import substitution and the belief that manufacturing rather than services generates economic development and income growth. As import barriers are being reduced and will be phased out further when CARICOM joins a future FTAA, the prospects for manufacturing in CARICOM are not going to be positive, except in special cases. CARICOM countries will probably be more successful in attracting investments in services and other non-manufacture sectors. If incentives are to be maintained, the emphasis should shift to service sectors. Currently, only the hotel industry is eligible for incentives in the service sector in most CARICOM countries.

For industries, agriculture, and agro-industries, CARICOM countries maintain a tax holiday for 5 to 15 years, depending on domestic value added, usually for enterprises and products that are “approved” by a minister. The tax holiday includes exemption from the corporate income tax, the dividend remittance tax, duties and value-added tax on imports of plant, equipment, and raw materials.

Incentives regulations require detailed calculations and forecasts of domestic value added or exports to be generated in proportion to total production or total sales to determine the amount of incentives for which an investment will be eligible. These data are very difficult to calculate and they change sometimes significantly after a business starts operating.

The length of period of tax exemptions depends on the ratio of domestic value added to total value of production. In the case of Grenada, the tax holiday can be extended another five years if exports account for more than 60% of total production. Haiti grants a five-year stepwise phase-in of full income tax payments after the tax holiday expires for investments located outside the greater Port-au-Prince area. Trinidad and Tobago does not offer exemption from the value-added tax during the tax holiday period. Highly capitalized investments, however, qualify for up to 10-year exemption from duties and value-added tax for plant, equipment, and other inputs. Barbados and Antigua and Barbuda grant duty and VAT-free imports for up to 15 years to investments of over \$25 million apparently regardless of the intensity of domestic value added.

- **Tax Holidays for Export Sectors**

CARICOM countries offer generous tax holidays over extended periods on profits from exporting. The share of profits exempt from taxes depends on the proportion of sales revenue or profits from exporting to total corporate sales revenue or profits.

Countries with established export processing zones (Trinidad and Tobago, Jamaica, Belize, Bahamas, Antigua and Barbuda, Haiti) offer investors locating in their zones complete tax holidays of varying length – in perpetuity in Jamaica and Trinidad and Tobago, for 20 years in Belize. St. Lucia offers a 5-year tax holiday, followed by very low tax rates for subsequent years.

Companies located outside export processing zones that export 100% of their production, so-called “enclave enterprises,” are granted 15-year tax, duty, and value-added tax holidays in most CARICOM countries, but for 10 years in the case of Jamaica and Trinidad and Tobago. To be eligible, exports have to be classified as “non-traditional” exports by the incentives granting authority.

Companies that export only a part of their non-traditional production are granted incentives related to their export intensity. In some countries, these incentives apply after the value-added incentives period has expired. St. Lucia, St. Kitts and Nevis, and St. Vincent and the Grenadines offer a 25% to 50% reduction of taxable profits, Guyana 25% to 75%, and Barbados 35% to 93%, depending on each company’s export intensity. Barbados grants also 50% to 90% reimbursement of export development expenses. Antigua and Barbuda extends the period of the tax holiday by up to five years, depending on a company’s export intensity. Grenada extends its tax holiday by five years, if more than 60% of production is exported. In The Bahamas, approved export manufacturers, exporting 95% of approved products, obtain 25-year exemption from property taxes, stamp taxes, profits taxes, and export taxes. Suriname and Haiti grant exporting

companies the same incentives based on domestic value added as other manufacturers. Only Haiti offers also exemption from duties and value added tax over the life of the project.

Tax holidays based on export performance should be phased out because they are not compliant with WTO rules and a future FTAA agreement. CARICOM countries have been given a deadline by the WTO to start complying in 2007 and to complete the process by 2010. This ruling applies also to incentives for companies in export processing zones. Less clear is whether tax holidays benefiting companies in export processing or free trade zones should be eliminated. One could argue that these are extra-territorial activities and their value added is produced by domestic wages and services and imported rather than domestic materials are being used. This interpretation would make the incentives for the maquiladora sector WTO-compliant. As so many developing countries have successfully promoted the development of export processing operations, it is possible that WTO rules may ultimately not be enforced or strategies will be found to circumvent these rules. For some countries, maquiladora exports from export processing zones have become the largest and most dynamic export sector.

- **Tax Holidays for Tourist Hotels and Resorts**

Most CARICOM countries offer tax holidays for new investments in hotels and resorts ranging from 5 to 20 years and duty and value-added tax exemption on imports of capital goods and building materials. The incentives regimes vary greatly, however, among CARICOM countries. A 15-year tax holiday applies also to expansions of existing hotels or resorts in the case of St. Lucia and St. Vincent and the Grenadines. St. Lucia offers a 10-year extension of its tax holiday period. Trinidad and Tobago grants only a 7-year tax holiday and no VAT exemption. St. Kitts and Nevis grants a tax holiday for 10 years for new hotels with more than 30 bedrooms, but only 5 years for smaller-sized hotels. Jamaica offers a tax holiday and duty and VAT exemption for 10 years to new hotels, but 15 years to hotels with convention facilities. Resort cottages qualify for duty and VAT exemption for 7 years. Barbados has only accelerated depreciation (10 years) and duty exemption. Antigua grants a 5-year tax holiday and duty exemption and ten-year depreciation in a 12-year period, extendable for another 5 years, depending on several criteria – size of investment, employment generation, managerial training for locals. Hotel investments in The Bahamas obtain 10-year exemption from property taxes and duties on plant and equipment. An allowance on property taxes of up to \$20 per room is granted for 10 years after the exemption expires. This can be extended for another 10 years.

Incentives for the tourism industry should be harmonized throughout CARICOM. Incentives should be expanded to encourage hotel renovation and modernization. As a service sector, incentives offered to the tourism industry comply with WTO rules.

- **Regional Incentives and for Small and Medium Sized Enterprises**

Most CARICOM countries do not offer special incentives based on location or for small and medium sized companies. For companies locating in and around the Port-au-Prince area, Haiti grants a tax holiday for five years, then gradually increasing the payable tax rate to its full rate in the 11<sup>th</sup> year. Companies locating elsewhere in the country enjoy a tax holiday rising gradually over a 25-year period. Trinidad and Tobago grants a 15% tax credit for 7 years for investments by national commercial firms locating in specified regions and a 35% tax credit to venture capital companies that invest in small and medium-sized firms. Domestic and foreign-owned manufacturing investments qualify for a 25% tax credit.

St. Lucia grants a 10-year tax holiday to prescribed sectors locating in designated areas and a 20% tax credit after the tax holiday ends. These investments receive also accelerated depreciation, duty and VAT exemption, and exemption from stamp tax on land transfers, property tax, and alien holding licensing fee. Barbados offers preferential tax treatment, tax-exempt interest income, accelerated depreciation, and exemption from duties, transfer and land taxes. Investments by small and medium-sized companies (must be 75% locally-owned) in Barbados are granted a preferential income tax rate of 25%, exemption from duty and dividend taxes, and a 20% tax credit research and development and other approved expenses.

It is recommended that incentives by countries that offer them should be retained for attracting investments in depressed areas and for small, disadvantaged enterprises for social equity reasons and to foster development of poor areas with high employment.

### **3. Compatibility with WTO Rules and Accession to FTAA**

In a "Report on Compliance with the WTO Agreement on Trade-Related Investment Measures (TRIM's) in CARICOM States," Mr. Anthony Halliday of the Center for Trade and Law at Carlton University (Ottawa) concluded that most CARICOM states are in violation of WTO rules on investment incentives. Under TRIM's and the Agreement on Subsidies and Countervail Measures (ASCM), incentives are deemed to be subsidies that distort trade and hence in violation of WTO rules if they are granted conditional upon export performance or the use of domestic goods or domestic value added (except wages or costs of local services) as inputs. In other words, WTO rules are violated if investment approval is "conditional upon fulfillment of trade-distorting performance requirements." The author found all Fiscal Incentives Acts of the CARICOM countries in violation of TRIM's or ASCM. A transition period allowing developing countries to adjust their incentives regimes to WTO rules has now been extended to start in 2007 and end in 2010.

Presumably the WTO will take no action against any CARICOM country in violation of its rules on subsidies until a formal complaint were to be made to the WTO by one of its member countries. Since dispute settlements in the WTO end up being very expensive, a country may be reluctant to lodge a formal protest against a small CARICOM country

because legal expenses may exceed the benefit from a favorable ruling involving a small trade volume.

Future access to the FTAA, however, may well depend on a commitment to observe WTO rules. In fact, the Chapter on Investment of the Draft Agreement (Nov. 1, 2002) of FTAA, in Article 7, Paragraph 1 specifically calls for prohibiting member countries from imposing domestic value added or export performance requirements, even for services, in connection with the operation, sale or other disposition of an investment. Paragraph 8 would allow smaller economies to “exercise the right to impose certain development-related performance requirements, provided these are WTO compatible.” These are bracketed proposals thus far, including milder worded alternative proposals that can still be changed in subsequent negotiating sessions. CARICOM and other smaller countries will undoubtedly argue for more liberal treatment.

CARICOM states can meet their obligations as members in the WTO by:

- a. Phasing out their tax investment incentives while shifting to and intensifying other forms of investment promotion; or
- b. Targeting tax incentives to entire industries that are export oriented and offering tax incentives to investments in specific regions where export processing zones happen to be located;
- c. Replacing their tax investment incentives by a significantly lower corporate tax rate applied to all existing businesses; or
- d. Removing all local value added and export performance requirements from their incentives laws; or
- e. Maintaining tax incentives only to those that limit value-added requirements to wages and benefits paid to domestic labor and to local services purchased, thereby eliminating the domestic goods component from the value-added requirement.

Since most of the above alternatives will have the effect of diminishing the value of investment incentives to investors, CARICOM countries should start developing strategies that would make incentives less critical to attracting private investment. It can be argued that incentives regimes should not be abandoned altogether because that would deprive small countries of a strategy designed to compete for private investments in the global market place. Incentives, however, could partly be supplemented by effective proactive investment promotion abroad.

#### **4. Administration and Approval Process of Incentives**

The administration and approval process of incentives is as important as the incentives themselves. The process for granting incentives varies among countries. In most cases, an application for investment incentives is first received by the agency administering the incentives program (usually the responsible ministry, national development or investment promotion agency). The agency may assist an investor in preparing the application. It reviews the application and submits it with a recommendation to its own Board or directly to an appropriate Minister. The Board reviews the application and passes its recommendation to the responsible Minister who gives his endorsement, after receiving assessments from other departments and from existing investors in some cases, and conveys it to the Cabinet for final decision. If approved, the enterprise is declared “approved” and receives a license together with the approved incentives from the Ministry. For an enterprise to be declared “approved,” the product to be produced must also be an “approved” product.

In Jamaica, all investment incentives applications are submitted to JAMPRO, the investment development agency, along with a certificate of incorporation, a certificate of tax compliance, a document detailed the projected business plan, and various other documents related to the particular type of project or business. JAMPRO evaluates the submissions and makes its recommendation to the relevant Ministry – in the case of a manufacturing project to the Minister of Industry, Commerce and Technology, for tourism to the Minister of Tourism, for mining to the Minister of Mining. JAMPRO claims that the entire approval process takes 3-4 weeks. Private sector representatives insisted that it takes much longer due to excessive requirements of documentation and red tape and the focus of the government agencies on functioning as controlling agencies and regulators rather than facilitators and promoters.

In Jamaica and some other member states, private investors consider this process to be excessively cumbersome and often quite frustrating. An investor may have to wait up to one year in extreme cases before his application for investment incentives has passed all of these bureaucratic hurdles for final approval. This process often appears to lack transparency, is highly discretionary, and vulnerable to corrupt practices. In such situations, there can be considerable scope for influencing any of the discretionary decisions along the lengthy approval process. Despite this criticism, feedback from the private sector -- when specifically asked -- indicates that most investments receiving incentives would not have been made in that country without obtaining the incentives.

In Belize, according to private investors, tax holidays, duty and VAT exemptions, reduced fuels taxes, and subsidized infrastructure costs can be negotiated directly with the Minister of Finance, particularly in the case of larger investment projects, despite an official suspension of the investment incentives regime. This lack of transparency can be viewed as a fairness problem by other investors, while some will be turned away in the absence of reliable legislation protecting their rights against future potential challenges. Similar problems were reported from Guyana and Suriname. In Guyana, GO-INVEST,



the investment promotion agency, assists investors in preparing the application for investment incentives and makes recommendations regarding the approval of incentives, the final decision rests with the Minister of Finance or the President himself. This lack of transparency and exercise of discretionary power, rather than simply applying the relevant law, is considered a distinctly negative factor by some investors. Companies also complained about lengthy, involved processes of obtaining licenses, permits, and, above all, land use concessions. Some claimed that the system encourages petty corruption by low to mid level government officials.

The Bahamas, maintains a more efficient, but also discretionary incentives approval process. The Bahamas Investment Authority, located in the office of the Prime Minister, acts as a one-stop-shop for project approval and facilitation. It submits its recommendation of an investment incentives application to the National Economic Council, a committee chaired by the Prime Minister. This ensures a speedy, but non-transparent, approval process. Once the project is approved, the Authority helps to expedite all permits and approvals for the establishment of the investment. After the investment is approved by the Council, approvals of permits and licenses by other agencies are processed rapidly.

In Trinidad and Tobago, the process can take longer despite concrete efforts to streamline the investment process and make it more transparent. All investment incentives applications are sent to TIDCO, the development agency, where it could take up to three weeks to evaluate the application in the case of tourism projects. Small businesses in particular complain that the procedures required for approval are complex, time consuming, and require much paper work. If all required documentation has been submitted and evaluated, it is sent to the respective Ministry, where it can take as long as three months before a decision is made. In the case of applications for tax holidays under the Fiscal Incentives Act, the Minister takes TIDCO's analysis and recommendations to a Cabinet committee where it could take up to three months to give a final approval for fiscal incentives. Verification whether or not the investment project of a company meets the eligibility criteria for incentives specified in the law is apparently still insufficient to secure approval. Only where performance or location-based incentives are concerned is the approval process somewhat more automatic once the Department of Inland Revenue has verified the accuracy of the data submitted by the company.

Another criticism leveled by some private investors is that the qualifying criteria for investment incentives are not always clear. In some cases an applicant for incentives is required to submit extensive information about the company's investment, production, and marketing plans and sales and profit outlook. Thus government officials get involved in evaluating complex and confidential corporate data. Many investors are not willing to comply with all of such requirements. Hence opportunities for attracting some investments are foregone to the detriment of job creation, export generation, and increased economic activity and growth.

Belize's currently suspended incentives regime represents such an example of onerous, confidential information requirements that would induce many foreign investors to turn

elsewhere for location of their investment. Applicants for incentives under this law are required to provide detailed data on expected annual output at full production in quantity and value; expected level of output at the end of the first year of production; the articles to be manufactured; description of the manufacturing process; types of machinery that will be used; preparation by a certified accountant of projected profitability statements for the new operation for each year up to and including the second year of production, including cost of product; projected cash-flow statements semi-annually up to the second year of full production; amounts of any royalty payments, commissions, or other fees payable to external interests in connection with the project; presentation of a marketing plan containing data on location, land tenure arrangements, expected export markets with names of corporate customers, proposed pricing of products, promotion plan, and distribution plan of products to agents or distributors.

After receiving the complete investment proposal, BELTRADE, the investment development agency would then distribute copies of the proposal to the Department of Environment and to the relevant Ministry for analysis and eventually as a so-called "Cabinet Confidential" document to up to 17 Ministers of the Ministerial Cabinet. It seems that very few national and foreign private investors would like to see the cash-flow and profit projections of their investments, marketing plans, and product pricing plans distributed widely among government officials of a foreign country. Similar requests for confidential information are made by Government officials in Haiti and Barbados.

Another issue has to do with the criteria for determining the category or amount of incentives to be granted. This is sometimes difficult to establish and to monitor subsequently. It requires calculating the local value added to national production or income that a specific new investment will make or the share of profits generated from exports out of total corporate profits. Various shortcuts are taken to arrive at an estimate that may be considerably overstated. Moreover, these proportions change from year to year, sometimes substantially. Changes in these proportions would require the enterprise to be moved to a correspondingly different category of incentives. Offices of incentives administrations in CARICOM countries, however, do not have an adequate budget nor the manpower to monitor and to re-calculate regularly these incentive criteria for individual companies in order to lower or increase the corresponding export allowance and/or other tax concessions. Such detailed regulations and controls provide opportunities for considerable discretionary power by incentive administrators and corrupt practices. A transparent, automatic system of granting incentives would not require post investment performance monitoring.

## **V. Planned Revisions of Laws and Regulations**

Aside from the proposed harmonization of investment policies for the CARICOM region, individual member states have announced plans for diverse revisions of laws, regulations, or the administration of them. Changes of incentives for specific sectors are mostly designed to attract more investments. Several of the planned revisions would conform to a sound harmonized regional investment framework, such as Trinidad's plan to phase out its tax holiday regime; Barbados's plan to lower the overall corporate tax burden; Guyana's intention to bring interest rates for the private sector more in line with international levels; and the plan of the OECS countries to improve the dispute settlement process.

### **1. Improvements of Tax and Investment Laws**

Trinidad plans to phase out its tax holiday regime, except for capital intensive projects. Eventually, only import duty concessions will remain for manufacturing projects. Jamaica plans to phase out some tax holidays that do not comply with WTO rules. Other changes in its incentives regime will aim to attract investments in international financial services. Jamaica wants to end double taxation of dividends and speed up customs clearance of imports. The Barbados government is considering shrinking the number of different corporate tax rates and incentives while lowering the overall corporate tax burden. Haiti has finally passed an Investment Code and a Free Zone Code to encourage investments in export processing zones.

Guyana plans to introduce additional tax breaks for new private investments, enable lending institutions to lower their interest rates, strengthen property rights and improve its system of registering land titles. Amplifying access to bank credit and lowering interest rates for the private sector are designed to bring interest rates more in line with international levels and thereby help enhance the competitiveness of Guyana's exporters.

The Bahamas government announced plans to expand incentives to encourage new investments in tourism, Jamaica will extend incentives to cover hotel expansions, while the Barbados government promised to improve incentives legislation for the agricultural sector. Suriname's parliament approved a new investment bill. It has not yet been signed into law by the president in order to be published in the official Gazette, as required by law before it can be implemented.

### **2. Improvements of the Incentives Approval Process**

Several CARICOM countries intend to make the approval process of incentives more transparent and less discretionary. Guyana is in the process of approving a new Investment Code that has gone through several revisions aimed at gaining support from private sector groups.

In Haiti several important investment bills continue to languish in parliament, held hostage to the six year-old political impasse. One important bill would create a new Mixed Presidential Council for Growth and Economic Modernization, a public-private sector permanent task force charged with identifying institutional impediments to private investments and with advising the government on international treaties, development strategies, and other economic issues.

### **3. Protection of Intellectual Property Rights**

In 2000 several CARICOM countries brought their laws on intellectual property rights protection in line with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIP's). A new such law passed parliament in St. Kitts, but has not yet been implemented. Antigua has also drafted a TRIP's-compliant law. Barbados continues to strengthen its laws on intellectual property rights. Haiti plans to draft an intellectual property rights law. Effective enforcement of intellectual property rights laws needs to be improved throughout the CARICOM region. A harmonized investment policy framework should address this problem as part efforts to improve the investment climate in the CARICOM countries.

### **4. Privatization and Private Investment in Infrastructure**

Haiti wants to restart its privatization program. Some countries have advanced relatively slowly (Suriname has not even started) and many companies remain state owned, particularly in the infrastructure sectors. Jamaica announced plans to attract private investments in road construction and maintenance. A supervisory or regulatory board is needed to protect the interests of consumers in CARICOM countries where conversion of state monopolies to private monopolies may lead to monopolistic practices.

### **5. Dispute Settlement**

The OECS Secretariat drafted an Arbitration Act governing the implementation of the International Convention on the Settlement of Disputes between governments and foreign investors, but this Act has not yet been passed by the parliaments in St. Lucia and St. Kitts and Nevis.

## **VI. Proposals to Reform and Harmonize the Regulatory Framework**

### **1. Summary of Major Bottlenecks for Investment**

CARICOM countries focus their incentives on value-added manufacturing, maquiladora assembly for export, and hotel/resort development, while opportunities to attract investments in diverse service sectors have largely been neglected – service sectors that do not require a large domestic market or a natural resource base.

Aggressive, pro-active investment promotion abroad has been ineffective or neglected, yet competition in the global market place for foreign direct investment has been increasing and many foreign countries have been devoting more resources to this effort.

The private sector in CARICOM countries has complained about excessive red tape involving permits, applications, and reporting requirements that are raising the costs of doing business.

The requirement in several countries for an annual renewal of licenses to operate a business generates uncertainty for a foreign investor with sunk investments that his license might not be renewed. This requirement may discourage some potential investors.

Performance based tax incentives, that is, those dependent on domestic value added or exports generation, do not comply with WTO rules nor are they likely to be acceptable in a future FTAA.

The prevailing discretionary and non-transparent process of granting incentives produces uncertainty among potential investors whether their incentives applications will be approved and whether incentives granted in this way will be protected against any future curtailment. This process of granting incentives provides opportunities for corrupt practices.

Companies are generally not be willing to divulge confidential corporate information to Government officials that are required in some countries to obtain incentives – information that can subsequently fall into the hands of competitors.

High corporate income tax levels plus dividend remittances taxes add up to a combined corporate tax rate higher than in many other developing countries. High corporate tax levels could turn away some potential investors, particularly if some major tax incentives were to be discontinued.

Restricted access to credit and high real interest rates in CARICOM countries tend to reduce the competitiveness of exporters and domestic companies that compete against imports. In a future FTAA, such countries will be at a distinct competitive disadvantage.

Difficulties in obtaining clear title to land prevents farmers from using land as collateral to obtain loans.

Restrictions limiting ownership of commercial land by foreign investors is seen as a distinct impediment for private investors to develop an efficient, large scale agricultural export sector.

## **2. Proposals for Removal of Bottlenecks to Private Investment**

CARICOM countries need to take into account major new challenges when formulating their investment policies for future years. An end to the world quota system for the textile industry when the Multi-fiber Agreement expires in 2005 is predicted to place the Caribbean textile exporters at a serious competitive disadvantage relative to Asian producers due mostly to significant wage disparities. Most of the CARICOM tax incentives regimes are not compliant with WTO rules and will have to be phased out in most CARICOM countries during 2007-2010. The advantages from CBI and other unilateral trade preferences will start declining with the implementation of CAFTA and then mostly be replaced by the free trade provisions under a future FTAA. On entry into FTAA, CARICOM countries will have to start reducing their trade barriers and subsidies. CAFTA, FTAA, and perhaps other regional free trade agreements with the U.S. will trigger intensified competition for access to the U.S. market. Investment policies and strategies should be designed to cope with or to offset these negative effects on the ability to attract private investments.

Strategies should be developed for the survival of the textile industry to deal with the double negative effects of the scheduled termination of the world quota system under the Multi-fiber Agreement and the non-compliance of export performance based tax incentives with WTO rules. Aggressive promotion activity abroad should be targeted to attract companies that produce exports of garments designed for upscale and niche markets where quality and design is emphasized over price and volume. Encouragement should be given to companies to move from value added to fully integrated “full package” production within the CARICOM region. Producers should increasingly seek cheaper input sources by resorting to e-commerce purchasing.

Major efforts, however, should be focused on substantially improving the effectiveness of investment promotion, re-organizing the institutional process relating to private investment, simplifying the investment approval process, and improving the attractiveness of the investment environment for the private sector. Strategies for dealing with these issues should be outlined in a harmonized investment policy framework and implemented by the member states. Detailed proposals are outlined in the remainder of this Report.

CARICOM countries will generally have better prospects to attract investments in service sectors than in manufacturing. Too many negatives will dampen prospects for CARICOM to expand future production and exports in manufacturing: a small internal market, high labor costs relative to productivity levels, phasing out trade preferences and

duty protection, and facing increased competition within a future FTAA. The emphasis of incentives regimes should shift still more to attract investments in service sectors. Efforts should be made by the investment promotion office to identify these sectors. A harmonized system of tax incentives for service sectors could be established to support the promotion efforts to attract such investments.

The member states should reduce or eliminate regulations that restrict desirable investors and generally strive to convert the regulatory business environment to one that facilitates investments. The requirement for an annual renewal of licenses to operate a business should be discontinued or the process be made an automatic certainty for revenue purposes similar to obtaining a car license renewal. Once an investment has been made, the private business should have the certainty of being allowed to operate as long as it wants to. If a business violates any law, it should face court action.

The process of obtaining building permits should be shortened, streamlined, and simplified. A task force could be formed to examine all the forms that are required by the different departments in government to be filled out by the private sector to obtain building and other permits and licenses with the objective to determine which ones can be eliminated or simplified. This may prove a difficult task, but necessary for improving public services for the private sector. Government offices should be under short deadlines to complete the process of issuing permits or licenses. A harmonized investment policy framework could address these issues and establish general guidelines to be followed by the member states.

Fiscal policies should be reviewed when starting to reform or to dismantle investment incentives regimes in order to reduce the negative effect on investments. As some incentives are being phased out, corporate income tax rates should be reduced to or below a maximum 30% in order to avoid high tax rates from becoming an impediment for attracting new investments when attractive incentives can no longer be offered.

Different tax rates among sectors should also be harmonized. Guyana, for example, maintains a 45% corporate income tax rate for banks, telecommunication and commercial enterprises, but 35% for all other businesses. Such tax discrimination against service sectors should be terminated, because production of services is just as vital and important for an economy as the production of goods.

Dividend tax rates range from 0% in the Bahamas to 40% in Antigua and Barbuda, but mostly 15%. States should consider lowering the dividend tax to 10% -- to be more in line with other developing countries. An alternative would be to eliminate it altogether as this constitutes double taxation since corporations already pay an income tax on profits that make up the dividends paid to shareholders.

Although each country wants to pursue its own tax policy, it would be preferable to move toward a harmonized corporate income tax to avoid competitive lowering of taxes as a means to attract important new investment.

CARICOM countries should reform their investment incentive regimes. A harmonized tax incentives regime for the region would avoid the use of tax incentives by CARICOM countries to compete among themselves for investments. It would make regional investment promotion simpler and more effective. A case can be made, however, for the diversity of the member states to be reflected in differences among the individual countries' tax incentives regimes. Haiti and Suriname may want to offset some very negative aspects in the investment environment by extra generous incentives in order to have a chance to attract private investment. The Bahamas and Barbados, on the other hand, may want to rely on their favorable tax and general business environment to attract investments without tax incentives. A preferred approach might be to adopt a harmonized investment incentive system, but allow some exceptions only after these are approved by all member states.

Performance based incentives, that is, incentives based on domestic value added or on development of exports should be phased out because they are difficult to administer, are discriminatory, and contrary to WTO rules and probably also not acceptable for entry in a future FTAA. The designation of an "approved investor" and "approved product" by a minister should also be eliminated, because the procedure is highly non-transparent and discretionary. If the CARICOM countries wish to retain tax incentives regimes, they should be applied across-the-board to investments in specific sectors and not based on a specific performance requirement in order to conform to WTO rules. Tax incentives applied to service sectors also do not violate WTO rules.

The process of granting incentives should be automatic, following the rule of law, and not be discretionary and non-transparent. Investment incentives laws or implementing regulations should clearly specify the eligibility requirements a company has to meet in order to obtain the incentives. Incentives could then be approved by an incentives administration located in a Ministry or in some other entity. The administrators should follow exactly the provisions in the law. Applicants would need to submit proof that they meet the conditions specified in the law. It would not be necessary for a lengthy, uncertain process to take place in which different government departments, Ministers, and the Cabinet get involved. The rule of law would be strictly observed. Investors would have the certainty of being eligible for a given incentive that can then take into account when calculating expected cash flow to arrive at the decision whether or not to invest. Perhaps internal Government reforms should be considered that would separate policy functions from operational functions of Government and assign the policy function strictly to the Ministers and the policy executing and operational functions to Government agencies and sector specialized Government entities. A clear definition of responsibilities along these lines might reduce confusing, delayed, discretionary, and non-transparent decisions in the investment approval process.

If the law clearly specifies the conditions for an investment to be eligible for incentives, there should be no need to require submission of confidential information about expected cash flow, prices or other information to determine whether or not an investment is eligible for incentives. The process for granting incentives can thus be greatly simplified



and shortened by eliminating a large part of the information requirements and by delegating the entire administration process of the incentives law and the granting of incentives to one specific entity in government. A harmonized investment policy framework should develop a clearly defined investment law and the process for administering it and propose it for adoption by the CARICOM countries.

One single, simple, standard application form can be developed for all national and foreign companies in virtually all sectors applying for incentives for a new investment or expansion of an existing one. Peru's Framework Law for Private Investment requires the approval administration to issue a single text of administrative procedures to be followed. Requests filed are automatically approved on the date they are filed, provided all documents are submitted that prove the applicant meets the eligibility requirements. The information submitted is regarded as affidavits, countersigned by an authorized company representative, thus certifying the authenticity and truthfulness of the information submitted. The law further states that the investment administration "must establish only one office for the processing of documents, through which the parties concerned shall perform all procedures and obtain information for any administrative procedures." The Peruvian Framework Investment Law (more details in Appendix I) established a process for approving investments that is efficient, automatic, and transparent, with strong disincentives against corrupt practices. The law aims to enhance private investor confidence to invest in the country.

Central Banks should adopt measures that minimize the effect of Government financing requirements pre-empting domestic credit markets that serve the private sector. Central Banks should lower reserve requirements and expand credit facilities to commercial banks to enable them to make more credit available to national investors at reasonable cost. A looser credit policy for the private sector should not be pursued so far as to stimulate inflation or a growing trade deficit. Efforts should be made to capture a part of the foreign exchange inflow from worker remittances abroad, and make it available for investment by the private sector rather than financing imports of consumption goods. Overall financial policies should aim to make more credit available to national companies and to bring real interest rates closer to prevailing international levels. A harmonized investment policy framework should establish guidelines on fiscal and financial policies relating to the private sector, but leave actual enactment and implementation to each member state.

A joint labor union/private sector task force should be created in CARICOM states to review a country's labor law when it becomes subject of complaints from potential investors. If the law is found to control and regulate work hours, wages, and other work conditions rigidly and in such detail that they serve as impediments to private investment, recommendations should be developed to make the law more flexible. A labor law should not be an impediment for private investment because it would no longer serve the best interests of labor and the community. A harmonized investment policy framework could offer general outlines for a labor code that would be considered fair by investors while providing adequate protection to workers.

Harmonized rules for granting work permits to foreigners (non-nationals of CARICOM countries) that serve the best interests of the CARICOM countries would be those that meet common, agreed objectives, such as promoting skills training of nationals without discouraging potential new investments. Rules should not restrict the temporary entry of technical skilled personnel required for start-up operations, or for training assignments, and for top managers needed to safeguard and represent foreign shareholders interests. Also important is the timely processing of work visas and permits so as not to disrupt and delay company investment operating schedules.

The process of obtaining clear title to private land ownership should be made less difficult in order to facilitate the use of land as collateral for loans. Government land should be leased or privatized to encourage agricultural production and diversification. Restrictions on foreign ownership of rural land should be eased where commercial land is not scarce and does not need to be reserved for domestic farmers in order to encourage expansion of efficient production. Land use policies should remain with individual CARICOM countries as local conditions vary sufficiently to call for different policies. A harmonized investment policy framework could outline broad guidelines to address these issues and recommend reforms to facilitate private national and foreign land ownership.

CARICOM countries should be required to implement fully the agreed common external tariff system. A 0% tariff rate should be established for all imports of machinery and capital goods. A uniform value added tax might also be desirable. The Central American Common Market countries have agreed to move to a uniform VAT rate, probably to 15%. A common external tariff and VAT rate would help reduce incentives for contraband trade and prepare for entry in a future FTAA.

Exporters in some countries, such as Barbados, suffer long delays in receiving legal refunds of duties and taxes paid on imported inputs used in the production of exports. This system of refunding can be replaced by exempting exporters from paying duties and taxes on such imports.

Only Barbados maintains incentives to encourage firms to train and upgrade their work force. Harmonized investment policies should include incentives that encourage skills training to raise the productivity of the work force. More abundant highly skilled workers in the region would be viewed as a positive element in the investment climate by potential investors, particularly in the high tech service sectors. More generous tax deductions, a 150% expense deduction, for example, could be offered to compensate companies for expenses incurred in training their workers to acquire new skills to operate complex machinery or other installations, thereby raising productivity levels.

CARICOM countries maintain laws to protect intellectual property rights and several countries have recently improved the level of protection by amending laws to comply with WTO rules. Attention should focus on improving enforcement and penalties to comply with laws that protect intellectual property rights.

## **VII. Proposals to Organize for Improving Private Investment Flows**

### **1. Elements for a CARICOM Investment Framework**

Proposals for the formation of a CARICOM investment policy and efforts to implement it arose from dissatisfaction with the inward flow of investment and from the perceived need to form a Single Market and Economy that included all CARICOM countries. Statistics show that four countries (Bahamas, Bermuda, Cayman Islands, and Virgin Islands) attracted 76% of all “foreign investments” during 1985-96 within CARICOM and other former British Territories. Moreover, these inflows were mostly off-shore financial transfers, that is, mere book entries rather than direct foreign investments, hence with marginal impact for local economies. Trinidad and Tobago’s foreign investments mostly to develop oil and gas for export accounted for a major share of the remaining inflow. The remainder of foreign direct investment to CARICOM has gone largely into hotel/resort development and to the maquiladora garment sector. Since 1996, the CARICOM countries have lost further market share of global foreign direct investment flows.

CARICOM will need to attract more foreign direct investment in the future to offset the negative effects on the economy from reductions in preferential trade arrangements, export-processing zones, tax incentives, subsidies, protective tariff levels and other trade restrictions. At the same time, competition for access to the U.S. market will intensify with the formation of CAFTA and FTAA. Plans and strategies need to be worked out and implemented in a timely manner to offset these negative trends and to position the CARICOM countries to fully benefit from new opportunities opening up in the global market place and in neighboring markets.

A beginning was made in 1992 at the Special Meeting of the Conference of Heads of Government of the Caribbean Community when the need was recognized to shift the focus of policies from stimulation of intra-regional trade to the development of competitive production within the region. The Harmonized Scheme of Fiscal Incentives, that emerged in 1994 as a consequence of that Special Meeting, failed, however, to halt the comparative decline in foreign direct investment flows to the region. Studies revealed deficiencies in the investment policy strategies. Individual CARICOM countries had adopted investment incentives regimes that deviated from each other and from the agreed Harmonized Fiscal Incentives regime and the countries’ investment promotion efforts proved largely ineffective.

It was then decided to “adopt a strategy aimed at the harmonization of the investment policy framework across the Single Market as an integral part of the effort to create a more conducive and competitive investment environment.”

A harmonized investment policy framework for the CARICOM region is desirable as a necessary component, similar to a harmonized trade policy, for the creation of a Single Market and Economy. A harmonized investment policy as part of a single market can improve prospects for attracting more foreign investment. The need to develop common positions on trade and investment for the region is enhanced by the decision to negotiate entry in a future FTAA as a group. International obligations to change and reform some investment laws and policies require cooperation to arrive at and defend common positions.

A harmonized investment policy framework is feasible for the CARICOM region if reaching the goals in an agreed investment framework is made binding for Member States in order to ensure that the international obligations to reform some investment policies and practices are fulfilled and that the benefits from a harmonized investment policy are fully realized. To achieve effective implementation of a harmonized investment framework, the role of the CARICOM Secretariat should be strengthened – the role as catalyst, supervisor, and promoter of the agreed investment framework. The Secretariat should have adequate resources to carry out the functions of assisting and guiding the states toward implementation of the components of a harmonized investment framework and to benefit from it. A new entity may be needed to carry out these expanded and new tasks.

A harmonized investment framework for CARICOM should conform not only to the concept of the creation of a Single Market and Economy, but also to WTO rules on investment and subsidies and those that will be adopted in a future FTAA and perhaps a free trade agreement with the U.S. similar to the one currently being negotiated by the countries of the Central American Common Market.

Participation by the CARICOM countries in a regional free trade agreement will require accepting and implementing the principles, rules, and treatment of foreign investment agreed by all signatories to a free trade agreement. This requirement further strengthens the case for harmonization of the treatment of foreign investment throughout CARICOM. Such a harmonized investment framework should include principles and policies for the treatment of foreign investment that conform to the rules and standards established by multi-lateral agencies and in regional free trade agreements.

A harmonized investment framework for CARICOM should not be confined to the adoption of common principles and policies, but also include harmonization of some laws and regulations, administration of investment policies and incentives, organization for effective investment promotion, and other areas that impact on the ability to attract more private investment.

A harmonized investment framework for the CARICOM region should include the following areas:

- government guarantees to the private sector
- treatment of foreign investment

- rules governing expropriation and dispute settlement
- reform of incentives regimes and the approval process
- simplifying regulatory processes applied to private investments
- institutional framework for administration of investment policies
- organizing for effective investment promotion abroad
- promotion of public-private working groups and partnerships
- incentives for worker skills training to raise productivity levels
- rules for granting work permits for foreigners
- guidelines to facilitate rural land use and ownership
- encouragement of private investments in ports and other infrastructure sectors
- conditions for improved customs operations and port operations
- recommendations for monetary policies to improve access to domestic financing and lower interest rates closer to international levels.

Some proposals for harmonizing investment policies relating to the removal of bottlenecks for investments were discussed earlier; recommendations for the treatment of broader issues are outlined below.

#### • **Government Guarantees to the Private Sector**

The investment laws and incentives regimes of CARICOM countries contain some Government guarantees to private investors, but they are broad, vague, and incomplete. Developing countries have found that strong, unequivocal commitments and guarantees to the private sector are considered important by the private sector.

A harmonized investment policy framework for CARICOM should stress the key role written and publicized government commitments and guarantees play in projecting a positive image about the investment climate for potential investors. A harmonized investment policy framework should recommend the following government commitments and government guarantees to be included in the states' investment codes:

1. Right to freely organize a company and its business activities;
2. Right to freely organize production and services;
3. Freedom to distribute and receive profits and dividends;
4. Freedom for foreign investors to remit abroad profits, dividends, royalties, earned interest, and repatriate capital, with prompt access to foreign exchange;
5. Effective protection of intellectual property rights (copyrights, patents, trademarks, corporate and trade names);

6. Right to private property;
7. In case of expropriation, compensation paid promptly, fully, and with convertibility to the currency of the owner of the expropriated asset;
8. The level of compensation to be the current fair market value as determined by an appraiser selected and agreed to by the Government and the investor;
9. Non-discriminatory treatment regarding ownership, bid awards, taxation, tariffs, pricing, access to investment sectors, markets, and foreign exchange;
10. Equal treatment of private and public companies with regard to payment of taxes, duties, and access to credit and markets;
11. National treatment of foreign investment and reform of laws and regulations that are discriminatory.

- **Treatment of Foreign Investors**

A harmonized investment policy framework for the region should include national treatment for foreign investors as a desirable objective for improving the investment climate for foreign companies. It would not contradict nor violate the basic concepts of regional integration just as the eligibility for tax incentives under equal terms for foreign as well as national investors does not contradict regional integration. National treatment is viewed as a very positive element in the investment climate by foreign investors. It strengthens at investment promotion and conforms to treatment accorded to foreign investors in many developing countries, including most Latin American countries.

There is no uniformity among CARICOM countries concerning the sectors that are reserved for national companies nor the type of restrictions applied to foreign investors in specific areas. A harmonized investment framework should establish uniform standards and categories of sectors listing those that are closed to foreign investors and others where foreign participation is limited to minority equity participation. A provision should be included for periodic revisions with a view to further liberalize treatment of foreign investors in the future, following global trends or commitments in bilateral investment treaties or regional free trade agreements.

Agreement on a final text regarding national treatment of foreign investment has apparently not been reached yet in the FTAA negotiations. The principal proposal in paragraph I of Article 2 of the Draft Agreement on Investment states that “each party shall accord to investors of another party treatment no less favorable than that it accords to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.” A proposal for paragraph 3 states that “while admitting the general applicability of the concept of national treatment with respect to the establishment, acquisition, expansion, management, conduct, operation, or sale of an investment, in certain special

circumstances, e.g., the threat of economic instability stemming from vulnerability, prudential measures employed by a smaller economy may be allowed to fall less heavily on domestic companies than on foreign companies.”

Under these proposals, the CARICOM countries would be required to grant national treatment to investors from other countries that are members in the FTAA. Only under special circumstances, could a country adopt a more restrictive measure against foreign than against national companies, presumably in dealing with an emergency balance of payments or other financial situation, but not as a permanent policy measure.

- **Laws and Rules Governing Expropriations**

All CARICOM countries maintain laws that restrict expropriation of privately owned land or installations. Expropriation is allowed only when deemed to be in the public interest. Public interest, however, is not defined in the law or regulations. The Belize government has reportedly resorted to some expropriation of land that could be considered outside its own law, but litigation is lengthy and costly. Guyana allows no legal recourse to challenge an expropriation. Several countries do not recognize binding external arbitration of disputes between the government and a foreign investor.

The laws are vague about compensation for expropriated property and allow governments discretion in determining the amount, the means, and the timing of compensation. The government of Guyana can issue bonds instead of paying cash for expropriated property.

Although few expropriations have occurred in CARICOM countries, the laws are considered inadequate and a negative element in the investment climate. A harmonized investment policy for the CARICOM region should outline a common policy on expropriation. The conditions calling for expropriation should be clearly specified in the law. Included should be indirect expropriation defined as the loss of assets or income through confiscatory rates of taxation, compulsory sale of all or part of private assets, deprivation or forced change of private management, freezing of bank accounts, and blockage of remittances.

Expropriation should only be carried out under due process of law and without discrimination against any particular enterprise. The level of compensation should be the current fair market value as determined by an appraiser selected and agreed to by both the Government and the private enterprise. Compensation should be paid in cash promptly, fully, and free convertibility into the currency of the owners of the expropriated asset should be guaranteed by the Central Bank. The official market rate of exchange on the date of expropriation should be used for conversion. Compensation should include accrued interest from the date of expropriation to the date of compensation. It will be calculated on the basis of the current market rate of interest. Foreign investors should have the right to external arbitration.

A clear, unequivocal commitment to avoid expropriation, but, if necessary, to provide fair terms of compensation would be viewed as a positive element in the investment climate of the CARICOM region.

- **Emphasis on Focused Investment Promotion Abroad**

A major new emphasis should be given to the strengthening of aggressive and focused investment promotion abroad. This would require substantially revamping the current investment promotion agencies, activities, and policies of the individual member states. Instead of waiting for foreign investors to take notice and initiate contacts with a ministry or other government entity, a country's investment promotion agency should be well organized to assume the initiative to identify specific foreign companies and industries potentially interested in investing in the country. A second step would be to develop a targeted direct approach to the top management of an identified potential investment prospect. A presentation before the management should focus on an analysis of the factors that would generate an interest on the part of the company to consider an investment in that country. Personnel at the promotion office would need to be specifically trained for conducting this type of pro-active, targeted promotion activity abroad. A focus on aggressive investment promotion abroad should become the key strategy for a new policy aimed at increasing extra-regional investment flows.

A national and regional objective should be to target investors that would help diversify the economy and lessen an excessive reliance on off-shore financial institutions and maquiladora garment production for export. In the past, foreign investors were attracted to countries with a substantial low-cost resource base, a large, dynamic internal market or very attractive investment incentives that opened the door to profitable assembly and export operations. This focus is undergoing substantial change that could result in new opportunities for CARICOM countries. The developing global market place and regional free trade agreements are attracting smaller and medium sized companies to invest abroad. A wide diversity of service sectors of the so-called new economy, the high tech service sector, has grown rapidly and is expanding globally. A country no longer has to offer a large internal market or resource base to attract investments in software services, call center operations, logistical support centers, or bio-technology research. Given effective promotion and back-up organizations that can meet tailor-made requirements of investors, CARICOM countries can attract increasingly such new types of foreign investment. A similar approach can be adopted for export promotion.

- **Strong Institutional Framework for Private Investment**

Governments in CARICOM countries would like to stimulate more private national and foreign investment in order to accelerate the currently very low or negative rate of growth of their economy, employment, income, and government revenue generation. A regional investment policy framework should focus on reforms that will stimulate more private investments throughout the CARICOM region. To be successful, reforms should not be limited to reform of tax incentives, but take a much broader approach to include also reforms at the institutional and organizational level of investment policy.



Detailed analyses of the counties' investment incentives regimes and administration and other aspects of investment promotion have revealed many shortcomings and ineffectiveness. A basic underlying theme is the weak institutional and organizational structure relating to investment policies. There is a great deal of diffusion and scattering of responsibilities and a high level of discretion among ministries and government agencies in dealing with private investors and in approving investments and incentives. These ministries and agencies have important functional responsibilities that leave no time for single-minded devotion to the difficult task of promoting investments. Moreover, the ministries are not required to meet measurable targets for attracting a specific amount of new investment. There is no performance evaluation of the ministers' success in attracting private investments and no accountability for failure to promote private investments effectively. Yet new and more investments are the fundamental engine for economic growth and job creation in any country. Therefore, no effort should be too small or too large in the pursuit of attracting or stimulating more private investments in the CARICOM region.

Different policy options should be examined in the search for a CARICOM Investment Policy Framework that would be effective in stimulating more private investments throughout the region. Some options may be desirable, but politically difficult and costly to implement. Some might be phased in gradually. One option to consider would be the replacement of the current diffusion of responsibilities for investment promotion and approvals by a single ministry or agency.

A Private Investment Center could be created with the single mandate to attract new investments. Its performance will be measured by its success. It will be free of all responsibilities except to focus single-mindedly on the promotion and nurturing of private national and foreign investments. Export promotion is related to investment promotion because many foreign investments made in CARICOM countries have been for export development. Export promotion could be included in the Center's portfolio, but as a department separate from investment promotion.

A Private Investment Center could be composed of five separate sections or departments:

Administration of Investment Incentives,  
Investment Promotion Agency,  
One-Stop Shop for Investors and Exporters, and  
Investment Information Office and Data Base.

A fifth department might be designed to assist national companies to become competitive without trade preferences, protection, incentives, and subsidies and capable to compete against imports after CARICOM joins an FTAA.

The Administration of Investment Incentives would be in charge of the entire process of applying the laws and regulations relating to the granting of investment incentives. It would monitor that recipient companies fully comply with the terms and conditions of

having qualified for incentives. If the laws clearly and unequivocally specify the conditions for investments to qualify for incentives, there should be no need for a Minister or the Cabinet to get involved in weighing pros and cons of granting incentives to a particular enterprise. The Cabinet should be in charge of establishing investment policies and initiating or supporting clear and workable laws that promote the established policies. A strict application of the law should determine whether or not an investment is eligible for a given incentive. If the conclusion is positive, final approval should be automatic. The Cabinet and the President, however, should hold the Private Investment Center accountable for its performance, including the strict application of the law. The Administration of Incentives could also be the entity supervising the phasing out of certain incentives programs and proposing changes in incentives laws.

The Investment Promotion Section or Department would be responsible for actively developing the kind of programs that attract private investments as outlined earlier.

A One-Stop Shop for Investors and Exporters should be organized to facilitate the establishment of a company in the country. Applications for approvals, permits, and licenses to start a new business and to operate would be submitted to and channeled through the One-Stop Shop for expedited processing at the responsible Ministries or Government Departments. The One-Stop Shop for Investors in El Salvador manages to complete the entire process for investors in eight to ten working days, unless an investor fails to submit all the needed documentation at the start of the process. A One-Stop Shop should facilitate and expedite the processing of red tape and not end up delaying any part of it. Specific deadlines could be considered for individual departments in Government to return the processed application forms to the One Stop Shop. During its interaction with private investors, personnel in the One Stop Shop could initiate eliciting feedback from companies for reducing red tape and speeding up the applications processes and pass on the information to appropriate authorities for follow up.

Currently, private investors have to visit a host of different government agencies to apply for diverse permits and approvals and to fill out different forms. They need to hire local law firms to help wade through laws and regulations and amendments to laws and regulations. Then they have to wait for decisions on individual permits and licenses that are made at widely different lengths of time from the date an application is filed. These processes are often frustrating, time consuming and costly for private investors. The practical experience gained in dealing with red tape by the One Stop Shop could prove helpful in simplifying and streamlining the regulatory process for private investors. The feedback from investors could result in reducing the information requested for permits, shortening the time for processing applications, improving the sequence of the process, and reducing the cost handling applications for permits and licenses.

An Investment Information Office and Data Base would provide relevant, accurate, up-to-date information about the CARICOM markets and investment opportunities to potential investors. It would respond reliably to enquiries from investors. This function would be supportive of the investment promotion agency. Its function could also be merged and be part of the promotion agency. The function of the Information Office

could be expanded to serve also the needs of investors in exporting. In this case the Office would subscribe to reliable foreign data banks on international trade leads, foreign country customs data, tariff rates, import regulations, and foreign market assessments for specific products and make all relevant new information immediately available on-line to local companies. To save the cost of subscription, the Information Office could offer exchanging access to its own data bank on CARICOM markets for that of other trade data banks. The goal would be to offer domestic investors and exporters speedy access to accurate, relevant, and up-to-date trade leads, foreign product markets, international price forecasts, and foreign country import regulations. While the internet provides a wealth of business and market information, it does not meet all the needs particularly of small businesses, such as daily trade leads from all over the world for their specific type of products.

These are but a few examples how the sections of a Private Investment Center could effectively serve existing and potential investors. If more than one country were to set up a Private Investment Center, information and some services could be shared or exchanged among the Centers within CARICOM in order to minimize costs or one Investment Center could serve more than one country.

- **Cabinet Rank for the Head of a Private Investment Center**

The head of the Private Investment Center should be given cabinet rank, reporting directly to the President or Vice President rather than to a Minister. These reforms would be designed to recognize the overriding importance of investment promotion for the economy, for job creation, for income and government revenue generation. A less preferred option would be to place the Center under one Minister, such as the Minister of Economy or the Minister of Commerce.

The elevation of the manager of the Private Investment Center to Cabinet rank would enable him to assume final authority and responsibility for investment and export promotion and incentives administration. He would have an advocacy interest in reducing red tape for investors, for simplifying, streamlining, and reducing regulations and speeding up the approval process, because these reforms would enhance the prospects of his success in attracting more private investment.

Creation of a Private Investment Center would require merging existing investment promotion and development agencies to the Center as well as similar functions from various Ministries. Close liaison and collaboration would continue with all relevant Ministries and departments in the exercise of the functions of the Center. Its personnel will seek advice and input from relevant ministries and other entities, including Customs and the Tax Department, before making decisions.

- **Investment Policy Task Force to Review and Recommend**

The Private Investment Center would benefit from advice and recommendations from a permanent Policy Task Force. Its task would be to review from time to time the

effectiveness of investment promotion, to compare results with those achieved by other countries, and to recommend improvements to make the promotion efforts more effective and results oriented.

The Task Force could assist the Head of the Center in the selection of qualified personnel for the Center. Some should have private sector experience and be proactive and capable of generating investor interest in their own country.

The required personnel qualifications should be clearly specified in the law creating the Private Investment Center and be observed in the hiring process in order to avoid politically influenced hiring.

- **Feedback from Investors about Incentives and Promotion**

There should be continuous efforts by the Center to invite, collect, and analyze feedback from investors about the adequacy of incentives and promotion efforts. A particular effort should be made to obtain feedback from companies that showed initial interest but then decided not to invest in that country. The analysis of such intelligence received should lead to adjustments and reforms of the existing promotion programs and processes.

- **Public-Private Sector Partnerships**

A key element for stimulating more private investment will be positive relationships and effective communication between the private and the public sector in CARICOM countries. Communication between the private sector and the public sector take place but usually on an ad-hoc basis. Cooperation with constructive, workable proposals and effective responses appear to be lacking at times. Public-private sector partnerships will increasingly be needed to find solutions for overcoming impediments for the private sector. In many Latin American and some CARICOM countries, private business organizations have used their member firms' prominent position in the economy to exert substantial influence on the Government's economic policymaking process. Business associations have technical staff and the means to hire consultants to develop detailed analyses and recommendations on vital issues affecting the business sector. They have provided key inputs to the negotiating process of regional free trade agreements. Leaders in business associations have been selected for Cabinet positions, such as Ministers of Economy, of Planning, or Commerce and Industry. Private sector organizations in CARICOM countries could strive to organize for similar constructive, influential positions in Governments' policymaking process in order to propose private sector solutions to overcome national problems.

Private sector organizations in CARICOM countries should be acquainted with the proposals for a harmonized investment policy framework and invited to discuss these proposals and propose improvements. The private sector should be invited to participate actively with proposals in all aspects of the future process for removing constraints to private investment. Joint public-privates sector working groups can be created

temporarily to work on a specific private sector problem that also requires Government commitments or actions. Public-private partnerships can also be created to work jointly on some of the major competitive problems identified earlier that will be faced the private companies in CARICOM countries. For the private sector to operate successfully under free trade agreements, may require not only operating reforms by the private companies, but also legal, administrative, and policy reforms on the part of Government.

Joint public-private sector working groups can be formed to assist a Government to reform a number of activities, such as:

- developing an incentive program for modernizing and re-tooling of plant and equipment;
- improving access to credit for the private sector;
- reducing red tape at Government departments dealing that affect business operations;
- speed up the approval process of permits and licenses;
- solve problems at ports and at the administration customs;
- develop negotiating positions for participation in free trade agreements; and many other issues.

Public-private partnerships can be created to expand and improve business and technical training targeted to meet the needs of private investors. This could include:

- forming a task force, composed of representatives from the Ministry of Education, labor unions, and business associations, to develop a skills training program for company employees in different industries with the objectives of upgrading worker skills in order to improve productivity and eligibility for correspondingly higher wage scales;
- forming public-private sector boards to formulate programs for teacher training for business courses and to expand the introduction of updated business course material relevant to the industries in CARICOM countries;
- encouraging more businessmen to volunteer time to teach courses and conduct lectures and seminars at all levels of schools;
- revising the tax code to expand the level of deductible expenses incurred for training programs to upgrade the skills of companies' own work force; and

- preparing applications for funding programs of business education by foreign foundations and other international donor organizations.

- **Reducing Negatives in the Business Climate of Countries**

The best investment incentives regime and promotional effort will not be sufficient to stimulate private investments if the investment climate is decisively negative in other important respects. Any of a host of perceived negative factors in the business climate can be effective impediments to attracting new investments. Perceived high crime rates and insecurity can eliminate a country from being considered for new investments. Unstable and ineffective macroeconomic policies, particularly if they cause recurring scarcities of foreign exchange and consequent remittance delays. The perceived threat of a major devaluation or a lowering of a country's credit rating can affect profit expectations negatively or threaten the freedom to remit profits. Deficient and unreliable infrastructure sectors can substantially elevate the costs of exporting and doing business in general and impede the functioning of modern business communication. Reports about frequent delays at customs or in moving goods through ports can easily drive potential investors away.

Positive aspects of the business climate are a business-friendly political and economic environment; stable macroeconomic policies; market growth; access to financing on competitive terms; an efficient infrastructure, such as low-cost transportation and reliable electricity and telecommunications, rapid movement of goods through ports; a labor code that does not unduly restrict business decisions; and a productive, skilled, disciplined work force.

A Private Investment Center should seek feedback from private investors about bottlenecks and problem areas in the environment for investments. Such information should be evaluated, analyzed and used to inform policymakers. An Investment Policy Task Force advising the Center could also relay information about negative factors in the business climate and advance proposals for reform. National embassies and consulates abroad could occasionally canvass the business community in the host country about attitudes and problems to invest in the CARICOM region and relay the results to the Private Investment Center and relevant Ministers for further analysis and action.

## **2. Strengthening the Institutional Role for the CARICOM Secretariat to Implement the Investment Policy Framework**

For a Harmonized Investment Policy Framework to become a reality throughout the region, three conditions will have to be met:

1. Agreement among all member states on the composition of a harmonized investment policy framework;

2. Agreement to make implementation binding for all member states in order to realize the investment policy component for a CARICOM Single Market and Economy.
3. Agreement to strengthen the institutional role and authority of the CARICOM Secretariat in proposing, assisting, guiding, and monitoring the implementation of a Harmonized Investment Policy Framework. The Secretariat should have an adequate staff and budget to be able to work directly and effectively with each member state toward the implementation of the agreed investment policy framework.

A harmonized investment policy framework for the CARICOM region should be implemented with the following objectives:

1. Supervise implementation of the agreed harmonization of laws and regulations toward the private sector that will conform to the decision to create a single market and economy for the CARICOM region;
2. Phase out or reform investment incentives regimes that are not compatible with WTO rules and that may also be disallowed in a future FTAA agreement;
3. Continue to identify and promote removal of impediments to private investment in CARICOM member states;
4. Organize more effective, pro-active investment promotion abroad to attract and stimulate more private investment in CARICOM countries;
5. Help prepare the private sector to operate successfully in a future free trade environment without trade preferences, protection, subsidies and incentives.

To develop and implement strategies that will achieve these objectives, it will be necessary to strengthen the role of the CARICOM Secretariat to function as a catalyst, a coordinator, a supervisor, and a monitor for the implementation of investment strategies and legal and regulatory reform of the investment policies of the CARICOM member states.

The Secretariat should seek a general consensus on goals and then work and push for gradual compliance by all Member States or, better yet, make implementation mandatory for a harmonized investment policy framework.

The CARICOM Secretariat could act as catalyst to help private sector organizations to initiate programs for their member firms to prepare strategies designed to survive competition from imports trade preferences and protective trade barriers will be reduced and to take advantage of new opportunities under regional and bilateral trade and investment agreements. The Secretariat should encourage the formation of public-private sector partnerships in member states and help them to develop agendas for work

programs on proposals for the implementation of the harmonized investment policy framework by their Government.

A case can be made for the CARICOM Secretariat to set up a regional Private Investment Center that would start providing services to the individual member states to help implement an agreed CARICOM Investment Policy Framework and setting up their own Private Investment Center. The Secretariat's Center could help organizing the effort to train personnel to assume functions in the countries' Private Investment Centers.

A program should be developed for reform of the investment incentives regimes, including the administration of incentives. This Center would supervise the implementation of the revisions of the incentive regimes.

The Center could also be instrumental in assisting member states in organizing and strengthening investment promotion, particularly pro-active, well-informed, targeted investment promotion abroad. Strategies should be implemented that would shift the emphasis of investment policies from a passive offering of tax incentives to active promotion abroad. The experience of other countries with successful promotion should be studied. Personnel would have to be trained to be able to effectively approach top managements of companies and awaken their interest in considering investments in CARICOM countries. Ways will need to be found to pool the costs of promotion activity abroad, such as housing investment and export promotion in CARICOM country embassies abroad.

The CARICOM Center could assist member states in setting up efficiently functioning One-Stop Shops designed to offer facilitation services to investors to cope with red tape when establishing a company and making a new investment. Investors would be well served if they could visit one office where all applications for incentives, building permits, operating licenses, and other permits and licenses are received and processed expeditiously. The positive and negative experience with One-Stop Shops in other countries could be studied to avoid mistakes and to ensure an efficiently run operation at the service of investors.

The CARICOM Center could develop and propose policies and initiatives designed to improve the productivity and competitiveness of the private sectors. It could provide guidance to the Private Investment Centers in individual countries to work with public-private sector task forces and with individual companies in organizing for exporting and to prepare for increased competition from imports in a future free market environment. SERCOTEC, a subsidiary of Chile's Industrial Development Corporation, provided such assistance very successfully to small Chilean companies to reform and to prepare for exporting and meeting competition in the domestic market when import protection was essentially eliminated.



## **VIII. Appropriate Macro-economic Environment to Support Investment**

### **1. Access to Domestic Financing**

Domestic financing is limited and costly for many private companies, particularly small firms with limited collateral. Access to local financing for investment purposes is restricted for foreign companies in Jamaica, Barbados, Guyana, St. Lucia and other OECS countries. Domestic interest rates are very high in Haiti, Belize, Guyana, and Jamaica. In Belize, local bank interest rates are around 15%, which is high considering that Belize maintains a fixed rate of exchange relative to the dollar. This provides an incentive to borrow abroad rather than locally, thereby increasing the country's external debt obligations. In Guyana, local credit consists largely of short-term loans and overdraft facilities from commercial banks at interest rates near 20%, with each bank applying their own method to calculate interest due. Interest rates are high in several countries, such as Haiti and Guyana, because the need for Government deficit financing tends to crowd out credit available for the private sector.

Domestic interest rates in real terms exceeding international levels reduce the competitiveness of exporters unless they qualify to borrow abroad. A harmonized investment policy aimed at stimulating private investments should recommend more uniform and sound monetary and fiscal policies for the region, particularly policies that would improve access to domestic financing and bring real interest rates more in line with international levels.

Incentives should be considered to develop capital markets at the national level and to encourage companies to go public. A study should be undertaken of the feasibility to organize a stock exchange at the regional level in addition to or to supplant stock exchanges at the national level. Plans to set up a regional stock exchange for Central America have failed. The operation of a regional stock exchange would be facilitated if the CARICOM countries adopted a common currency.

### **2. Exchange Rate and Exchange Controls**

Several countries maintain a fixed exchange rate that has led to an overvalued currency, exchange controls, recurring shortages and rationing of foreign exchange, delays in financial remittances, and even a black market in foreign exchange in the case of Belize. An overvalued, fixed exchange rate makes imports less expensive and exports more expensive and hence less competitive in international markets, hence contributing to trade deficits. It also causes investing to be more expensive for foreign companies. These negative factors, if combined with a loose monetary policy of budget deficits, will outweigh the positive factors of exchange predictability and stability for investors and ultimately produce fear of a future major devaluation. A free flexible exchange rate mostly avoids the emergence of these problems. It will remain relatively stable, if

accompanied by sound monetary and fiscal policies and empowerment of the Central Bank to intervene temporarily to counteract currency speculation or external shocks.

### **3. Customs Clearance and Port Costs**

Private companies in Haiti, Guyana, Belize, and Barbados reported frequent long delays in goods clearance at customs and complained about the high cost and inefficiencies of moving goods through local ports. The Customs administration should be reformed further to reduce opportunities for contraband and other corrupt practices. Frequent rotation of customs officials to other locations can reduce corruption. Customs inspection is most effective and efficient if performed in ports of entry rather than on company premises. Shipments can get "lost" on the way between ports and company premises before inspection by customs can take place in company warehouses.

The CARICOM Secretariat should consider commissioning a study to develop workable proposals for achieving greater efficiencies in the movement of goods through customs and ports. Various options should be analyzed for improving customs operations and for privatizing port services and port installations or offering management contracts and/or long-term concessions to operate ports or individual terminals.

### **4. Private Investment to Improve Infrastructure**

Most CARICOM countries still have government-owned infrastructure sectors that are high cost, tax revenue draining loss operations. Some provide inadequate and unreliable services because they do not generate the income to finance needed modernization or expansion. A poor infrastructure raises the cost of exporting and doing business in general and reduces competitiveness in export markets as well as in the domestic market against imports. Some countries, such as the Philippines and most Latin American countries, have privatized many infrastructure sectors, such as electricity generation and transmission, telecommunications, port terminals, airport operations. Alternatively, countries have attracted private investments into infrastructure sectors under management contracts or long-term operating concessions or BOT (build-operate-transfer) contracts and thereby improved the efficiency and reliability of the public services they render.

Some privatization of infrastructure investments has occurred in CARICOM countries with mixed results. Contract terms have not been observed in some cases. Governments and the public expected lower rates or prices and investments in modernization that sometimes have not materialized. Companies expected government-decreed rate increases or consumer demand to increase that did not occur. Where a state monopoly is being transformed into a private monopoly, a regulatory body becomes necessary to oversee and to veto, if necessary, the decisions of the private investor. Controversy and disappointment can be avoided sometimes by not privatizing an infrastructure sector where a monopoly would prevail after privatization.

CARICOM countries should consider setting up a transparent, competitive bid system for private companies to bid for long term concessions to operate a given infrastructure, such as the maintenance and expansion of a specific road system, or the public water or sewage system. A concession contract should clearly specify the investment and maintenance required from the investor and the means for him to achieve a return on his investments. The term of a concession needs to be long enough to allow recovery of the investment plus a reasonable profit. It might offer extra compensation for goals attained beyond those specified in the contract. Build-operate-transfer contracts can be considered for private investments in new container port terminals, with a final decision delayed whether or not the government would want to take over ownership at the end of the contract or allow the investor to continue to own his investment.

Consideration should be given to displace public investments by private investments under any of diverse, suitable partnership arrangements in most infrastructure sectors in order to

- remove infrastructure constraints plaguing business activities;
- improve the management, operation, and reliability of infrastructure sectors by placing them under private management;
- meet the large capital requirements for modernization, maintenance, and expansion of the infrastructure sectors;
- avoid further increases in external or internal borrowing expanding the Government's debt service burden; and
- avoiding that scarce Government revenues are being diverted from needed social expenditures to investment in infrastructure sectors.

## **IX. Conclusion**

The Treaty of Chaguaramas established the Caribbean Community in 1973. Since then, the Member States continued their efforts to create a common market and subsequently a single market and economy by harmonizing policies mostly designed to increase investment flows. The earlier efforts were deemed insufficient, as Governments realized that global trends have made it increasingly important to attract more private investment. Thus, in 2000, Protocols (later incorporated into a Revised Treaty) were agreed upon that formed the outlines for harmonized policies for the economies of Member States, particularly relating to investments. The Protocols were designed to deepen the integration movement by improving the conditions for intra-regional investment flows. Governments hope that harmonizing investment policies and converting the 15 Member States into a single larger market and investment location will also attract more foreign investments. A future FTAA will require CARICOM to offer an attractive investment climate to be able to compete for foreign investors with access to regional markets in order for CARICOM to benefit from hemispheric free trade.

The Diagnostic and Incentives Reports on individual Member States prepared for this Study revealed positive aspects in the investment climate, but also bottlenecks that act as impediments to private investment:

- Government policies have become more business friendly in recent years.
- All Member States maintain investment incentives regimes and want to attract more private national and foreign investment.
- Discriminatory treatment of foreign investment has been eliminated, but persists in some areas.
- Privatization programmes have advanced, but progress has been uneven.
- Member States have concluded double taxation and bilateral trade and investment treaties with a number of countries.
- CARICOM countries participate actively as a group in the negotiations for a future FTAA and almost all are members of the WTO.
- Bottlenecks for investments exist in several areas, such as restrictions on land transfers and difficulties obtaining clear title to land ownership, limited access to domestic credit, relatively high corporate tax levels and interest rates, overvalued exchange rates in some countries that hamper export growth and diversification, a partly unreliable and high cost infrastructure, excessive red tape and regulations on businesses, out-of-date tax incentives and a highly discretionary, non-transparent incentives approval process.

- Member States investment promotion efforts have been mostly ineffective or been neglected.

Planned revisions of laws and regulations related to private investment by some Member States are mostly designed to improve incentives and the approval process in order to attract more investments. More needs to be done, however.

The world quota system for textiles will be terminated when the Multi-fiber Agreement expires in 2005, while tax incentives based on domestic value added or export generation will need to be terminated by 2010, as they are non-compliant with WTO rules. These two decisions, unless they are changed, could well doom most export-processing zones and the most dynamic export sector. The benefits from CBI and other unilateral trade preferences will gradually diminish as well as import protection and subsidies with trade liberalization after FTAA goes into effect. Strategies have to be developed and implemented soon in order to help private companies prepare to survive and benefit from these expected external changes.

Proposals have been developed for the removal of bottlenecks and for developing the elements for a CARICOM Investment Framework. A Harmonized Investment Framework should include Government guarantees and commitments to the private sector aimed at providing assurances for a stable, positive business environment. An Investment Framework should also address the need to reform the incentives regimes and the approval process and reform the institutional framework for investment. A single, simple, standard application form for incentives would be sufficient and the rule of law strictly observed in place of the largely non-transparent, discretionary approval process. The granting of incentives should be shifted from manufacturing to service sectors where CARICOM will have better prospects to attract new investments in the future. National treatment for foreign investors should be accepted as a desirable goal and clear and fair rules should govern expropriation, if that should be necessary.

The focus of investment promotion should shift from tax incentives to very active targeted investment promotion abroad in efforts to improve investment flows. This can be achieved by strengthening the institutional framework for investment in individual countries as well as the institutional role of the CARICOM Secretariat.

Consideration should be given by individual Member States to establishing a Private Investment Center with sole responsibility for the administration and approval of incentives, all investment promotion, a one-stop-shop facilitating the entire permit, licensing, and approval process for new investments, and an investor's information office and data bank. An additional section in the Center could be set up to provide on-going technical assistance to national firms designed for improving their competitiveness to operate successfully without protection, subsidies, or incentives. The Head of the Center should preferably be accorded cabinet rank and report directly to the President or Vice-President in order to raise the visibility and importance of investment promotion and make him/her solely accountable for the performance and success of investment promotion.

An independent investment policy task force could review performance of the Center and recommend changes in regulations and practices to make the effort more successful. Importance should be given to feedback from investors about incentives and promotion activities. The Center with advice from the task force should make recommendations to the Cabinet for initiatives to improve the business climate of the country. Appropriate steps should then be considered for improving the macro-economic environment, such as access to domestic financing, an exchange rate system favorable for export development, customs reform, infrastructure privatization, in support of private investment.

The institutional role of the CARICOM Secretariat should be strengthened so that it can effectively propose, promote, assist, guide, and monitor the implementation of a Harmonized Investment Framework. The Secretariat should also set up its own Private Investment Center to promote and supervise:

- the implementation of a Harmonized Investment Framework;
- reform of the incentives regimes;
- removal of bottlenecks to private investment;
- effective investment promotion abroad; and
- efforts to improve the viability and competitiveness of national companies.

## **Appendix: Peru's Framework Law for Private Investment**

Peru's Framework Law for Private Investment requires the approval administration to issue "a single text of administrative procedures," containing:

- the administrative procedure to be followed;
- a "clear description of all requirements necessary to complete each administrative procedure;"
- classification of each procedure whether approval is automatic according to the law or whether it requires an evaluation by the approval authority;
- the cases requiring payment of fees and the specified amount of the fees;
- the address of the office where applications are to be sent;
- the competent authority in charge of approving each procedure; and
- the authority with jurisdiction to rule over any objections to the proceedings or to the decision.

The Peruvian law requires an annual updating of the single text of administrative procedures and its publication in the official gazette in order to make the administrative process as predictable, as transparent, and as free from arbitrariness as possible. The law specifies that "the parties concerned shall only be required to fulfill the administrative procedures included in the single text. Consequently, no additional information, documentation or payment not expressly indicated therein shall be required under the responsibility of the processing official."

The law states that "the requests filed ..... shall be deemed approved on the date the corresponding request or form is filed, provided the requirements are fully satisfied and all documents required under the single text of administrative procedures for each case duly submitted. A copy of the request or form filed by the party concerned containing the official receipt seal shall suffice as evidence of the automatic approval of the request."

The Peruvian law further points out that "all documents, requests or information submitted ..... shall be regarded as affidavits and must be countersigned by the party concerned or its representative, who shall be answerable for the truthfulness of the information and the authenticity of the documents filed; otherwise, they shall be held guilty of the offense against public trust typified in Title XIX of the Criminal Code."

The law also states that "the (administrative) entities ..... shall only charge the fees indicated in the single text of administrative procedures ..... Such fees shall only be charged when such procedures are requested by the party concerned and to the extent the

entity is required to provide a service inherent in such procedure. The amount of any such fees shall not exceed the actual cost of the service, which must be duly substantiated by the administrative department of the competent entity, and shall be answerable therefore.”

“The public administrative entities must establish only one office for the processing of documents, through which the parties concerned shall perform all procedures and obtain information required for any administrative procedures.” The law clearly establishes that “any public officials and employees failing to fulfill the provisions contained in (the law) shall be held liable for infringement of discipline rules punishable ..... “ It further refers to the decrees that specify the penalties and procedures before the control body of the Attorney General.

The Peruvian Framework Investment Law thus established a process for approving investments that is efficient, automatic, and transparent, with strong disincentives for engaging in corrupt practices. The law clearly aims to enhance national and foreign private investor confidence to invest in the countries.