UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

INVESTMENT POLICY REVIEW

DOMINICAN REPUBLIC

UNITED NATIONS

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Investment Policy Review
Dominican Republic

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Use of a dash (–) between dates representing years – for example 2004–2005 signifies the full period involved, including the beginning and end years.

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FOREWORD

Over the last three decades, the Dominican Republic has adopted policies of greater openness to international trade and investment as part of its quest for economic and social progress. As a result, foreign direct investment (FDI) has played a prominent role in its economic development and in decisively shifting the export structure of the country to light manufacturing, thereby reducing commodity dependence.

A new and more ambitious development goal has now been set. It focuses on making the country a regional leader in high-value-added manufacturing and services. To this end, the Dominican authorities have embarked on a number of policy initiatives to increase the international competitiveness of the economy. They acknowledge that FDI can again play a key role in promoting this second transition into higher-value-added activities.

In light of this ambitious objective, the Government of the Dominican Republic has requested that UNCTAD carry out a review of the country's investment policies and of the national investment promotion effort. This investment policy review is the result of research and analysis carried out by UNCTAD in 2007. It has benefited from the full cooperation and support of the Dominican Government and of the United Nations Development Programme (UNDP) office in the country. It is our hope that the analysis and recommendations provided in this report will assist the Dominican Republic in achieving its development objectives.

Supachai Panitchpakdi
Secretary-General of UNCTAD

Lic. Eddy Martínez Manzueta
Secretary of State
Executive Director
CEI-RD

PREFACE

The UNCTAD *Investment Policy Reviews* are intended to help countries improve their investment policies and to familiarize Governments and the international private sector with an individual country's investment environment. The reviews are considered at the UNCTAD Commission on Investment, Technology and Related Financial Issues.

The *Investment Policy Review* of the Dominican Republic, initiated at the request of the Government, was carried out through a fact-finding mission in February 2007 and is based on information current at that date. The mission received the full cooperation of the relevant ministries and agencies, in particular the Centre for Export and Investment of the Dominican Republic (CEI-RD). The mission also had the benefit of the views of the foreign and domestic private sector, civil society and the resident international community, particularly bilateral donors and development agencies. A preliminary version of this report was discussed with stakeholders at a national workshop in Santo Domingo on 6 December 2007. The workshop was organized jointly with CEI-RD and the UNDP office in the Dominican Republic and with their financial support.

The quality of the regulatory regime is assessed against several related criteria, including whether regulations adequately address the public interest and whether the methods employed are effective and well-administered given their public interest objectives and the legitimate concerns of investors that rules and procedures do not unduly burden their competitiveness. In the latter respects, international practices are taken into account in the assessments contained in this report.

This report received the financial support of the Government of the Dominican Republic and of the Inter-American Development Bank (IDB). The UNDP office in the Dominican Republic also provided substantive and logistics support.

This report was prepared by Rory Allan, Massimo Meloni and Clive Vokes under the supervision of Chantal Dupasquier. James Zhan provided overall guidance. Collaborators included Anna Joubin-Bret, Maria Victoria Abreu Malla (UNDP Dominican Republic), Paige Griffin, Noelia Garcia Nebra, Nana Adu Ampofo and Adelino Muxito. Lang Dinh provided research assistance and Elisabeth Anodeau-Mareschal provided production support.

It is hoped that the analysis and recommendations of this review will help improve policies, promote dialogue among stakeholders and catalyse investment and beneficial impact in the Dominican Republic.

Geneva, December 2008

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ABBREVIATIONS

AD	Alternative Dispute Resolution
ASOMIMETRO	Asociación de Micro y Mediana Empresas Textiles de la Romana
BIT	Bilateral Investment Treaty
BPO	Business Process Outsourcing
CACM	Central American Common Market
CAFTA	Central America Free Trade Agreement
CARICOM	Caribbean Community Common Market
CBERA	Caribbean Basin Economic Recovery Act
CBI	Caribbean Basin Initiative
CBTPA	Caribbean Basin Trade Partnership Act
CDE	Corporación Dominicana de Electricidad
CDEEE	Corporación Dominicana de Empresas Eléctricas Estatales
CEDOPEX	Centro Dominicano de Promoción de Exportaciones
CEI-RD	Centro de Exportación e Inversión de la Republica Dominicana
CEPAL	La Comisión Económica para América Latina
CFI	Corporation de Fomento Industrial
CICR	Chamber of Industry of Costa Rica
CREP	Comisión de Reforma de las Empresas Publicas
CNC/NCC	Consejo Nacional de Competitividad/National Competitiveness Council
CNZFE	Consejo Nacional de Zonas Francas de Exportacion
CODIA	Colegio Dominicano de Ingenieros, Arquitectos y Agrimensores
CPI	Corruption Perception Index
DR-CAFTA	Dominican Republic - Central America Free Trade Agreement
ECLAC	United Nations Economic Commission for Latin America and the Caribbean
FDI	foreign direct investment
FET	Fair and Equitable Treatment
FTA	Free Trade Agreement
FZ	Free Zone
GDP	Gross Domestic Product
GFCF	Gross Fixed Capital Formation
GSP	Generalized System of Preferences
IAB	International Advisory Board
ICC	International Chamber of Commerce
ICFTU	International Confederation of Free Trade Unions
ICSD	Instituto de Competitividad Sistémica y Desarrollo
ICSID	International Centre for Settlement of Investment Disputes
ICT	Information and Communication Technology
IDB	Inter-American Development Bank
IFCA	Independent Financial Centre of the Americas
ILO	International Labour Office
IMF	International Monetary Fund
INDOTEL	Dominican Institute of Telecommunications
INFOTEP	National Institute for Technical-Vocational Training
ITBIS	Tax on the Transfer of Industrial Goods and Services
ITU	International Telecommunications Union
KOTRA	Korea Trade-Investment Promotion Agency
LAIFEX	Latin American International Financial Exchange
MIGA	Multilateral Investment Guarantee Agency
MFA	Multi-Fiber Arrangement
MFN	Most-Favoured Nation

NAFTA	North American Free Trade Agreement
NPSC	National Plan for Systemic Competitiveness
NSIP	National System of Investment Promotion
NT	National Treatment
OECD	Organization for Economic Cooperation and Development
OIO	Office of the Investment Ombudsman
ONAPI	Oficina Nacional de la Propiedad Industrial
ONDA	Oficina Nacional de Derecho de Autor
OPI-RD	Office for the Promotion of Foreign Investment
OTEXA	United States Department of Commerce Office of Textiles and Apparel
SEMARN	Secretaria de Estado de Medio Ambiente y Recursos Naturales
SLA	service-level agreement
SME	Small and Medium Enterprise
SDP	Supplier Development Program
TEU	Twenty Foot Equivalent Unit
TNC	Trans-national Corporation
TRIPs	Trade-Related Aspects of Intellectual Property
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Program
UNIDO	United Nations Industrial Development Organization
USAID	United States Agency for International Development
USTR	Office of the United States Trade Representative
WB	World Bank
WIPO	World Intellectual Property Organization
WTTC	World Travel and Tourism Council
WTO	World Trade Organization

DOMINICAN REPUBLIC

Key economic and social indicators

	1980	1985	1990	1995	2000	2001	2002	2003	2004	2005	2006
Population (million)	5.9	6.6	7.3	8.0	8.7	8.9	9.0	9.2	9.3	9.5	9.6
Gross domestic product (GDP) at market prices (billion $)	6.6	5.0	7.1	12.6	19.8	21.6	21.6	16.3	18.5	29.1	30.6
GDP per capita ($)	1'117.5	763.4	969.7	1'570.5	2'261.2	2'430.3	2'393.5	1'778.3	1'978.8	3'073.1	3'180.9
Real GDP growth (%)	8.0	-2.1	-5.5	4.7	8.1	3.6	4.4	-1.9	2.0	9.3	10.7
GDP by sector (%)											
- Agriculture	20.1	13.1	13.4	12.6	11.1	11.3	11.5	11.4	11.7	12.4	12.3
- Industry	28.3	18.1	31.4	32.6	33.9	33.0	32.1	31.0	29.6	25.5	26.2
of which: Manufacturing	15.3	12.3	18.0	18.2	16.8	16.1	15.7	15.6	15.5	15.1	12.7
- Services	51.6	68.8	55.2	54.8	54.6	55.7	56.4	57.6	58.7	62.1	61.4
Annual inflation (%)	16.8	45.3	50.5	12.5	7.7	8.9	5.2	27.4	51.5	4.2	7.6
Trade (million $):											
- Merchandise exports	1'217.0	1'228.0	2'170.0	3'780.0	5'737.0	5'276.0	5'165.0	5'471.0	5'936.0	6'145.0	6'436.9
- Service exports	309.4	584.3	1'097.2	1'951.3	3'227.6	3'110.3	3'070.8	3'468.8	3'503.9	3'910.4	..
- Merchandise imports	1'964.0	1'787.0	3'006.0	5'170.0	9'479.0	8'779.0	8'838.0	7'627.0	7'888.0	9'876.0	11'160.0
- Service imports	399.0	274.5	440.4	966.4	1'373.3	1'283.9	1'313.5	1'219.4	1'213.2	1'456.6	..
Exports of goods and services (% of GDP)	19.2	28.2	33.8	30.9	44.9	38.5	37.7	53.0	50.1	34.0	35.4
Imports of goods and services (% of GDP)	28.9	37.1	43.7	34.3	54.9	46.5	46.6	53.6	49.2	37.7	41.6
FDI Inflows (million $)	92.7	36.2	132.8	414.3	952.9	1'079.1	916.8	613.0	909.0	1'023.1	1'183.3
Gross capital formation (% of GDP)	25.1	17.6	25.1	19.5	23.8	22.9	22.8	23.3	24.1	19.9	24.2
Human development index (value)	0.654	0.675	0.683	0.703	0.733	0.737	0.738	0.749	0.751	..	..
Human development index (HDI), ranking among 175 countries (177 as of 2002)	94	94	94	94	94	94	98	95	94	..	..

Sources: 1980 - 2006 UNCTAD, WDI2007 (Database on line)

UNCTAD, FDI/TNC database (WIR07), WORLD BANK (WDI2007) (internet: http://devdata.worldbank.org/external).

INTRODUCTION

Foreign direct investment (FDI) has had a presence in the Dominican Republic since as early as 1890. Over time, it has led the transition of its export base from commodities to basic manufacturing and services. It has also played a major role in making the Dominican Republic a leading tourist destination. The free zones and the low labour costs have for long been the main factors in attracting FDI to manufacturing.

The Government of the Dominican Republic now wishes to direct the economy towards a new stage of development, based on higher value addition in both manufacturing and services. It has recognized that FDI can stay instrumental in supporting this evolution, and is looking to attract international investment into new industries, such as electronics, information and communications technology, medical devices and business process outsourcing. Through the Centro de Exportación e Inversión de la Republica Dominicana (CEI-RD), the Government has requested that UNCTAD carry out an investment policy review with the dual objective of supporting the improvement of the legal and regulatory framework for investment in the country and reviewing the national investment promotion effort to ensure its consistency and effectiveness.

The current policy efforts to achieve this economic shift correctly focus on increasing the competitiveness of the economy and securing trade access to key partners. DR-CAFTA and the launching of the National Plan for Systemic Competitiveness are but recent examples.

For FDI to play its full role, the country will need to change its supply from one based on a pool of low-cost labour and fiscal incentives to one based on the excellence of its investment climate and the quality of its infrastructure. These are the defining elements of a best-in-region investment climate, which can be achieved within a five-year period by filling the main gaps in the legislative framework for investment and improving the implementation of the legal reforms initiated over the last 10 years.

Also, the Dominican Republic will need to increase its efforts to promote investment. This is not an objective solely of the investment promotion agency, but a truly national effort to reposition the country's profile with regard to foreign investors, in accordance with its economic upgrading objective.

Chapter I provides an overview of FDI trends and impact. Until 1995, FDI was primarily directed at free zones (mostly textile and garment production) and tourism. Liberalization reforms in the mid-1990s opened new avenues for investment, including in the country's backbone infrastructure and retail, with FDI inflows reaching $1 billion per year since 2005. The United States of America and Spain have always been the leading home countries of FDI. A new target of attracting $2 billion FDI per year is feasible by 2015, including attracting FDI in more advanced industries and services. An incipient FDI interest in electronics, call centres and medical devices is an encouraging recent trend in this respect. While, direct linkages between foreign and local companies have been weak, FDI has helped generate employment, especially in the free zones and in tourism. Its most visible impact has, nonetheless, been the diversification of the Dominican economy.

Chapter II examines the investment framework. In 1995, the Dominican Republic opened almost all economic sectors to FDI and granted it national treatment. However, legacies of the old regulatory approach still affect areas such as investment registration and technology transfer. Modern policies and laws have been adopted since 1995 in areas such as intellectual property, land and environment. They are however often only partially or not properly implemented. Moreover, making the Dominican Republic a best-in-region will require closing major legal gaps in the investment framework, such as the lack of a competition policy.

Chapter III proposes a new investment promotion framework. The current FDI promotion platform of the Dominican Republic should be improved to attract the foreign investment necessary to move up the value chain. This entails reorganizing CEI-RD and strengthening the cooperation between different Government agencies involved in investment promotion. A proposal tailored to the Dominican Republic is presented, in the form of a national system for investment promotion overseen by a Minister of Investment.

Chapter IV highlights the main findings and recommendations of the review.

Chapter I

FDI TRENDS AND PERFORMANCE

Over the last 30 years, the Dominican Republic has developed from an economy relying largely on commodity exports (principally sugar) to one that is more diversified in tourism and manufactured exports. FDI has had a long presence in the country and a prominent role in this transition. The Government is now seeking to move the economy towards manufacturing and services that are more technology-intensive and this suggests a continued role for FDI as a leading agent of change.

A. Historical Trends

1. 1967–1994

The Dominican Republic has a long FDI history. Initially, investment focused on commodities such as sugar and coffee. The American firms South Puerto Rico Sugar Company and the Cuban-Dominican Sugar Company were established as early as in the 1890s. Diversification into garment assembly began in 1967 with the creation of the free zones. FDI inflows ranged between $50 and $100 million with an annual average growth of 4.5 per cent from 1970 to 1985 (figure I.1).

In the early 1980s, sugar prices hit a 40-year low which – combined with the increase in oil prices and expansionary fiscal policies – resulted in an economic crisis. In 1983, the country signed a three-year extended fund facility with the International Monetary Fund (IMF) that called for lower fiscal deficits, tighter credit policies and other austerity measures. This was followed by a one-year standby agreement signed in 1985 and a devaluation of the Dominican peso. With hindsight, the currency adjustment heralded the start of the Dominican Republic becoming an attractive, low-cost tourist destination.

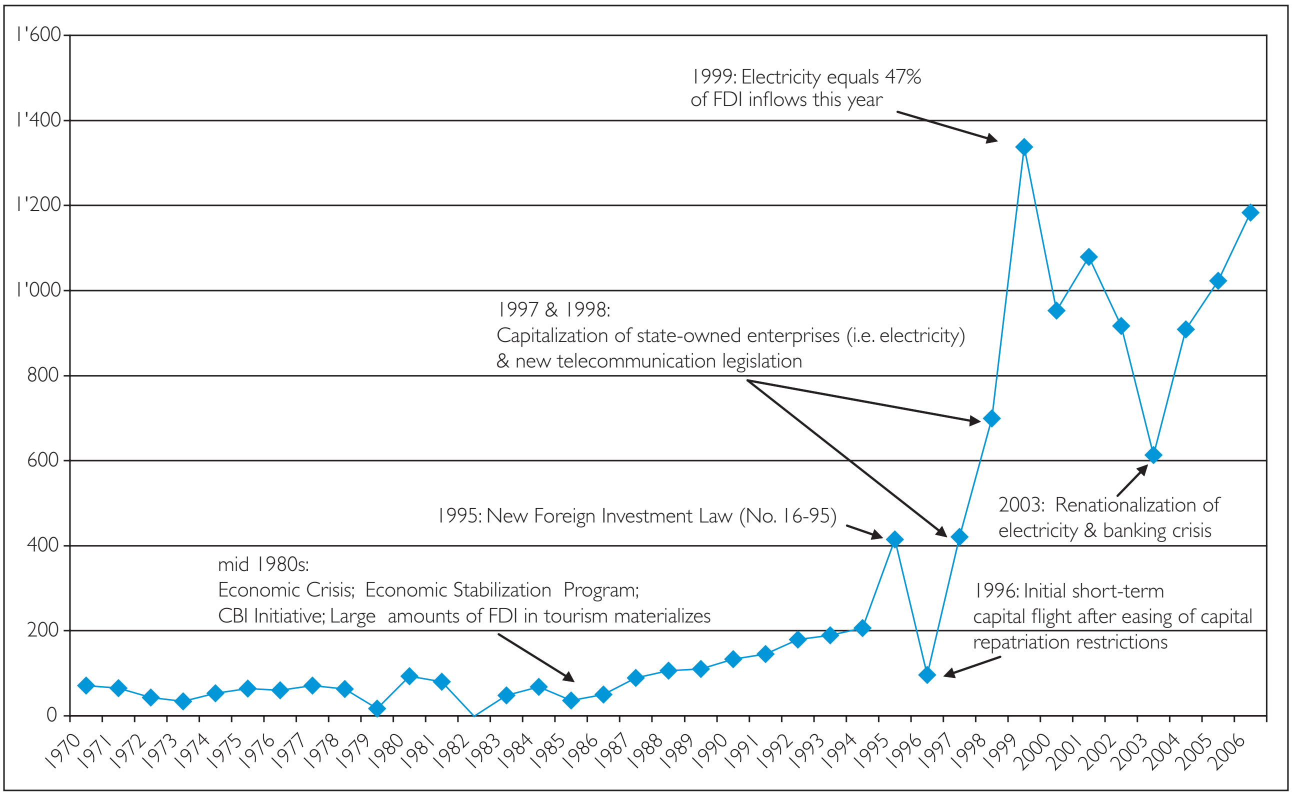
At the same time, a major turning point for FDI in the Dominican Republic occurred in 1986 when the United States' Caribbean Basin Initiative provided duty free access to the United States for about 3,000 products, including apparel containing Dominican inputs. For American firms facing increased competition from Asian manufacturers, the initiative made the Dominican Republic an attractive alternative to relocating factories in Asia far from their primary market in the United States. The result was an impressive growth in FDI over the next eight years, with an average annual increase of 17.7 per cent.

Macroeconomic instability, however, continued. Imbalances in public finance, the fall of the international prices of the main Dominican export products and the increase of the cost of petroleum imports (a consequence of the Persian Gulf War) led to a new recession in 1990, when gross domestic product (GDP) fell by 5 per cent.[1] A second IMF intervention in 1991 led to the adoption of the New Economic Program, a stabilization and structural reform programme oriented to achieve macroeconomic stability and restore economic growth. The programme included exchange rate devaluation, tighter monetary policy and trade opening, paving the way for the liberalization measures that would characterize the rest of the 1990s.

[1] Extensive government spending previously covered by income from sugar exports became unsustainable, fuelling unprecedented inflation (prices rose 60 percent in 1988 alone). At the end of the decade, the country's foreign debt had reached nearly US$4 billion, roughly double the 1980 figure. (Haggerty, 1989).

Figure I.1. FDI inflows to the Dominican Republic, 1970–2006

(Million dollars)



Sources: UNCTAD and Central Bank of the Dominican Republic.

2. The recent past: 1995–2003

Restored macroeconomic stability, high GDP growth rates (averaging above 8 per cent per year between 1995 and 2001) and a number of liberalization policies characterized the second half of the 1990s. They resulted in a significant increase in FDI inflows, which grew by 37 per cent a year over 1994-1999. The new Foreign Investment Law (16-95) in 1995 and the capitalization of State-owned enterprises in 1997 (a privatization process whereby a private company purchases 50-per-cent equity ownership, and receives management control) were the primary drivers for the large increases in FDI.

The Foreign Investment Law introduced national treatment, broadened sectoral access to FDI and eased restrictions on repatriation of dividends and capital (see chapter II for details). The ongoing trade liberalization of the Dominican Republic culminated with admission to the World Trade Organization (WTO) in 1995. It was also that the Office for the Promotion of Foreign Investment was also created during this period, in 1997. In 2003, investment and export promotion were merged into the Centro de Exportación e Inversión de la República Dominicana (CEI-RD).

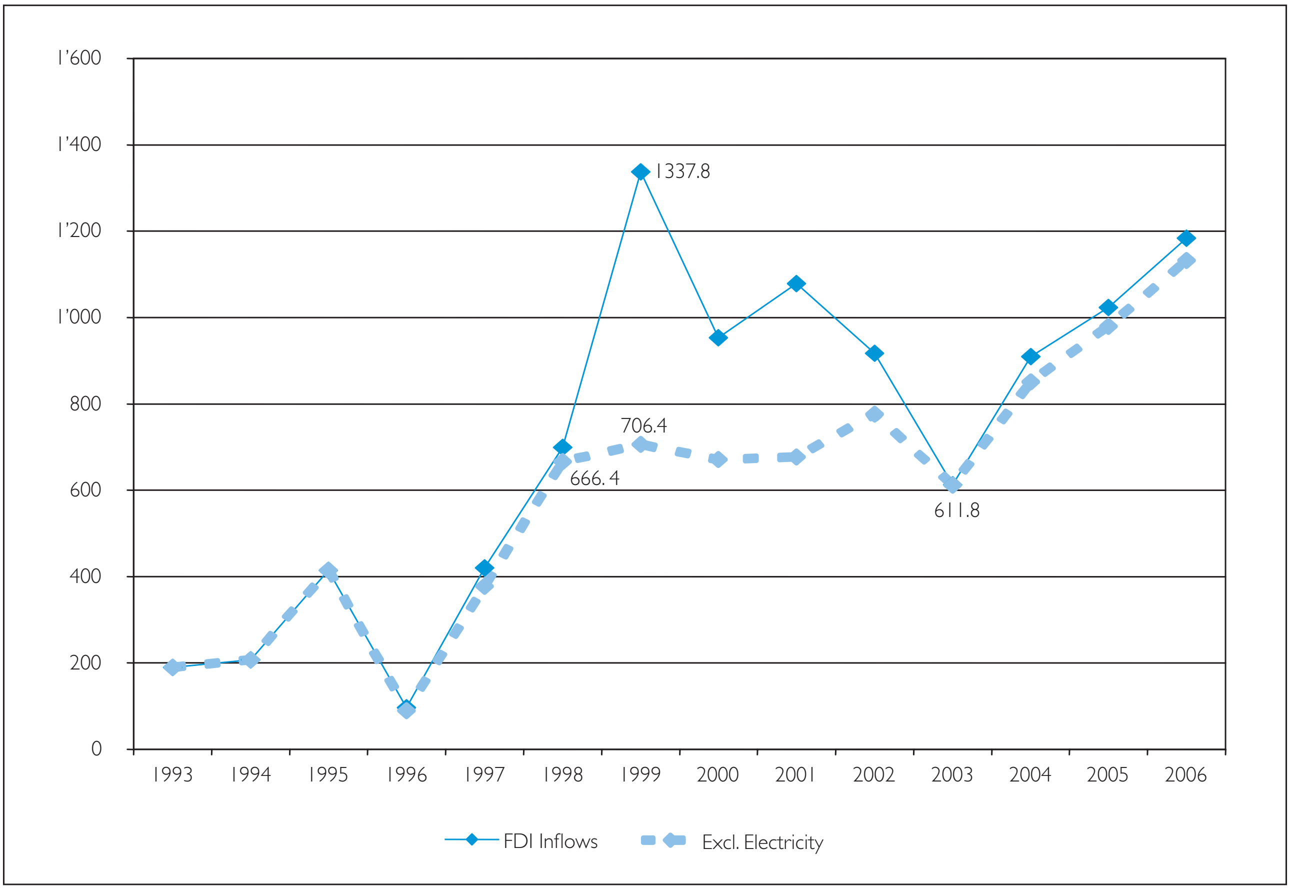
In 1997, the capitalization effort created a surge in FDI inflows (see figure I.1). Through the capitalization programme of the state-owned electricity company, distribution and generation of electricity were moved into the private sector, while transmission remained public. As a result, there was an infusion of $631 million dollars (47 per cent of FDI inflow) which explains the peak level of FDI in 1999. In 1998, a new telecommunication law (Law 153), the purpose of which was to ratify the WTO Agreement on Basic Telecommunications Services, liberalized that sector (see chapter II). The telecommunications sector has since attracted steady flows of FDI, which helped to sustain overall FDI inflows during the economic downturn that emerged in 2003.

The period 1999–2003 was indeed challenging for the Dominican Republic. The effects of a series of external shocks, including a new rise in oil prices, global economic slowdown and the impact of the events of 11 September 2001 on tourism, were all compounded when the large, Dominican private bank Baninter collapsed. This triggered a new economic and financial crisis, with the economy moving from 4.4 per cent growth in 2002 to a contraction of nearly 2 per cent in 2003. This led to yet another IMF intervention and the negotiation of a new standby agreement (approved only in 2005, owing to the failure of the former administration to comply with the agreed fiscal targets).

Throughout this economic crisis, FDI proved to be more resilient than a cursory comparison of annual totals would indicate. Foreign disinvestment in electricity was due to the specific problems of this industry. Excluding the electricity industry, the decline in FDI from 1999 to 2003 is less severe (13 per cent, figure I.2).

Figure I.2. Total FDI inflows and FDI inflows excluding electricity sector, 1993–2006

(Million dollars)



Sources: UNCTAD and Central Bank of the Dominican Republic.

The underlying cause for this resilience can be found in the diversification of FDI across tourism, retail and telecommunications. From 1997 to 2006, total FDI inflows experienced a significant decline only in 2003, which was largely due to the banking collapse and resulting economic uncertainty.

3. Current trends and challenges for the future

In light of the changes brought about by the new administration which took office in 2004, (i.e. tightened monetary and fiscal policies and subsequent stabilization of the exchange rate and inflation), the standby agreement with the IMF entered into effect in 2005 and confidence in economic management has since been restored. A reflection of the renewed confidence is not only in the impressive rebound in annual GDP from a 1.9 per cent contraction in 2003 to a 9.5 per cent growth in 2005 (and an estimated 10.7 per cent for 2006) but also in an improved sovereign credit rating.[2] FDI inflows also reflected these changes, increasing 48 per cent between 2003 and 2006.

Recent growth in FDI inflows can also be attributed to renewed interest in sectors such as mining and tourism and to a series of policy initiatives, including the DR-CAFTA negotiations that started in 2004. In addition to the Dominican Republic, this free trade agreement includes Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the United States. Key aspects of the agreement include market access and expanded rules of origin, intellectual property rights and a chapter devoted to investment protection. This has aided FDI growth by increasing investor confidence (particularly for investors from the United States, whose investments represent approximately 30 per cent of total FDI in the Dominican Republic). Another policy initiative that has boosted FDI growth was the foreign exchange liberalization, which took place in 2002, with the introduction of the new Monetary and Financial Law (chapter II for details).

As the Dominican Republic takes steps to move into higher-valued-added manufacturing and high-tech sectors, several challenges will require attention. Internally, infrastructure (mainly energy), regulatory framework and skill-set of the labour supply will need to be improved to support the transition. At the same time, the restored macroeconomic stability will need to be maintained, so as to protect the economy from the cyclical crises that have affected it over the last four decades. Externally, the Dominican Republic is challenged with meeting WTO obligations for the abolition of export subsidies, which would affect the incentives offered to companies setting up in the free zones.[3] Another challenge is the increased competition domestic firms will face from other signatories of the DR-CAFTA, both from countries within Central America and from the United States. Countering this is the expected increase in FDI as the advantageous terms of trade with the United States are cemented and the rules of origin under the treaty are expanded (box I.1).

B. Comparative trends

The Dominican authorities set an FDI attraction target of $1 billion per year for the period 2005–2008.[4] FDI inflows since 2005 suggest that the target could be comfortably achieved (figure I.1).

In absolute terms, the Dominican Republic has become, since the reforms of the mid-1990s, the leading recipient of FDI inflows among DR-CAFTA members (excluding the United States), surpassing Costa Rica, its closest competitor (see table I.1). Over the period 2001–2006, FDI inflows to the Dominican Republic were higher than those of its immediate neighbour in the Caribbean, Jamaica, and on par with Panama. In terms of FDI stock, that of the Dominican Republic, at over $5 billion in 2005, is the second highest in the DR-CAFTA group (after Costa Rica), though still smaller than that of Panama (about $12 billion) and Jamaica (about $7 billion). On this basis, the Dominican Republic has undoubtedly achieved strong growth in FDI inflows since the reforms of the mid-1990s.

[2] On May 3, 2007, Moody's Investor Service raised its foreign and local currency bond rating of the Dominican government-issued bonds to B2 from B3. In addition, the country's ceiling for foreign currency bank deposits was also upgraded from B3 from Caa1, and the rating outlook has been set to stable for all categories.

[3] These should be removed by 2008, unless agreement is reached within the WTO to extend the transition period beyond that date. As at end of July 2007, no decision on the extension was taken by the General Council of the WTO, although the WTO Committee on Subsidies and Countervailing Measures, on 13 July 2007, agreed to adopt the text of a draft decision of the General Council to continue procedures for the extension of the transition period until 2013, with a final phase out period of two years, but no later than 31 December 2015.

[4] Plan Estratégico CEI-RD 2005-2008.

Box 1.1. Dominican Republic Regional Economic Integration

The Dominican Republic regional integration efforts started in the 1980s as a reaction to the ongoing economic integration process in the region, rather than a proactive strategy. A three-pronged approach characterized the Dominican trade strategy: (1) preferential access to the United States market, its largest trading partner; (2) integration with the Caribbean countries; and (3) integration with Central America.

With respect to preferential access to the United States market, the Dominican Republic was one of the 20 original beneficiaries[5] of the Caribbean Basin Initiative (CBI), a unilateral and non-reciprocal trade preference program of the United States initiated in 1983 by the Caribbean Basin Economic Recovery Act. The Act provided the Caribbean Basin countries with duty-free access to the United States market for most categories of products until 1990. CBI countries benefited from production sharing or the offshore production tariff, under which the duty reduction on apparel assembled in CBI countries took into account the value of United States components. The entry into force of the North American Free Trade Agreement (NAFTA) in 1994 put CBI countries at a distinct competitive disadvantage compared to Mexico. In order to offer the Caribbean countries similar trade benefits to Mexico, in 2000 the Caribbean Basin Trade Partnership Act gave an extension of duty/quota-free treatment to access the United States market to those previously ineligible goods produced in the Caribbean. Notably, special provisions for preferential treatment of textiles and garment, leading to "textile parity" with NAFTA partners, were introduced.

A second axis of Dominican trade strategy was integration with the Caribbean countries. The Dominican Republic was an observer in the Caribbean Community (CARICOM) common market from 1982 and in 1991 applied for full membership. However, the request was not accepted by the CARICOM members, as they were afraid of being swamped by cheaper goods from the Dominican Republic. The relationship between CARICOM and the Dominican Republic was finally formalized with the signature of a free trade agreement in 1998 which entered into force in 2001. The agreement eliminated tariffs for all products except for a sensitive list of around 50 categories, which did not qualify for duty concessions and another 20 products subject to phasing-in of lower tariffs. Free zone goods were also excluded.

The process of economic integration by the Central American countries started in 1960 with the adoption of the Central American Common Market (CACM). This treaty was enlarged by the signature in 1998 of bilateral free trade agreements between each of the member countries and the Dominican Republic. The agreements with El Salvador, Guatemala and Honduras entered into force in 2001 whereas those with Costa Rica and Nicaragua took effect in 2002. The main products excluded from those agreements are tobacco, sugar, alcoholic beverages and oils.

In 2001, the five CACM countries started negotiations with the United States on a free trade agreement which resulted in the signature of the United States-Central America Free Trade Agreement (CAFTA) in May 2004. Negotiations between the United States and Dominican Republic on integrating the Dominican Republic into CAFTA started at a later stage, in January 2004. The Dominican Republic-Central America Free Trade Agreement, commonly called DR-CAFTA, was signed in August 2004 and entered into force in the Dominican Republic on 1 March 2007. The treaty integrated the previous bilateral agreements between the participatory countries. The DR-CAFTA removed tariffs between member countries on the majority of goods and established a phase-out schedule for the remaining tariffs. The phase-out schedule comprised timetables of 5, 10, 12, 15 or 18–20 years. Agricultural products have the most generous tariff phase-out timetables, with the agreement providing up to 20 years for some products, such as rice and dairy

[5] Currently 24 countries are designated as "beneficiary countries": Antigua and Barbuda, Aruba (since 1986), Bahamas (since 1985), Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana (Guyana since 1988), Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua (since 1990), Panama, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, and British Virgin Islands.

products. In textiles and garments, the DR-CAFTA expanded the CBI legislation by eliminating duties on nearly all textiles and garment imports assembled from components made in DR-CAFTA countries and the United States, and removed 807 production arrangements (known as the yarn forward rule). Some woven goods, such as collars and cuffs from Canada and Mexico, will also qualify as originating, although subject to quantity limitations. The treaty includes a comprehensive investment protection chapter and a number of provisions in the area of intellectual property rights, trade in services and transparency in Government regulation, matters which the Caribbean Basin Trade Partnership Act did not cover.

The Dominican Republic has also gained preferential access to the European market thanks to the agreements of Lomé signed in 1975 and replaced in 2000 by the Cotonou Agreement which gave unilateral preferences to agricultural products, apparel and electronic components. Moreover, the Dominican Republic benefits from a generalized system of preferences granted by Canada, Japan and Switzerland among others.

Much uncertainty still surrounds the potential impact of the DR-CAFTA on the Dominican economy. It is difficult to forecast the effects of the DR-CAFTA on trade and investment. Some recent estimates indicate that the agreement will increase exports to the United States between 18–20 per cent per year (World Bank, 2004a). In terms of investment, such forecasts are even more difficult. It is, however, possible to foresee an increase in FDI from the United States given the improved investment treatment and protection provisions included in the treaty and an increase in investment from third countries which seek access to the United States market, as the NAFTA experience shows (FDI into Mexico increased by more than 40 per cent in the years immediately following ratification of the treaty, see World Bank, 2004a).

The DR-CAFTA will also pose a number of challenges to the Dominican economy. The agreement implies that all member countries grant reciprocal tariff-free access to their markets to United States products, which will increase competition from United States goods now able to enter duty-free. Such concerns have been more pronounced with regard to agricultural products. Over half of current US farm exports to Central America and the Dominican Republic have become immediately duty-free. Moreover, competition will also increase among other DR-CAFTA members than the United States.

Sources: United States Trade Representative, Foreign Trade Information System of Organization of American States, United States Department of Commerce, CARICOM and DR-CAFTA treaty texts, World Bank, Economist Intelligence Unit.

This uplift over the last decade is less striking when taking into account relative sizes of population and economies. The Dominican Republic has attracted much less FDI per capita than Costa Rica, although it outperforms all other Central American countries and the Latin American and Caribbean group of countries on this measure (if tax havens are excluded). Nicaragua also now attracts more FDI inflows in relation to GDP than either the Dominican Republic or Costa Rica. The relative scores of the countries according to the UNCTAD inward FDI performance index corroborate this view of the situation.[6] Moreover, all countries in the region are substantially outperformed in relative FDI inflows terms by Jamaica and Panama[7] (table 1.1).

This comparative underperformance is more evident in relative FDI stock terms. In particular, the FDI stock discounted for the respective size of the economies in the sample group of countries as measured by GDP is lower in the Dominican Republic than in all other CAFTA countries (except for Guatemala), and than in Latin America and the Caribbean as a region.

6 This index measures the extent to which a host country receives inward FDI relative to its economic size. It is calculated as the ratio of a country's share in global FDI inflows to its share in global GDP. The 2005 index values were 1.78 for the Dominican Republic, 1.92 for Costa Rica, 2.18 for Honduras and 2.96 for El Salvador. Higher values indicate relatively higher levels of FDI.

7 It is important to note, however, that Panama, unlike the Dominican Republic, is an established offshore financial centre and roundtripping FDI from the United States, through Panama and back, boosts its apparent FDI performance.

Table I.1. Comparative performance of the Dominican Republic with selected countries, 1986–2006

	Country	ABSOLUTE PERFORMANCE					RELATIVE PERFORMANCE									
		FDI inflowsper year				FDI Stock	FDI inflows								FDI Stock	
		Millions of dollars				Millions of dollars	Per capita (Dollars)				Per $1000 GDP				Per capita (Dollars)	Per $1000 GDP
		1986-1990	1991-1995	1996 2000	2001-2006	2006	1986-1990	1991-1995	1996 2000	2001-2006	1986-1990	1991-1995	1996 2000	2001-2006	2006	2006
	Dominican Republic	**98**	**227**	**702**	**954**	**5'606**	**14**	**30**	**86**	**110**	**16**	**23**	**41**	**42**	**621**	**177**
DR-CAFTA	Costa Rica	108	257	495	803	6'780	37	77	132	189	17	27	35	42	1'541	317
	El Salvador	15	19	309	331	4'376	3	4	51	49	3	3	25	21	625	236
	Guatemala	137	93	244	239	4'852	16	10	23	20	18	8	13	9	376	137
	Honduras	42	53	167	283	2'989	9	10	27	40	10	15	32	37	406	321
	Nicaragua	1	48	206	221	2'743	0	11	43	41	0	16	57	49	490	511
	CAFTA excluding US (CACM)	304	470	1'421	1'878	21'741	12	17	45	53	11	13	26	25	583	242
Region	Panama	-189	209	897	974	12'821	-83	81	316	303	-32	25	84	65	3'900	749
	Jamaica	54	156	350	658	7'264	23	64	137	250	13	37	46	73	2'729	688
	Caribbean and other America Excluding Fiscal Havens and Dominican Republic	357	669	1'563	2'379	29'363	14	25	55	81	8	14	28	31	981	299
	Latin America and the Caribbean Excluding Domincan Republic and Fiscal Havens	6'123	17'865	62'523	55'894	694'712	15	39	125	103	7	12	32	26	1'242	235
Selected Comparators	Chile	786	1'855	5'667	5'523	80'732	61	132	377	343	28	34	74	58	4'903	554
	Malaysia	1'182	5'064	4'803	3'480	53'575	68	261	221	139	31	76	53	29	2'077	360
	Mexico	2'745	6'808	13'187	20'554	228'601	34	76	135	196	15	19	30	30	2'110	272

Source: UNCTAD, FDI/TNC database (World Investment Report 2007).

Notes: CAFTA: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, United States - CACM: (Central American Common Market) Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua - CARIBBEAN: Caribbean and other America (UNCTAD World Investment Report definition) - TAX HAVENS: Bahamas, British Virgin Islands, Cayman Islands and Bermuda.

Finally, when comparing the FDI performance of the Dominican Republic to that of countries at more advanced stages of the economic transformation into higher value addition in manufacturing and services, it appears that in terms of relative FDI inflows, the country is today in a similar situation to that of Chile and Malaysia during the late 1980s and early 1990s. Both countries, in the early stages of their structural shift into high-value-added export manufacturing attracted twice the FDI per GDP that the Dominican Republic is attracting. This suggests that for FDI to play a full role in sustaining economic diversification into more sophisticated export businesses, the Dominican Republic should look to double its current annual FDI inflows and set a more ambitious FDI attraction target of $2 billion.

As mentioned above, DR-CAFTA is not only an opportunity to boost FDI attraction, but also a competitive challenge. Chapters II and III of this report suggest a number of policy measures which would enable the Dominican Republic, in five years time, to offer the best-in-region investment climate and an investment promotion set-up that will help it achieve the new FDI target.

C. Origin of FDI

Comprehensive data on FDI inflows by country of origin are only available since 1993. Since then, the largest foreign investors in the Dominican Republic have been the United States, Spain and Canada, accounting together for two thirds of total FDI (table I.2).

In particular, the United States is home to some of the largest investors in the Dominican Republic. Verizon, the largest telecommunications operator in the Dominican Republic, was also the single largest foreign investor in the country, until it divested to América Móvil (from Mexico) in 2006. Others include the Central Romana Corporation (sugar, mills, real estate and tourism), Esso and Texaco, Colgate Palmolive and Citibank. The United States also accounts for the largest share of FDI to the free zones (section B.4 below).

Table I.2. FDI inflows by country of origin

(Million dollars and percentage)

Countries	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004[1]	2005[2]	2006[2]	1995-2006	% of Total
United States	23.4	45.0	64.3	44.9	157.8	180.4	181.2	201.6	433.5	382.1	461.6	176.6	254.6	671.5	3'278.5	32.6
Spain	68.6	16.2	60.8	61.2	52.4	205.6	457.1	190.1	193.4	35.0	(13.3)	126.6	220.6	178.0	1'852.3	18.4
Canada	71.2	107.0	239.7	(23.3)	199.0	127.8	94.8	133.2	10.2	18.4	(22.7)	274.2	194.9	90.5	1'514.8	15.1
Cayman Is.	1.1	4.7	4.2	1.6	45.6	45.5	179.2	37.0	-	(13.7)	(9.1)	(62.8)	(52.7)	(55.0)	125.6	1.3
United Kingdom	5.4	7.3	5.9	5.2	41.4	22.9	75.7	17.4	2.0	(0.2)	(25.2)	21.4	100.7	78.6	358.5	3.6
Chile	-	-	-	-	-	-	88.9	21.6	0.3	-	(0.7)	12.4	8.5	15.6	146.6	1.5
Switzerland	14.5	20.4	14.8	12.9	14.7	7.7	16.5	14.0	2.0	4.0	5.8	18.2	52.8	7.2	205.5	2.0
Netherlands	-	-	-	-	-	-	61.5	36.0	245.2	119.4	25.1	0.2	38.5	(26.2)	499.7	5.0
Italy	4.5	-	-	-	0.3	33.1	13.9	15.5	0.7	5.0	5.1	39.1	15.2	0.2	132.5	1.3
France	-	-	-	-	-	-	34.4	97.5	60.6	109.6	33.0	85.3	80.9	(3.8)	497.5	5.0
Others	0.6	6.2	24.6	(6.0)	(90.6)	76.8	134.6	189.0	131.2	257.1	153.4	217.8	109.1	226.8	1'430.7	14.2
TOTAL	**189.3**	**206.8**	**414.3**	**96.5**	**420.6**	**699.8**	**1'337.8**	**952.9**	**1079.1**	**916.8**	**613.0**	**909.0**	**1023.0**	**1183.3**	**10'042.2**	**1**

Source: Central Bank of the Dominican Republic.
Notes: [1] Revised Data
[2] Preliminary Data

Spanish and Canadian FDI is far less diversified. Spanish FDI has traditionally concentrated on tourism, with the short-lived exception of Union Fenosa's investment in electricity in 1999,[8] while Canadian FDI has focused on the mining sector (Falconbridge, Barrick, Globestar) and banking (Nova Scotia).

With the exception of FDI from Switzerland (e.g. Nestlé and, more recently, Xstrata) and from the United Kingdom (e.g. Shell and Cadbury-Schweppes), FDI inflows from other countries have been less sustained, more volatile and dependent on one-off opportunities. This is the case for instance of Dutch investment, which has targeted a number of projects in tourism, commerce and the free zones, and that of French investment, characterized by discrete FDI projects in tourism (e.g. Club Med), retail (Carrefour) and construction. FDI from other European countries and Asia remains negligible.

D. Sector trends

1. Tourism

Tourism is the single largest recipient of FDI to the Dominican Republic. FDI inflows to the sector have grown an average of 12 per cent per year between 1993 and 2006, totalling $2.2 billion in FDI in the same period.[9] It is estimated that foreign investment accounts for more than 60 per cent of total cumulative investment in the sector.[10] Moreover, as of October 2005, 63 per cent of the rooms in hotels with 100 rooms or more (which represent 80 per cent of the total number of hotel rooms in the country) were foreign-owned, 25 per cent were owned by Dominican nationals and 12 per cent had mixed ownership (UNCTAD, 2007a).

Table I.3. FDI inflows by activity

(Million dollars)

Activity	2001	2002	2003	2004[1]	2005[2]	2006[2]	Total 2001–2006
Tourism	155	212	78	138	315	276	1174
Commerce/Industry	167	223	103	320	191	158	1162
Telecommunications	223	223	146	225	112	324	1253
Electricity	402	140	1.2	(58)	43	51	579
Free zones	73	45	45	100	175	136	574
Real estate[3]	-	-	-	82	94	181	357
Finance	15	25	99	61	66	28	294
Mining	7	23	78	60	28	29	225
Construction	0.2	4	0.0	0.0	0.0	0.0	4
Transportation	14	15	64	0.1	0.0	0.0	93
Other[4]	23	7	(2)	(20)	0.1	0.0	8
Total	**1079**	**917**	**613**	**909**	**1023**	**1183**	**5724**

Source: Central Bank of the Dominican Republic.
Notes: For reasons of data availability and completeness, only years 2001–2006 are shown in the table. Some data inconsistencies exist in respect to FDI inflows to the free zones as provided by the Central Bank and those provided by the CNZFE, shown later in this report.
[1] Revised Data
[2] Preliminary Data
[3] Residential and commercial
[4] Includes net loans, as well as other sectors' FDI
- = Not available

[8] Spain's Union Fenosa sold its stake in electricity distribution back to the Government in 2003.
[9] For which data is available since 1993.
[10] Based on UNCTAD interviews with officials of the Central Bank of the Dominican Republic and the Dominican Association of Hotels and Restaurants.

Historically, FDI in this sector has been dominated by Spain. Spanish investors brought the first hotel chain Barceló (presently comprised of 19 hotels and over 5,000 rooms) to the Dominican Republic (Economic Commission for Latin America and the Caribbean, 2004) and it was Spanish investment that was behind the large spikes in tourism FDI in 1998 and 1999 (table I.3). Currently, there are 20 Spanish hotel chains operating 48 hotels in the Dominican Republic. More recently, investors from Canada and the European Union have begun to arrive in the Dominican Republic.

Although investment is flourishing, the all-inclusive model has so far prevailed and the Dominican Government is eager for the industry to diversify and move into greater value-added and deeper linkages to domestic businesses (e.g. ecotourism and sporting holidays). An example of this diversification is the Cap Cana Resort, built in 2002, as a $3 billion, 30,000-acre resort catering to mid-market to high-end leisure travellers. This project will receive another infusion of capital projected at $1.5 billion, in accordance with a partnership agreement completed in February 2007 with Mr. Donald Trump (United States).[11]

2. Telecommunications

The telecommunications industry in the Dominican Republic has received FDI since the 1930s, when the Anglo-Canadian Telephone Company (Canada) set up Codetel, the first national telephone operator. The peak inflow of FDI to the sector ($272.2 million) was recorded in 2000, two years after the approval of the Telecom Law in April 1998 which established a modern regulatory regime.

Recent developments in this sector include the purchase in December 2006 of the largest provider of fixed and mobile telephony Verizon Dominicana by the Mexican firm América Móvil. Indotel, the regulator, forecasts that telecommunication companies will invest $300 million in 2007.[12] The intense competition for this fast-growing market, primarily mobile telephony and internet, is the underlying impetus for FDI.

3. Mining

Up to the early 2000s, foreign investor interest in mining had languished. Falconbridge of Canada (acquired by the Swiss Xstrata in 2006) had been in the Dominican Republic since the 1950s, but halted operations in the late 1990s, when prices for nickel plummeted. Nickel prices rebounded in 2004 and Falconbridge reopened its mine, causing a sharp rise in FDI that year.

Recent exploration by Placer Dome (Canada), which was acquired by Barrick Gold (Canada) in 2006, has confirmed a deposit of gold and associated minerals significant enough to begin large-scale mining at Pueblo Viejo. Barrick and Goldcorp (Canada) are joint owners. Construction in Pueblo Viejo is expected soon and it is estimated that investment outlays will be $2.3 billion[13] over five years. This operation, and the presence of Barrick, a leading specialist gold mining company, will significantly raise the international mining profile of the Dominican Republic. GlobeStar (also a Canadian company) is developing a new small copper-gold mine at Cerro de Maimón, which is expected to open in 2008.

4. Free zones

There are currently 55 free zones in operation in the Dominican Republic, hosting a total of 555 companies.[14] Over two thirds of these are foreign companies and the remaining 32 per cent are domestic investors.

[11] Cap Cana Resort Press Release, February 2007.
[12] INDOTEL Press Release. 9 March 2007. <http://www.indotel.org.do>.
[13] <http//:www.barrick.com>.
[14] This section relies on data provided by the Consejo Nacional de Zonas Francas de Exportación in the latest available statistical report of 2005, and on the data update for 2006.

With 257 companies investing a cumulative total of $978 million (corresponding to 46 per cent of total companies in the free zones and 49 per cent of total investment), the United States accounts for the largest share of zone investment. This is not surprising, since the primary export destination of the free zones is the United States, which accounted for an average of 50 per cent of total exports in the late 1990s. No other single home country of FDI to the zones accounts for more than 5 per cent of total zones' investment, with the exception of Sweden, represented by one company whose invested capital represents 5.7 per cent of the total (see table I.5 below).

Historically, textile and garments production have been the main driver of investment and the main employer in the free zones (41 per cent of all companies in the free zones are in the sector, accounting for 29 per cent of total zone investment and employing 60 per cent of total zone employees) and the zones' economic success and history has been inevitably linked to the faith in the sector (see section IV B). Tobacco and its derivatives is the second largest sector by volume of investment (18 per cent of the total). Encouragingly, these two traditional sectors of Dominican manufacturing activities are followed, in terms of investment volumes, by relatively new sectors which feature among the priority sectors for FDI promotion activities by CEI-RD. These are medical equipment and pharmaceutical products (14 companies accounting for 13 per cent of free zone investment) and electronics (30 companies accounting for 10 per cent of free zone investment). The remaining free zone investment is shared between the shoes industry (6.5 per cent of free zone investment), agribusiness (3 per cent of free zone investment) and others.

In addition to targeting FDI from diverse sectors, the Dominican Republic has introduced themed free zones with a particular industry focus that are owned/operated by anchor tenants. Some of the early examples are Westinghouse in the Itabo free zone, Verizon-GTE in the San Isidro free zone and more recently, the Cyber Park of Santo Domingo, the first technological free zone park in the country specializing in information and communication technology and related industries.

Table I.4. Free zones: Companies and investment by country of origin

Country of origin	Number of companies[a]	% of total[a]	Invested capital ($ million)[b]	% of total[b]
United States	257	46.3	978	49.1
Dominican Republic	178	32.1	477	23.9
Republic of Korea	20	3.6	71	3.6
Puerto Rico	16	2.9	16	0.8
Spain	10	1.8	13	0.6
Netherlands	9	1.6	49	2.5
Switzerland	7	1.3	91	4.6
Italy	6	1.1	8	0.4
Canada	6	1.1	65	3.3
Taiwan Province of China	5	0.9	11	0.6
United Kingdom	4	0.7	36	1.8
Sweden	1	0.2	113	5.7
Others	36	6.4	62	3.1
Total	**555**	**100**	**1990**	**100**

Source: CNZFE, Statistical Report 2005 and statistical update for 2006.
Notes: [a] = data refers to 2006; [b] = data refers to 2005 (latest available).

5. Finance

The financial sector has experienced increasing levels of investment since the early 1990s. The highest level of FDI was recorded in 2003 when the Government brokered an agreement for Bank Nova Scotia

(Canada) to acquire one third of the bankrupt Baninter's branches, credit card and personal and commercial loan portfolios. As of 2005, three foreign-owned banks were operating in the Dominican Republic: Citibank (United States), and Scotiabank and Republic Bank (Trinidad and Tobago). Scotiabank recently announced that it will expand its operations in the country by acquiring Citibank's retail banking business.

New developments in this sector point to the likelihood of new FDI inflows. An offshore banking centre, the Independent Financial Centre of the Americas, is being planned. Its creator, a former sugar merchant well known in the Dominican Republic for restructuring the sugar industry during the 1960s, intend the centre to house private and commercial banks, as well as an electronic exchange.

6. Energy

FDI began in this sector in the 1990s through the development of independent power generation projects. Such projects accounted for 50 per cent of total supply by the end of the decade. Substantial additional FDI was brought in by the capitalization (privatization) programme, which created three distribution companies and two generation companies in 1999 and offered 50 per cent interest to industry investors (table I.2). These entities were previously part of the State-owned and vertically integrated operator, Corporación Dominicana de Electricidad (CDE).

Table I.5. Dominican Republic: Energy sector capitalization

Corporación Dominicana de Electricidad (CDE)	Acquiring company	Nationality	Original Investment (1999)	Comments
Generation:				
Generadora Haina S.A.	Seabord (consortium Enron & Caribbean Basin Power) and CDC	United States, United Kingdom	$144.5 million	CDC currently in the process of divesting
Generadora Itabo	New Caribbean Investment (consortium Gener & Coastal Power)	Chile, United States	$177.8 million	Gener's share since acquired by AES
Distribution:				
Distribudora del Norte S.A. (EDENORTE) Distribudora del Sur S.A. (EDESUR)	Union Fenosa	Spain	$211.9 million	Sold back in 2003 for $420 million.
Distribudora del Este S.A. (EDEESTE)	AES Distribudora Dominicana LTD	United States	$109.3 million	Sold to TCW Group (United States/ France) in 2004)

Source: Economic Commission for Latin America and the Caribbean 2004 and the Commission for the Reform of Public Enterprises.

The market entrants in the capitalization process were primarily American, although the largest initial investor was the Spanish firm Unión Fenosa (table I.5). The power sector accounted for 15 per cent of total FDI inflows to the Dominican Republic between 1996 and 2005, reaching as high as 47 per cent in 1999.

Since 1999, AES Dominicana has invested over $850 million and EGE Haina $244 million in upgrading capacity.[15] However, the distribution companies have been unable to overcome the chronic and long-standing

[15] Dominican Republic, Business Week Special Report, 12 June 2006.

culture of non-payment and theft of electricity (chapter II). Union Fenosa sold its interest back to the Government in 2004 and the Empresa Distribuidora de Electricidad (EDEESTE) investment has resulted in two international arbitration claims against the Government.

With regard to foreign investment initiatives, an interesting new development lies in biofuel production. The construction of an ethanol plant by Brazilian firm Infinity Bio-Energy was announced in June 2007. The first stage of investment will amount to $80 million, with the second phase of investment increasing to $120 million.

7. Commerce and industry

FDI data provided by the Central Bank of the Dominican Republic, as reproduced in table I.3 above, contain a category named commerce/industry, which largely refers to FDI activities in manufacturing and distribution services outside of the free zones. Over the period 2001-2006, total FDI inflows for this grouping constituted only around 20 per cent of total FDI inflows to the Dominican Republic. This limited FDI presence in the domestic industry outside the free zones is an indication of the twofold nature of the Dominican economy, whereby an export segment (the zones) characterized by a large foreign investment participation coexists with a more sheltered and domestically oriented sector, less exposed to international competition and investment.

E. Impact of FDI

1. Capital and investment

Since the 1970s, public investment has remained more or less static as a proportion of GDP, while private gross fixed capital formation (GFCF) has almost doubled as has FDI as a proportion of GFCF (table I.6). Since the 1990s, total private investment reacted positively to improving macroeconomic fundamentals. FDI in particular benefited from policy initiatives (e.g. the 1995 Foreign Investment Law) and Government efforts to draw FDI into backbone services and tourism.

Table I.6. Capital formation as a proportion of GDP, 1970–2005

(percentage)

	Gross fixed capital formation as % of GDP and public/private components			FDI as % of GFCF
	Total GFCF	Public GFCF	Private GFCF	
1970s	19.1	6.4	12.6	11.5
1980s	22.0	6.0	16.0	4.5
1990s	25.8	6.7	19.1	13.8
2000s	29.3	5.1	22.7	18.5

Source: World Bank (2006) and UNCTAD.

Table I.7 also shows that the contribution of FDI to GFCF in the Dominican Republic over the period 2000–2005 was relatively high compared to most CAFTA countries, with the exception of Nicaragua, and significantly higher than the average for developing countries.

Table I.7. FDI as a proportion of gross fixed capital formation in the Dominican Republic and selected comparators in the 2000s

(average annual percentage)

Dominican Republic	Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua	Developing economies
18.5	17.1	13.3	6.1	14.8	22.3	12.3

Source: UNCTAD.

2. Employment and linkages

In the context of relatively high unemployment figures,[16] foreign investment has been a useful source of job creation in the Dominican Republic, particularly in tourism and the free zones.

Free zones

In the free zones, the number of employees increased from 164,639 in 1996 to a peak of 195,660 in 2000, to fall back to 146,535 in 2006. The number of employees in 2006 represents 30 per cent of the total manufacturing employment in the country (down from 38 per cent in 2000). The recent decline in the fortunes of the free zones is largely due to the end of the WTO Agreement on Textiles and Clothing and competition from Asia and NAFTA countries in apparel exports to the United States. It is also caused by increasing labour costs which have had impact on the competitiveness of the sector.[17] Between 2004 and 2006 alone, the number of free zone employees involved in textile and garment production fell by 40 per cent from 131,978 to 79,365 (CNZFE, 2005 and 2006).

Table I.8. Dominican Republic, employment by sector, 1996 and 2006

Sector	1996	2006	% Change
Agriculture/mining	*511'198*	*517'581*	*1*
Manufacturing	*466'240*	*488'773*	*5*
Free zones	164'639	146'535	-11
Non-free zones	301'601	338'357	11
Services	*1'546'343*	*2'428'733*	*36*
Wholesale and retail	499'971	716'058	30
Hotels, bars and restaurants	120'683	209'893	43
Transport and communications	168'873	244'378	31
Financial services and insurance	34'667	64'502	46
Public administration and defence	100'702	148'908	32
Constructions	168'317	240'036	30
Electricity, water and gas	12'796	26'354	51
Other services	440'334	778'606	43
Total	*2'990'021*	*3'923'859*	*24*

Source: Central Bank of the Dominican Republic, Labour Force Survey 2007 and CNZFE.

The entry into force of the DR-CAFTA, by cementing the privileged access to the United States market and expanding the rules of origin included in the treaty, is expected to at least partially counterbalance the recent difficulties of the textile and garments industry (box I.1). At the same time, the Government

[16] 17.9 per cent in the Dominican Republic in 2006, versus Costa Rica and Honduras for example, which have 7 per cent and 5 per cent respectively. Sources: Central Bank of the Dominican Republic and WB, WDI 2006.

[17] In February 2004 the minimum monthly salary in textiles was at a low $71 (when the Peso weakened below DOP50:US$1). Since 2005, the minimum monthly salary has averaged $135. Source: The Economist Intelligence Unit. Country Report, November 2006.

is fostering diversification of the zones into higher value-added activities, such as integrated textile and garments manufacture (full package manufacturing), jewellery, medical products and electronics. New employment activity in the jewellery and medical and pharmaceutical product groups indicates growth in these new product areas. Although employment in electronics has declined, the concurrent increase in the share of exports may point to increasing efficiencies in this sector (later, and table I.10).

Employment creation notwithstanding, there is not the depth of backward linkages that might be expected given the volumes of FDI attracted. Table I.9 below shows that for most zone industries, more than 85 per cent of all suppliers are foreign companies. The only exceptions are observed in long-established sectors, such as tobacco and textiles, which make the most use of local suppliers (26 local suppliers in the former and 12 in the latter).

Table I.9. Dominican suppliers to the zones by industry in 2005
(Number and percentage)

	Electronics	Textiles	Footwear	Jewellery	Tobacco	Medical and pharmaceutical
No. of Dominican suppliers	1	12	4	2	26	2
Share of total suppliers (%)	2	3	11	6	30	6

Source: CNZFE, Statistical Reports by Sector 2005.

Tourism

The tourism sector has been an important driver of the Dominican economic expansion and is the country's biggest earner of foreign exchange. It developed largely through partnerships between local and foreign investors encouraged by an incentive scheme launched in 1973 (chapter II for details on the incentive structure). Between 1980 and 2006, accommodation capacity increased from 5,000 to 63,206 rooms and tourism receipts increased by a factor of 18. In 2006, the tourism industry contributed 6.6 per cent of GDP directly and as much as 21.3 per cent when its impact on transportation, communications and agricultural production are taken into account.[18] The impact of the sector in terms of employment generation thus goes beyond the number of direct jobs created by the industry.[19]

In 2005, the hotel segment alone employed 49,176 people directly and 172,116 when indirect job creation is taken into account; corresponding to 1.4 per cent and 5 per cent of total employment respectively (Asociacion Nacional de Hoteles Y Restaurantes, 2005).[20] The employment figure increases to 210,000 people (2006 data) when restaurants and bars are included. Compared to the 1996 figure of 120,000 employees (table I.8), this makes the sector one of the fastest growing in terms of employment in the country (46 per cent growth over the last 10 years). In 2007, the estimated contribution of the tourism and travel economy to employment is of 593,000 jobs or 17 per cent of total employment (World Travel and Tourism Council, 2007).

Positive contributions notwithstanding, the low-cost, all-inclusive model that characterizes many of the resorts in the Dominican Republic, limits the impact on employment generation compared to more diversified tourism models. In Mauritius, for example, where tourism development has promoted the high-end leisure segment, the ratio of direct employment per room is 1.8 on average and 2–3 for the top five hotels, compared to 0.8 in the Dominican Republic.[21]

[18] Latin America Database Factsheet, 2006. ladb.unm.edu.
[19] For a comprehensive análisis of the impact of tourism FDI on economic growth and development, see: UNCTAD, *FDI in Tourism, the Development Dimension*, New York and Geneva, 2007a.
[20] Percent of total employment based on total employment of 3,465,995 as reported by The Central Bank of the Dominican Republic, October 2006 Employment Data.
[21] Central Statistics Office of Mauritius and KPMG Mauritius

Other drawbacks of the all-inclusive model in its current form include few linkages with domestic business, other than in domestically provided support services and construction and small daily expenditure by tourists outside of the all-inclusive resorts. The trend is compounded by the absence of a favourable regulatory environment for small hotels and ancillary service operators (UNDP, 2005). Recent strategic shifts to diversify the sector into ecotourism and sporting holidays are expected to have more impact on smaller operators. Those particularly affected include owners of equipment rental shops (e.g. renting sailboats and wind surfing and fishing gear) and adventure tour or ecotour guides with specialized knowledge of the local terrain.

Other sectors

Table I.8 shows that the largest gains in employment in the last 10 years took place in services. It also highlights that those sectors which have attracted significant levels of FDI since the mid-1990s have seen high rates of employment growth. It is the case, for example, for the telecommunications sector (31 per cent more jobs since 1996), electricity (51 per cent more jobs since 1996) and commerce (30 per cent more jobs since 1996), all of which grew faster than total employment growth (23 per cent more jobs since 1996).

A relatively new employer within services is the call centre sector, which can benefit from the country's well-developed communications infrastructure. CEI-RD is proactively targeting foreign investors to establish call centres in the country to service primarily the English- and Spanish-speaking markets in North America. Meanwhile, the National Institute for Technical-Vocational Training (INFOTEP), the country's public technical training institute (details in chapter II), is sponsoring specialized training to provide the local labour force with the necessary language and information and communication technology skills to become immediately employable. The strategy appears to be quite effective, and 55 call centres operate in the Dominican Republic, employing a total of around 17,000 people. Foreign investors are among the largest employers in the sector. Stream (United States), employs more than 3,500 call centre employees, while Codetel (América Móvil of Mexico) and ACS (United States) employ approximately 1,200 each.

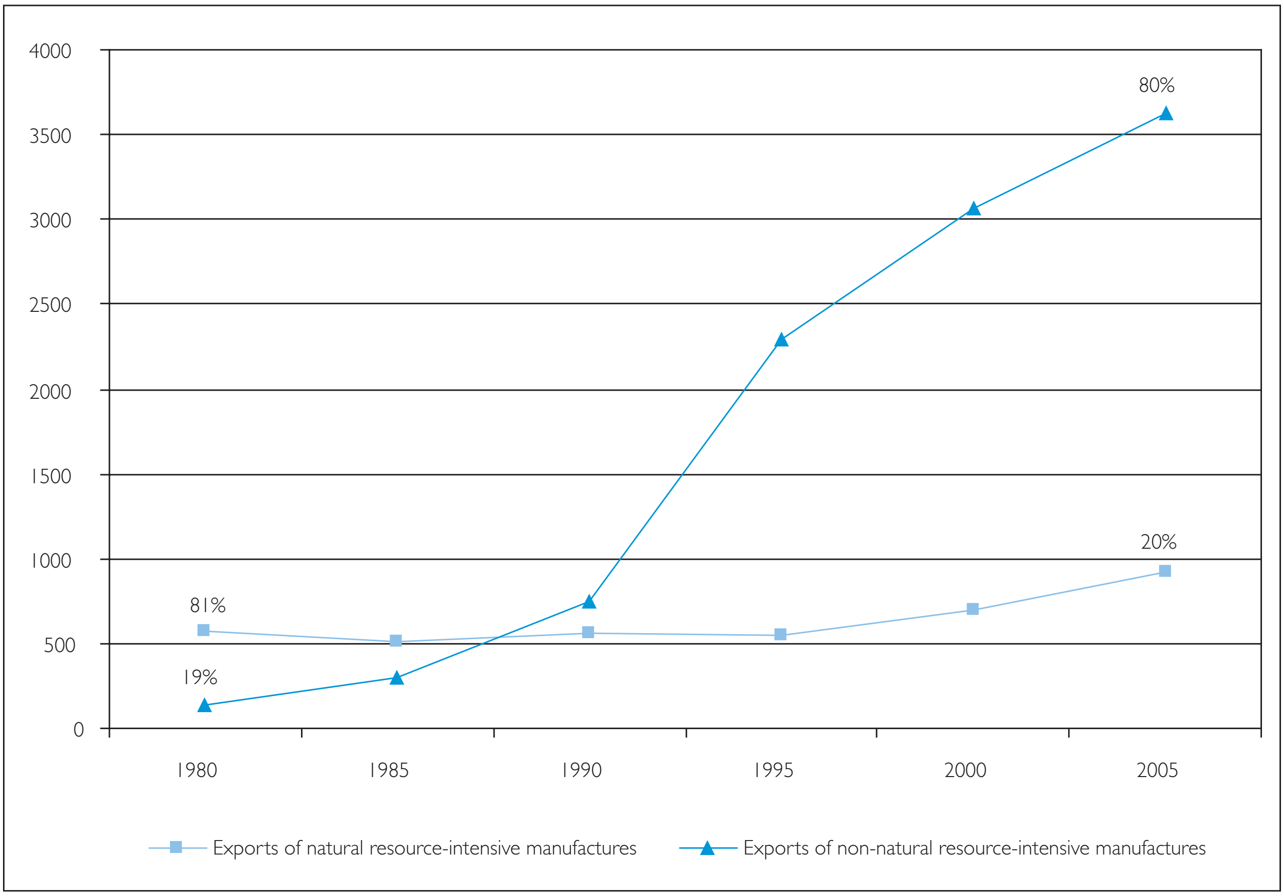
3. Export diversification

The single most noticeable impact of FDI on the Dominican economy is its contribution to exports and export diversification. Free zone companies, the vast majority of which are transnational corporations, account for the bulk of the country's exports. In 2005, the free zones accounted for 77 per cent of Dominican merchandise exports and 50 per cent of total goods and services exports. Moreover, the establishment of textile and garment transnational corporations in the country's free zones, beginning in the 1970s, has resulted in a radical change in the composition of national exports from commodity-based to light manufacturing. Figure I.3 shows the magnitude of the transformation in the export structure. Whereas in 1980, 81 per cent of the country's manufacturing exports were based on natural resource-intensive goods, by the end of the 1980s, non-natural resource-intensive exports already accounted for more than 50 per cent of total manufacturing exports. By 2005, that proportion had increased to 80 per cent.[22]

[22] Natural resource-intensive manufactures include foodstuffs, beverages and tobacco; manufactures of paper and paper products; manufactures of wood, wood and cork products; manufactures of rubber products and basic metal manufactures (i.e. iron, steel and non-ferrous metal manufactures) Non-natural resource-intensive manufactures include all other manufactures according to ISIC Rev. 2 classification except for those considered as natural resource-intensive.

Figure I.3. Structure of Dominican manufacturing exports, 1980–2005

(Million dollars and percentage)



Source: UNCTAD COMTRADE Database.
Notes: Data on reverse exports (i.e. world imports from Dominican Republic).
ISIC Rev. 2 classification.
Data on exports of manufacture of miscellaneous products of petroleum and coal not available for 1980, 1985, 1990 and 1995.

This first transformation in the export structure of the Dominican Republic was characterized by the transition from commodities to basic manufacturing exports. Noticeably, in recent years, the composition of exports from the zones appears to be undergoing a new transformation, this time into higher value-added manufacturing. Over the last five years, a reduction in textiles and garments exports and a significant increase of more technology-intensive manufactured exports can be observed (figure I.4). In 2005, exports of technology-intensive manufactured goods for the first time matched the volume of exports of textiles and garments, footwear and leather products.

Table I.10. Sector trends within the free zones

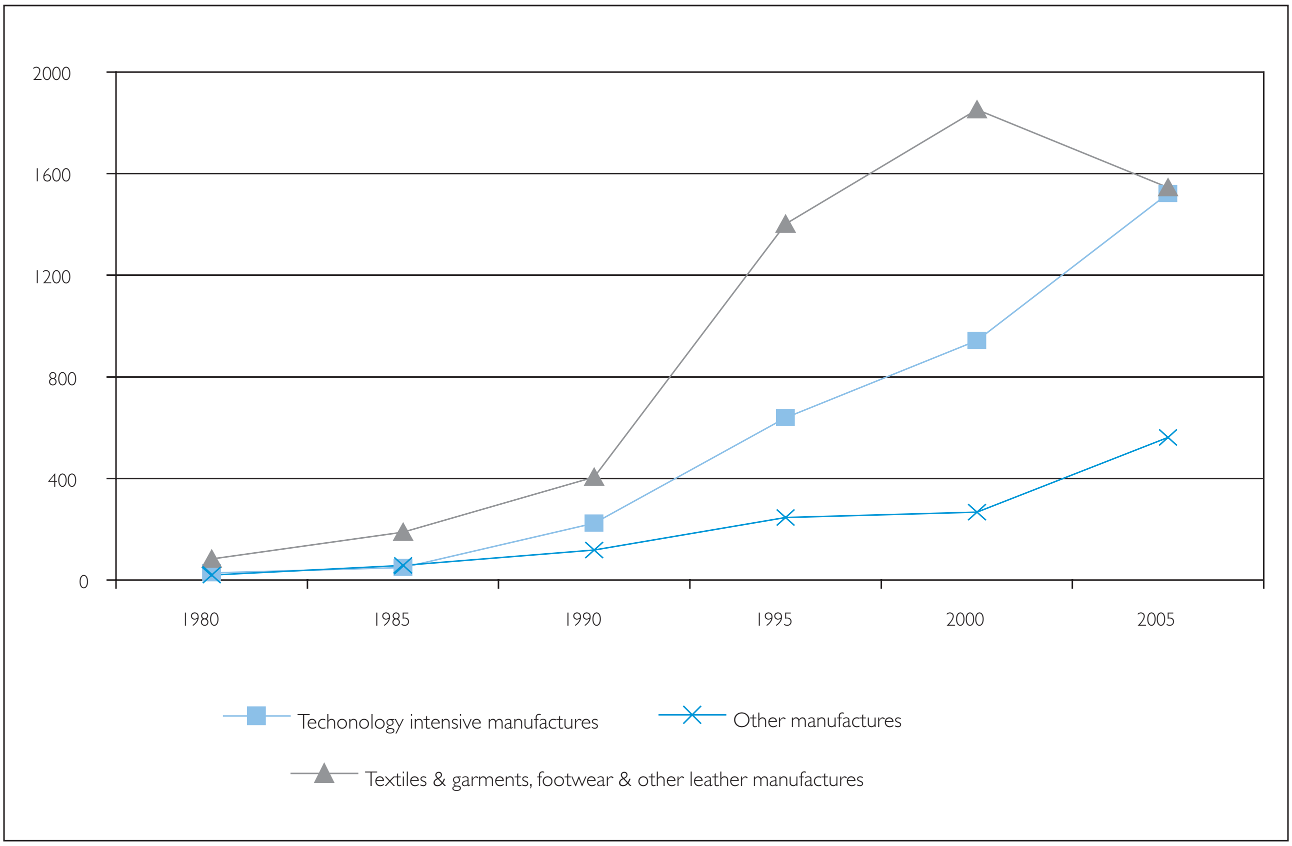
	Textile & Footwear	Electronics	Jewellery & similar	Pharmaceutical & Medical
2000 share of zone exports (%)	54	12	7	7
2005 share of zone exports (%)	40	15	13	6
Annual average growth 2000–2005 (%)	-5.9	4.4	11	-2.3
Employment change 2000–2005 (%)	-35	-14	17	23
% foreign companies in sector	86	98	94	94

Source: Central Bank of the Dominican Republic and CNZFE, Statistical Reports by Sector 2005.

Once again, FDI centred primarily in free zones is leading the change. The electronics and jewellery product sectors, both of which are characterized by a strong foreign investment presence (more than 90 per cent of companies in both sectors are foreign affiliates) have increased their share in total zone exports over the period 2000–2005 (table I.10). Export growth is not the only sign of diversification, as the shift of employment from textiles and footwear to jewellery and medical products suggests.

Figure I.4. Exports of non-natural resource-intensive manufactures, 1980–2005

(Million dollars)



Source: UNCTAD COMTRADE Database.

Notes: Data on reverse exports (i.e. world imports from Dominican Republic).
Data on exports of manufacture of miscellaneous products of petroleum and coal not available for 1980, 1985, 1990 and 1995.
ISIC Rev. 2 classification.

4. Transfer of skills and know-how

The FDI-led conversion of the economic structure of the Dominican Republic from commodities to export manufacturing and tourism could not have taken place without the necessary transfer of the required skills and know-how to the Dominican workforce. Although no comprehensive studies on the extent of the skills-transfer process are available, evidence suggests that FDI has contributed to transferring know-how and building local skills in at least three main ways: (1) by providing the initial capital and managerial skills to move the economy into new production sectors; (2) by introducing the local workforce to export-competitive production processes and techniques; and (3) by creating an emulation effect which has opened up new business opportunities for Dominican entrepreneurs.

In terms of production processes, the example of garment manufacturing in the free zones stands out. An important competitiveness parameter in this industry is lead times', i.e., the period between design, order and availability for customers. Consequently, even where limited to assembly, Dominican affiliate labour is exposed to best practice in the management and organization of labour, such as just-in-time production and computer technology (Wilmore, 1996). The Organization for Economic Cooperation and Development (OECD) estimates that Dominican unskilled workers are able to reach between 60 and 80 per cent of best-practice labour productivity in investors' home countries (OECD, 2003).

Box I.2. La Romana Micro Apparel Business Association: former textile free zone employees expand their potential

La Romana Micro Apparel Business Association (ASOMIMETRO) was created in an east coast town of the Dominican Republic (La Romana. It was established by a group of former free zones employees, who lost their jobs when apparel companies such as Walmana (United States), Costura Dominicana (United States) and Elizabeth (United States) left the country during the early 1990s.

With the knowledge and experience gained during the years of employment at the La Romana free zone, these workers started sewing and manufacturing underwear in their own houses, which were eventually transformed into small factories. Manufacturing underwear, robes and bathing suits, they began by selling to the local market. Today, their bargain-priced lingerie is sold in several major Dominican clothing stores, and their employment figures are rising. At the beginning, each company started with an average of between three and four employees. Today, there are 9–10 employees per company, for a total generation of 240 direct jobs and about 100 indirect jobs, including some informal street vendors from all around the country that go there to buy and resell in their own towns.

The cluster developed so rapidly that the area, situated in the Respaldo Benjamín sector of La Romana, is today known as "Duarte de los Panties" ("Panties Villa") or "Avenida de los Interiores".

Although they began in 1992, it was only in March 2007 that this group of small companies registered officially as a business association, ASOMIMETRO, thanks to the support of the Chamber of Commerce of La Romana and of the Inter-American Development Bank, which launched a project aimed at strengthening their entrepreneurial capacities.[23] Since then, ASOMIMETRO has rented new office space and created its own website.

Out of the 56 companies in the area, 24 now are part of ASOMIMETRO and 18 are in the process of becoming members. The majority of these companies (53 per cent) are headed by women.

ASOMIMETRO is in the process of registering through CEI-RD to jointly import raw materials and produce underwear as a collective brand. The ultimate objective is to eventually export to Central America, neighbouring islands and the United States. For this purpose, among other efforts, they are working towards systematizing their financial operations. ASOMIMETRO is also working with the Chamber of Commerce of La Romana and with the Altos de Chavón School of Design to improve the packaging and presentation of their products as to be able to export as soon as possible. Moreover, all members of ASOMIMETRO go through technical courses by CEI-RD on international trade, sponsored by the Chamber of Commerce of La Romana.

This case study highlights the transfer of knowledge arising from initial exposure to FDI and the ability of the Dominican workforce to learn and successfully reproduce business activities to service both the local and the export markets.

Sources: ASOMIMETRO (www.asomimetro.com); UNCTAD interviews; INCAE Costa Rica.

[23] "Challenge Grant Fund for SMEs Competitiveness in Central America and the Dominican Republic, Programme for improving competitiveness of SMEs from Benjamin Sector in La Romana", INCAE/IADB-FOMIN ATN/ME8291-R6.

Furthermore, integrated textile and garment manufacture, which comprises greater value-added and more sophisticated activities such as design and fabric production, has been pioneered by the better-connected, better-skilled and better-capitalized transnational corporations. In 2004, a study found that 48 per cent of export-oriented apparel manufacturers in the Dominican Republic were full-package producers, compared to minimal numbers in the mid-1990s, and that foreign firms were 60 per cent more likely to undertake full-package production than their local counterparts (Shrank, 2004). The removal under the DR-CAFTA of 807 arrangements, which mandated the use of yarn and fabrics produced in the United States in order to obtain duty-free treatment for exports to United States, should further improve the incentives to develop full-package manufacturing (box I.1).

The emulation effect and the opening of new markets to local investors may be the most significant channel for the transfer of know-how in terms of its implications for the development of domestic capacities and of the local private sector. While this effect is generally hard to measure, there are concrete examples within the Dominican Republic of local employees of foreign companies in the free zones that have learned the skills by working for transnational corporations before moving on to set up their own business. This the case of Mr. Fernando Capellan, a Dominican entrepreneur who, after a career in C&F (a clothing company known in the United States as Cathy Daniels) between 1979 and 1986, moved on to create his own company, Grupo M. Today, Grupo M is the largest private sector employer in the Dominican Republic with 12,000 employees working in 22 production facilities and is the largest apparel producer in the Caribbean/ Central American region, supplying major United States brand name companies including Liz Claiborne, Polo, Levis, Hanes and Tommy Hilfiger.[24]

Another, equally impressive example of transfer of know-how to the local workers is that of La Romana, where employees laid off from free zones' textile companies in the 1990s have transformed their east-coast town into an industrial area specialized in the production of underwear for the local market (box I.2). In 2004, they created a business association called La Romana Micro Apparel Business Association (ASOMIMETRO) and are currently planning to move into export markets.

5. Infrastructure services: Telecommunications and energy

Telecommunications

The Dominican Republic has one of the best telecommunications infrastructures in Latin America and the Caribbean. FDI has long made a significant contribution (section B), although the fastest growth did not occur until competition was introduced in the early 1990s and liberalization was formalized in 1998.

Since 1998, FDI inflows to the sector have reached an annual average of $200 million and new foreign operators have entered the market (table I.11). This trend was reflected in an expansion of access to telecommunications services. By 2004, telecommunications coverage had increased to 51 per cent, from 2 per cent in 1985.[25] The number of Internet connections has also grown, from 4 per cent in 2000 to 17 per cent in 2005, equalling Mexico and nearing Costa Rica (25 per cent). This expansion is taking place largely in the mobile market, as opposed to landlines.

[24] See: International Finance Corporation, IFC project 20744.
[25] ITU World Telecommunications Indicators, 2006.

Table I.11. The Dominican telecommunications sector

Company	Commercial Name	Services	Origin of investment	Date of licence authorization
ADVANCED VOIP TELECOM, S.A.				07.12.2006
All America Cables & Radio, Inc. Dominican Republic. (AAC & R)		Fixed/Mobile/ Internet	Centennial - U.S. (100%)	
Bec Telecom, S.A.		Fixed/Internet		10.03.2005
DR TELECOM, C. POR A		Fixed		14.02.2007
FUSION, S.A.				24.01.2007
Local Free Zone Services, S.A.		Fixed		13.01.2005
Lusim Com, S.A.				18.07.2002
Orange Dominicana, S.A.	Orange	Fixed/Mobile/ Internet	Orange - France (100%)	
OZYMANDIAS COMPANY, S.A.				07.12.2006
SkyMax Dominicana, S.A.,		Fixed		18.07.2002
Tecnología Digital, S.A.	DG-TEC	Fixed/Internet		03.03.2005
Tricom, S.A.	TRICOM	Fixed/Mobile/ Internet	Motorola - US (40%) Dominican (60%)	
Turitel, S.A.		Fixed/Mobile		
Compañía Dominicana de Teléfonos, C. por A.	CLARO, CODETEL	Fixed/Mobile/ Internet	America Movil (Tel-Mex) - Mexico (100%)	
VIARK-TEK NETWORK COMMUNICATION, S.A.				23.11.2006
Wind Telecom, S.A. / Solar Satelite, C.por A.		Fixed/Mobile/ Internet		10.05.2004

Source: INDOTEL.

The opening up of the sector to domestic and foreign investors has led to a significant reduction in international calling rates, which are now among the lowest in the region (down from $3.9 per three minutes of call to the United States in 1998 to $22 cents/three minutes in 2004). It has not, however, brought about the expected reduction in tariffs for local calls. Local calling rates (for both fixed and mobile calls) have actually increased in recent years, and are now among the highest in CAFTA countries (table I.12).

Table I.12. Telephone average cost of call ($ per three minutes, peak rate)

	Local call from landline		*Local call from mobile*		*Call to the United States*	
	1998	*2005*	*1999*	*2005*	*1998*	*2004*
Dominican Republic	0.07[1]	0.11	0.37	0.6	3.9	0.22
Costa Rica	0.03	0.02[2]	0.37	0.2	3.37	n.a.
El Salvador	0.06	0.07	0.87	0.2	2.4	2.4
Guatemala	0.10	0.08[2]	0.61	0.07[2]	1.8	1.21[3]
Honduras	0.06	0.05	0.79	0.8	4.86	2.52
Jamaica	0.06	0.03	0.28	0.5	5.2	0.87
Nicaragua	0.04	0.05	1.26	1.2	3.24	3.15[3]

Source: ITU, World Telecommunications Indicators for local calling rates and WB, World Development Indicators 2007 for calls to the United States.
Notes: [1] = in year 2000; [2] = in year 2004; [3] = in year 2003.

Possible explanations for the increase in the local calling rates include the introduction of mandatory interconnection charges in 1995 and the rebalancing of the local and international tariffs further to the opening up of the sector (the former were subsidized before liberalization, while the latter paid a premium). However, the rebalancing effect should have been exhausted in the years immediately following liberalization, while in 2005 local tariff rates still increased compared to those in 2004, pointing to the existence of inadequately addressed competition issues.

A lesson of the early years of liberalization in telecommunications is the importance of avoiding anticompetitive behaviour, including by foreign investors. Before 1995, two new entrants to the long-distance and international market faced high charges for interconnection to the sole local landline provider Codetel (owned by Verizon of the United States). Codetel's charges may have been a means of protecting its own dominant position in the long distance and fixed line business. Eventually, interconnection charges were regulated.

Energy

After the 1997 capitalization and subsequent FDI inflows ($631 million in 1999 alone, see table I.3), generation capacity increased. One example is Generadora Haina. In 1999, it had 120mW of delivery capacity and two years later it increased capacity to over 530mW. EGE Haina has since brought a new 150mW plant. It now generates almost 25 per cent of Dominican supply. AES Dominicana, the largest private power generator, generates 30 per cent of the country's electricity with a capacity of 987mW.[26]

Although generating capacity has increased, recent economic growth is increasing demand. Furthermore, there continue to be issues in the areas of transmission and distribution. Presently, the Government owes considerable amounts to the private power producers and is working to restructure contracts in order to address the debt. In pursuit of a remedy, a new law was passed in August 2007 to make illegal connections a criminal act (Law 186-07). Progress will likely depend on the outcome of the above-mentioned law and on the renegotiation of generation contracts between Government and private operators (chapter 2).

F. Overall assessment of FDI trends and performance

The Dominican Republic has had a long history of FDI, going as far back as 1890. It has historically been receptive to FDI, except for in the 1950s when there was a period of nationalizations. In recent years, the Dominican Republic has been among the leading attractors of FDI in the region. Export manufacturing in free zones and tourism development have received rising levels of FDI for more than 30 years. FDI has been a contributor to overall capital formation and employment but its key impact has been in leading the Dominican Republic's diversification from an agricultural commodities-based economy. Non-natural resource-intensive manufactured exports, account for the 80 per cent of all the Dominican Republic exports today, compared with 19 per cent 20 years ago. The number of tourists has grown from about 750,000 per year 20 years ago, to 4.3 million per year today, a performance in which FDI and national investors have played a strong role.

FDI inflows grew very strongly over the last decade in response to a more open FDI regime adopted in 1995 and a capitalization (i.e. privatization) programme re-launched in 1997. Currently, FDI inflow is nearly $1 billion annually, i.e. almost four times its level a decade ago. This has been sustained in recent years in spite of a financial crisis caused by a major bank failure, subsequent austerity measures implemented to recover from the crisis, and chronically poor electricity supply. This background and regional FDI attraction performance indicators suggest that the full potential of the Dominican Republic to attract FDI is far from being realized. The DR-CAFTA free trade agreement, which consolidates and somewhat extends previous preferential access to the United States market, is a major opportunity to boost FDI attraction further.

[26] See: Dominican Republic, Business Week Special Report, 12 June 2006.

The major effect of FDI in the modern era has been economic diversification. Importantly, this has been done by providing goods and services for international markets. Thus, FDI has introduced the valuable market knowledge, know-how and workforce skills needed for international competitiveness. There are also encouraging examples of an emulation effect by local producers in textiles and garments. On the negative side, evidence suggests that direct linkages to local firms through supplier relationships have been weak, although they improve as new industries mature. Moreover, foreign investors are liable to engage in anticompetitive behaviour in the absence of a strong pro-competition policy.

For FDI to further its contribution to the Dominican Republic's development, two strategic challenges must now be met:

The first challenge is to lead a second wave of diversification into businesses that can support higher labour costs and upgrade the skills of the workforce. The Government is aware of this challenge. It has encouraged FDI in more technology-intensive industries and services in the free zones and to broaden the supply of low-cost, all-inclusive tourism. The evidence suggests that this is happening, but rather slowly. This report concludes that in order to meet the diversification objective, the Dominican Republic should aim to establish a best-in-region investment climate and double its annual FDI inflows in the next five years.

The second challenge is for FDI to inject more competitive practices into domestic industry and services. The Government has developed the National Plan for Systemic Competitiveness, within which there is scope for a sharper focus on the contribution that FDI can make to business competitiveness. This is not to obviate the central role that local entrepreneurship and innovation has to play or the need for better firm-level linkages with FDI to gain greater development benefits from enclave sectors, as a dynamic local private sector with competitive and complementary relationships with FDI is integral to improving national competitiveness.

This report addresses two of the three Government responses needed to meet these challenges for FDI. These are regulatory and tax policy (chapter II) and investment promotion (chapter III). The third response, an assessment of FDI strategy, was not requested for this review but some comments on the issue are made in the introduction to chapter III.

CHAPTER II

THE INVESTMENT FRAMEWORK

The Government of the Dominican Republic has stated that attracting world-class foreign investment is one key ingredient that will allow it to renovate its economic development model and diversify its economy to focus on higher value-added manufacturing and services. To achieve this objective, the authorities aim at making the country an ideal investment location. It is therefore against this very ambitious goal that this chapter reviews the Dominican Republic's policy framework and recommends improvements to the investment climate.

In the mid-1990s, the Dominican Republic economy opened almost all business activities to foreign investment. Since then, many reforms have taken place to modernize various policy areas affecting business activities. These ranged from privatization of backbone services to modernizing the regulation of foreign exchange, environmental protection, company establishment, land, competition and migration. The DR-CAFTA further required the adoption of new legislation in important areas such as intellectual property and Government procurement.

Although the above reforms have generally introduced very modern legislation and policies, their implementation is often slow and the administration problematic. This has a negative impact on the development of the private sector. It is of paramount importance that these issues be addressed so that the economy to shift into the new development pattern as per the Government's objectives.

Other reforms have been only partially put into effect. The legacy of the old regulatory approach, for example, is still affecting FDI-specific regulations in such areas as funds transfer and technology transfer agreements.

Encouragingly, the reform drive received fresh impetus in 2007, with the presentation of the National Plan for Systemic Competitiveness. This is the first comprehensive effort to improve the overall competitiveness of the Dominican economy (details in chapter III). It includes reforms to create a better-regulated business environment.

A. Specific FDI measures

In spite of a long history of foreign investment, it was only in the mid-1990s, when the new Foreign Investment Law (Law 16-95) was adopted, that inflows of FDI to the Dominican Republic increased dramatically and spread beyond its established base in free zones' manufacturing and tourism (chapter I).

The introduction of the 1995 Act[27] represented a clear liberalization in the approach of the Dominican Republic to FDI, previously regulated by Law 861 of 1978 (box II.1). The 1995 Act more explicitly recognized the role of FDI in the economic and social development of the country and opened up most sectors of the economy to foreign investment. It also removed the need for pre-approval by the Central Bank for all investments and liberalized the repatriation of foreign capital and dividends (though it maintained a ceiling on dividends repatriation). Box II.1. summarizes the main differences between the Foreign Investment Law of 1995 and the previous regime.

[27] Together with its enabling legislation contained in Presidential Decree 380-96, later modified by Presidential Decree 163-97.

Box II.1. FDI legislation before and after 1995

Act No. 861/78 and its amendments	Act No. 16/95
Pre-approval	
Pre-approval by Central Bank required	No pre-approval required
Registration of FDI	
Compulsory and supported by sanctions against violation of registration obligation	Compulsory but no sanctions against violation
Remittances	
Dividends up to 25% of the registered invested capital. Full remittance of disinvestment proceeds.	Ceiling on repatriation of dividends (restricted to after-tax profits for the year). Full remittance of disinvestment proceeds.
Sectoral entry restrictions	
FDI prohibited in: • Public services • Mining, hydrocarbons and radioactive minerals extraction • Production of materials and equipment for national defence and security • Radio and television broadcasting, advertising, magazines, publishing and other mass media services • Domestic land and air transport, international maritime transport and cabotage FDI restricted to up to 49% of capital in: • Agriculture, forestry, poultry and cattle production, fisheries • Commercial and investment banking • Other financial services and insurance	All sectors open to FDI but for: • Disposal of toxic/radioactive waste not produced in the country • Activities affecting public health and environmental "equilibrium". • Production of materials and equipment for national defence and security, unless authorized by the President

Source: Acts Nos. 861/78 and 16/95

The Foreign Investment Law was supplemented by Decree No. 109 of 1997, which set up the Office for the Promotion of Foreign Investment. Investment and export promotion were then merged by Act No. 98 of 2003, which combined the office and the Dominican Centre for Export Promotion into the new Centre for Export and Investment of the Dominican Republic (CEI-RD).

Other changes since 1995 have contributed to a more open investment climate, including the abolition of controls on foreign exchange, the opening up of state companies to private investment and the stepping up of investment promotion efforts (the latter will be the subject of the next chapter).

The Foreign Investment Act is liberal, although some issues remain, both in certain provisions of the law itself and in some sectoral laws. Within the law itself there are provisions on FDI registration, limits on dividend transfer and requirements to register technology that have been carried over from the previous regime. These are inconsistent with the liberal tendency of the new regime and do not accord with modern practice: they may be called legacy provisions. Under certain sectoral laws, some FDI restrictions remain (box I.2). Also the Foreign Investment Law, other sectoral laws and the ratified bilateral investment treaties (BITs) (which together constitute the FDI regime) often lack consistency with respect to FDI treatment and protection provisions, with potential repercussions for the country in case of investor-State disputes. These matters are reviewed below.

1. Entry of FDI

The Foreign Investment Act establishes that all areas of the national economy are open to FDI, but for: (1) a negative list of activities as defined in the law itself and (2) the conditions and limitations imposed by sectoral laws (art. 5).

The negative list prohibits foreign investment in activities related to the disposal of toxic waste not produced in the country, in the production of materials and equipment for national defense and in activities "affecting the public health and the environmental equilibrium of the country" (art. 5). The first two are typical restrictions. The third one, however could be problematic for the following reasons: (1) it is too broadly defined and contains an element of arbitrariness, thus contrasting with the clarity and transparency expected from the investment framework; (2) registration of a foreign investment under this law might be interpreted as a de facto environmental approval; and (3) it is redundant, since all foreign investors, like any other economic actors in the Dominican Republic, must comply with other domestic laws that safeguard public health and the environment, including the existing provision in the Foreign Investment Law itself.[28]

As for the FDI entry restrictions contained in sectoral laws, most have been removed since 1995, including in very sensitive areas.[29] Nevertheless, FDI in some professional services and in specific sectors is still subject to some limitations (box. I.2), as reflected, for example, in the schedule of the Dominican Republic annexed to the DR-CAFTA Treaty.

The restrictions on professional services detailed in box II.2 overcompensate for the legitimate policy concern of ensuring that foreign professionals adhere to Dominican certifications and standards of quality. By reserving specific activities to Dominican nationals or partnerships with Dominican nationals, they effectively represent restrictions on the entry of FDI. These contrast with the country's objective of capitalizing on its privileged geographical location and on the quality of its telecommunications infrastructure to manage an economic transition into higher value-added manufacturing and services. In due course, should the Dominican Republic aspire to become a regional centre for the provision of services, it might wish to review the mentioned restrictions.

Several sectoral restrictions are listed in box II.2. The only media ownership restriction appears to be in radio broadcasting. This is more liberal than mass media restrictions elsewhere and, in any event, has little economic impact. However, limiting FDI entry to private companies in the mining and oil and gas industries is quite unusual. In the oil and gas industry, in particular, it is unclear whether the restriction extends to State-owned enterprises.[30] This would effectively close the industry to large, State investors, who are increasingly active in cross-border investment.[31] In air transportation, the objective of protecting national operators prevails over the objective of promoting open competitive domestic air transport and charter services.

[28] The Foreign Investment Act explicitly requires foreign investment projects to undergo environmental evaluation.

[29] It is the case of restrictions related to FDI entry in banking, insurance and agriculture, which were progressively abolished by means of revisions of the relevant laws.

[30] During 2005, the Dominican Republic was in negotiation with Brazil's federal energy company Petrobras regarding onshore and offshore oil exploration permits. No deal was reached also due to the lack of clarity in the regulatory framework (the Hydrocarbons Law of 1958). See: Alexander's Oil and Gas Connections, "Dominican Republic urged to accelerate oil exploration", in *News and Trends: Latin America*, Volume 10, issue 14, July 2005.

[31] According to UNCTAD's World Investment Report 2007, oil and gas TNCs from developing and transition economies are fast emerging as global investors. In addition, there are also several oil and gas companies from developed countries with state participation, including ENI (Italy), Inpex (Japan) and Statoil (Norway).

Box II.2. Restrictions on the entry of FDI contained in the domestic legislation

Field	Restrictions	Exclusions	Reciprocity waiver
	Professional services		
Legal	Only Dominican lawyers can practice law before the courts or render notary services.	Other legal services are open to foreigners, provided they are members of the *Colegio de Abogados*.	Yes
Architecture and Engineering	Foreigners may practise as engineers, architects or land surveyors only if members of the *Colegio Dominicano de Ingenieros, Arquitectos y Agrimensores* (CODIA). CODIA is only open to foreigners on the basis of reciprocity in the jurisdiction in which the foreign professional is licensed.	Professionals who are not members of CODIA can practice in the Dominican Republic if (a) contracted by the Government or (b) their service is specific, limited in time and the employer demonstrates the necessity for it to CODIA.	Yes
	Foreign nationals or enterprises organized under foreign law must associate with an enterprise organized under Dominican law in order to provide services related to urban and architectural studies for a tourism project.		No
Accounting, auditing and book-keeping	Only Dominican nationals may practice as certified public accountants.		No
	Foreigners, professionals or enterprises, may practice only in association with a Dominican partner.		No
Tourism and related	Tour guide licences may be granted to foreigners only in special circumstances such as specific language requirements.		No
	Sectoral restrictions		
Mining	Concessions cannot be granted to foreign Governments or companies that are partially or wholly State-owned.	When duly justified and approved by the National Congress, and the basis of special agreement with the Executive Branch.	No
Broadcasting	Only Dominican Republic nationals may own and control an enterprise that provides public radio broadcasting services originating in the Dominican Republic.		No
Oil extraction and exploration services	Concessions cannot be granted to foreign Governments or entities in which foreign Governments participate		No
Air transportation	Cabotage is reserved to Dominican Republic nationals or companies. These are defined as companies in which 51% of capital belongs to Dominican Republic nationals, in which at least one third of the administrators are Dominican Republic nationals, and which maintain effective control of the air fleet.		No
	Operators, agents or non-regular operators of charter flights must be at least 51% owned by Dominican Republic nationals and must be managed by Dominican Republic nationals.		No

Source: UNCTAD, based on the DR-CAFTA Treaty, annex I, schedule of the Dominican Republic.

Notwithstanding these exceptions, the Dominican Republic has one of the most open FDI regimes in the world. Moreover, in the DR-CAFTA treaty it has committed to retaining all the open elements of the current regime for its treaty partners.

DR-CAFTA also requires domestic legislation to conform to the treaty's provisions. This raises issues of consistency not only between the DR-CAFTA and the Foreign Investment Law with respect to the treatment of FDI upon entry to the Dominican Republic, but also in respect to the international obligations of the Dominican Republic under the BITs.

The FDI registration requirement (certificate of registration) is a legacy regulation contained in the Foreign Investment Law. Prior to 1995, the Central Bank's capital account controls also functioned as an FDI entry control procedure. The 1995 Law removed pre-approval of FDI, but maintained the requirement for all foreign investment (including re-investment) to be registered (art. 4). The Central Bank was in charge of the registration until foreign exchange controls were abolished. Instead of abolishing FDI registration at the same time, Act No. 98 of 2003 transferred its responsibility to CEI-RD (and the National Council of Free Trade Zones for Zone FDI) and required investors to complete a heavy load of paperwork and comply with procedures typical of a screening regime (art. 4 of the Foreign Investment Law and Decree No. 214-04).[32]

Legally, access to foreign exchange for a technology-related payment is conditional on approval by CEI-RD of the underlying agreement (arts. 5 and 7 of Decree no. 214-04). Banks providing foreign currency for capital and dividend repatriation and for technology-related payments are supposed to have evidence of CEI-RD approval of the related investment and technology transfer arrangements. However, the liberalization of foreign exchange has made these procedures difficult to enforce as they are not supported by any sanctioning provision.[33] Moreover, according to the law, CEI-RD is to process the application and issue the certificate of registration within 15 working days. In fact, investors report that the registration process is extremely slow and can take up to 2 years.

As a result, according to CEI-RD, only about 25–30 per cent of new investment seeks registration, while virtually no re-investment is registered. Also, it appears that technology transfer agreements are no longer submitted to CEI-RD for approval. Technically, although not so in practice, this puts the capital, dividend and technology remittance rights of non-registered foreign investments in jeopardy. These regulations should be removed.

CEI-RD has maintained the registration procedure on the grounds that it provides statistics on FDI. The collection of FDI statistics is important but it is better approached via a mandatory survey of investors, supplemented with information collected by the Central Bank for balance of payments statistics.[34]

2. Treatment and protection of FDI

The standards of treatment and protection of specific interests of foreign investors of the Dominican Republic are good in practice, although the domestic law guaranteeing these norms is weak. Treatment provisions are below widely accepted international standards and serious gaps exist in protection provisions,

[32] These include: information relevant to the invested capital and the area in which it has been made; proof of entry of the foreign currency or physical or tangible goods; incorporation papers of the local company in which the investment is made or in the case of a branch, evidence of an authorization to establish a domicile in the Dominican Republic. In case the investment has an impact on the environment, foreign investors need also to submit the appropriate approval issued by the Ministry of Environment. Where foreign technology is capitalized, investors must submit the contract setting forth the amount of foreign exchange to be received in exchange for technology.

[33] An additional use of the Certificate of Registration to foreign investors is in relation to the "Residence by Investment" scheme, a residence permit scheme for investment above a certain size (see later).

[34] The survey-based system is a more useful way to obtain comprehensive information not only on the volumes of FDI, but also on its impact on the local economy. Information currently not available, (such as the employment impact of FDI, its contribution to fiscal revenues, R&D spending or the existence of linkages with domestic producers) could also be obtained via the compulsory survey, if it is conducted as a joint undertaking between the Central Bank, the national statistical office and the CEI-RD.

namely with respect to expropriation and dispute settlement. This is substantially compensated by a reasonably extensive network of bilateral and regional investment treaties with many of the most important home countries of FDI, which, however, also contain inconsistent provisions.

a. The bilateral and regional investment treaties framework

Nine bilateral investment treaties are in force (table II.1). Moreover, the free trade agreements between the Dominican Republic and CARICOM, the Central American Common Market (CACM) and CAFTA all contain very comprehensive investment chapters, which cover the standard range of guarantees usually contained in BITs. Together, these bring the total number of countries in the Dominican Republic's network of investment agreements to 30, including with the largest investor, the United States. However, there are undue delays in ratifying BITs, including with important source countries of FDI. Three BITs await ratification (those with Argentina, Italy and the Netherlands), one was ratified in November 2007 and is soon to enter into force (that with the Republic of Korea) and two have been rejected by Congress (those with Cuba and the United Kingdom).[35]

The BITs in force and those awaiting ratification are very similar in their format, but their contents differ. In particular:

i. Some key issues, such as fair and equitable treatment are dealt with in very different ways. Some treaties refer to fair and equitable treatment without qualification, some refer to fair and equitable treatment in relation to international law and some have no reference to fair and equitable treatment at all, while CAFTA provides for the international minimum standard of treatment in accordance with customary international law.

ii. Other protection issues such as the settlement of disputes (investor-State), the formulation of most-favoured-nation (MFN) treatment provisions, umbrella provisions and definitions of investment and investor also show dissimilarities. A further risk (as recent cases interpreting MFN in contradictory ways have shown) arising from importing substantive provisions from other treaties or importing dispute settlement provisions requires additional care in the wording of the clauses.

iii. The inconsistencies in formulations of key provisions are attributable to the different positions of negotiating partners and to the lack of systematic discussion of a Dominican model agreement as part of the negotiations.

As part of the follow-up technical assistance offered in the context of the investment policy review, UNCTAD carried out a first mission to the Dominican Republic in July 2007 to perform an in-depth analysis of the country's BITs network and to help CEI-RD to formulate a model BIT to be used in forthcoming negotiations. The analysis suggested that the Dominican Republic should: (1) seek to follow up closely on the dates of duration of each treaty, (2) seek clarification of key issues in order to avoid inconsistencies or ambiguity that can in turn lead to interpretations by arbitral tribunals that can be detrimental to the State and (3) make use of proposals to renegotiate a number of bilateral investment treaties by some European states to address some of the above issues.

[35] Specific reasons for this rejection could not be identified.

Table II.1. Bilateral and regional investment treaties signed by the Dominican Republic

Bilateral investment treaty with:	Signed	In force	Standards of treatment [a]	Free transfer of capital	Expropriation	Compensation	Disputes resolution forum [b]
Chile	28 Nov. 00	8 May. 02	NT, MFN, FET	Yes	Public purpose, national or social interest	Prompt, adequate and effective at market value	National, UNCITRAL or ICSID
Ecuador	26 Jun. 98	04 Nov. 06	-	Yes	Public purpose	Prompt, adequate and effective at market value	ICSID
Finland	27 Nov. 01	30 Nov. 06	n.a.	n.a.	n.a.	n.a.	n.a.
France	14 Jan. 99	30 Oct. 02	NT, MFN, FET	Yes	Public purpose	Prompt, adequate and effective at market value	UNCITRAL or ICSID
Morocco	23 may 02	5 Dec. 06	NT, MFN, FET	Yes	Public purpose or social interest	Prompt, adequate and effective at market value	National, UNCITRAL or ICSID
Panama	6 Feb. 03	19 Jun. 06	NT, MFN, FET	Yes	Public purpose or social interest	Prompt, adequate and effective at market value	National, UNCITRAL or ICSID
Spain	16 Mar. 95	07 Oct. 96	NT, MFN, FET	Yes	Public purpose or social interest	Adequate without undue delay	UNCITRAL
Switzerland	27 Jan. 04	12 Mar. 06	NT, MFN	Yes	Public purpose	Prompt, adequate and effective at market value	National, UNCITRAL or ICSID
Taiwan Province of China	05 Nov. 99	27 Nov. 01	NT, MFN, FET	Yes	Public purpose or social interest	Prompt, adequate and effective at market value	National, UNCITRAL, ICSID or ICC
Argentina	16 Mar. 01	-	NT, MFN, FET	Yes	Public purpose	Prompt, adequate and effective at market value	National, UNCITRAL or ICSID
Cuba	15 Nov. 99	-	n.a.	n.a.	n.a.	n.a.	n.a.
Italy	12 Jun. 06	-	NT, MFN, FET	Yes	Public purpose or social interest	Prompt, adequate and effective at market value	National, UNCITRAL or ICSID
Republic of Korea	30 Jun. 06	-	NT, MFN, FET	Yes	Public purpose	Prompt, adequate and effective at market value	National, UNCITRAL, ICSID or others
The Netherlands	30 Mar. 06	-	NT, MFN, FET	Yes	Public purpose	Fair and adequate at genuine value	National, UNCITRAL, ICSID or ICC
United Kingdom	11 Jul. 02	-	n.a.	Yes	Public purpose	Prompt, adequate and effective at market value	National, UNCITRAL, ICSID or ICC
CARICOM	22 Aug. 98	28 Jan. 01	NT, MFN, FET	Yes	Public purpose	Adequate and effective	National or UNCITRAL
CMCA	16 Apr. 98	28 Mar. 01	NT, MFN, FET	Yes	Public purpose	Prompt, adequate and effective at market value	National, UNCITRAL or ICSID
DR-CAFTA	5 Aug. 04	01 Mar. 07	NT, MFN, FET	Yes	Public purpose	Prompt, adequate and effective at market value	(National?) ICSID, UNCITRAL

Source: UNCTAD and CEI-RD

Notes: [a] NT= National Treatment; MFN= Most Favoured Nation; FET= Fair and Equitable Treatment. All except DR-CAFTA are based on post-establishment national treatment;
[b] UNCITRAL= United Nations Commission on International Trade Law; ICSID= International Centre for Settlement of Investment Disputes; ICC= International Chamber of Commerce

b. Treatment

The principle of national treatment of FDI is recognized in the Foreign Investment Law of 1995, though its efficacy is diluted by the possibility of introducing discriminatory treatment in special laws (art. 6). This exclusion is too broad. It could be confined to special treatment for local small and medium-sized enterprises. Other standards of treatment and protection, such as fair and equitable treatment, and guarantees against expropriation, generally offered in national investment laws, are only guaranteed by the Dominican Republic in the context of its bilateral investment treaties/free trade agreements.

Nevertheless, in practice, no discrimination appears to take place between foreign and domestic investors.

c. Funds transfer

The Foreign Investment Law of 1995 grants foreign investors the right to remit abroad the full proceeds of disinvestment. However, this right appears to be on condition that the investment and reinvestment have been registered with CEI-RD, in accordance with Decree 214-04 (a regulation of the Foreign Investment Law).

The Foreign Investment Law also permits dividends to be repatriated, although the amount permitted annually cannot exceed after-tax profits for the year in question.

In 1995, these funds transfer provisions constituted an important liberalization effort with respect to the repealed Law 861 of 1978 (box II.1). But the new, less onerous restriction on the remittance of dividends still applies. This, along with the requirement to register investment and reinvestment in order to repatriate disinvestment proceeds, is among the legacy regulations inconsistent with the thrust of foreign exchange liberalization. They are not followed in practice (only 25 per cent of foreign investments are registered). Moreover, the provisions contrast with the free transfer guarantees offered by the Dominican Republic in the context of its bilateral investment treaties and should be removed.

The Foreign Investment Act makes the repatriation of fees and royalties resulting from technology transfer contracts and licences to manufacture conditional on the pre-approval of such contracts by CEI-RD. In this respect, Decree No. 214-04 makes it a responsibility of CEI-RD to issue certificates on transfer of technology after having determined that the legal and regulatory preconditions have been satisfied (arts. 2a and 2e). Again, this procedure is not followed in practice and it is recommended that the screening of technology transfer agreements be abolished. This regulatory approach to the transfer of technology was very popular among developed and developing countries during the 1970s, but has since been largely abandoned in favour of a more targeted approach which relies on ex-post monitoring by those agencies that are most competent to address the public interest issues arising from technology transfer. These issues include taxation arising from transfer pricing and training and localisation issues in the context of permits to hire foreign staff (more in section 10 of this chapter).

d. Expropriation

The Constitution makes private ownership of property a constitutional right and establishes that nobody can be deprived of property rights unless there is just cause for public purpose or social interest and just compensation as determined by the appropriate tribunal (art. 13).[36] Given the constitutional nature of the mentioned provision, its generic treatment of expropriation is not surprising. Additional provisions would usually be contained in an investment law. However, the Dominican Republic foreign investment law is silent on the issue and no other law covers expropriation. Hence, there is a vacuum in domestic law

[36] The Constitution further declares the gradual elimination of large estates (latifundio) and the use of land for useful purposes is of social interest.

regarding the more specific rights of foreign investors in case of expropriation (such as the right of appeal, the right to compensation at market value and in freely transferable form).

Investments covered by BITs or other investment agreements, on the other hand, are generally offered guarantees of prompt, adequate and effective compensation at market value, following widely accepted international standards (table II.1).

Domestic law should be revised to bring it up to international standard, particularly in light of the record of expropriation cases involving foreign investors.

A 2007 report from the United States Commercial Service notes that several United States investors have ongoing disputes with the Dominican Government concerning unpaid Government contracts or expropriated properties and businesses. Property claims make up the majority of expropriation cases, most of which relate to land taken for infrastructure or commercial development (United States Commercial Service, 2007). Prompt and adequate payment for losses has proved difficult, even when a Dominican court has ordered compensation.[37]

In 2002, USAID helped the Government identify and analyse some 248 expropriation cases involving United States companies alone (some going back more than 30 years). Most cases (65 per cent) were then resolved by the Government through payment or issuance of Government bonds. Also, it is important to stress that no reports of expropriation cases were identified during the prior 10 years.

e. Dispute settlement

Foreign investors have full and equal recourse to Dominican Republic courts to settle commercial disputes. Ordinary justice, however, is very slow (section 8) and the alternative disputes resolution (Dominican Republic) mechanisms in place fail to provide a much speedier option.

Recourse to arbitration is possible under the Commercial Code (art. 631) and by the Code of Civil Procedure of 1975 (book III)[38], which establishes the right to refer disputes among private parties to one or more arbiters. The resulting arbitral award, however, is only enforceable in accordance with these laws if validated (exequatur) by a national court (art. 1020).

A new arbitration mechanism was introduced in 1987, when the chambers of commerce and production were empowered to set up conciliation and arbitration councils in their respective jurisdictions (Law 50-87, title VI). The law made it possible for the councils to handle disputes not only between two or more members of a chamber, but also between a member and the State. Moreover, their arbitral awards do not need validation from the ordinary tribunals in order to be executable.

However, it is reported that the chambers' arbitration mechanism is seldom utilized since it is little known by lawyers, access requires membership of the chambers by both parties and the procedures are tedious.[39]

The draft law on commercial arbitration would bring the arbitration regime of the Dominican Republic up to best international practice. The law, which would repeal the relevant provisions of the Code of Civil Procedure, would empower the parties to decide upon dispute settlement procedures, including national

[37] According to the United States' Trade Department: "…the Dominican Supreme Court in 1970 ordered the government to compensate a US family for expropriating land and businesses. The Dominican government compensated owners only for the expropriated land but to date has not offered compensation for the businesses."

[38] As modified by Law no. 845 of 1978.

[39] From 2001 to 2006 only 44 cases were received by the chamber of Santo Domingo on all matters. It is not known whether any cases involved disputes with the State.

or international arbitration. The agreement of the parties would take the form of an arbitration clause included in a contract or independent agreement. The law would establish that arbitral awards are binding: (1) independent of the country where they were issued and (2) subject to a simple written notification to the competent court. Hence the main limitations of the current arbitration mechanisms (the exequatur requirement of the Commercial Code and the requirement to be a member of the Chamber of Commerce) would be overcome.

With respect to access to international arbitration, the Dominican Republic is a member of the Multilateral Investment Guarantee Agency. The Government also implemented the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in August 2002 and signed the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in March 2000. At the writing of this report, however, the latter convention had not yet been ratified.

Under the BITs ratified by the Dominican Republic and the investment chapters of the DR-CAFTA, Dominican Republic-CARICOM and Dominican Republic-CACM agreements,[40] investors may take a dispute to international arbitration (table II.1). Two investor-State lawsuits against the Dominican Republic have emerged in the course of 2007. One was initiated by Société Générale (France) and is based on the bilateral investment treaty between France and the Dominican Republic. It will be subject to arbitration under the United Nations Commission on International Trade Law (UNCITRAL) rules. The second, by TCW Group (a Los Angeles-based unit of Société Générale) is based on the DR-CAFTA and was initiated shortly after the entry into effect of the agreement. The two cases are linked (one is raised by the bank, the other by the electricity operator) and relate to the claimants' complaint that the Government is turning a blind eye to the systematic theft of electricity, thus failing to provide investor protection under the BIT with France and DR-CAFTA. These appear to be the first international arbitration cases against the Dominican Republic.

f. Investment legislation

The above review suggests that the Dominican Republic should adopt a new law on investment to improve the legal regime for foreign investment, reflect the open treatment of FDI in practice and remove current anachronisms. The preparation of this law should be done in tandem with a re-examination of Dominican Republic policy on the key provisions of its international investment agreements and the remaining FDI restrictions in sectoral law.

3. Institutional setting

CEI-RD is presently constituted under its own law to be the lead agency in investment (and export) promotion. Chapter III of this report recommends new institutional arrangements for investment. These include the appointment of a minister of investment with policy and oversight responsibilities for CEI-RD and other investment-related Government organisations. A new investment law would need to take account of these recommendations, if accepted.

4. Assessment and recommendations

The legal framework for investment in the Dominican Republic is open and liberal and contains very few sectoral restrictions. The modernization of the legal regime for FDI started in 1995 and continued with the creation of CEI-RD. However, foreign investment legislation itself has fallen behind the treatment of FDI in practice and is much less forthcoming than international treaty provisions of the Dominican Republic. This incoherence is not itself a significant barrier to FDI, but there is a case for updating foreign investment legislation both to reflect the Dominican Republic's treaty standards and to remove the anachronistic regulatory role of CEI-RD.

[40] The latter is not a single agreement but a series of bilateral agreements between the Dominican Republic and CACM members.

A simpler and more modern investment law is needed. It should:

- Guarantee FDI treatment provisions such as national treatment with a more targeted approach to exclusions and ensure consistency with the obligations under the DR-CAFTA;
- Guarantee access to domestic and international dispute resolution mechanisms;
- Offer protection provisions on fair and equitable treatment and expropriation based on the principle of prompt compensation at market value;
- Eliminate the ceiling on the repatriation of dividends;
- Remove the FDI registration requirement;
- Remove the references to health and environment in the FDI negative list;
- Remove the screening of technology transfer contracts.

Other recommendations include:

- Review the sectoral FDI entry restrictions in domestic legislation with respect to the provision of services, mining, oil extraction and exploration and air transportation against the public interest they serve and reflect the maintained restrictions in FDI legislation.
- Strengthen the treatment and protection regime by: (1) adopting a model BIT for future negotiations; (2) pursuing the ratification of the signed BITs; and (3) seeking renegotiation of those existing BITs which contain unclear provisions or inconsistencies.
- Address the need to ensure accurate FDI statistics in the absence of a registration mechanism by legally requiring all companies to comply with annual investors' surveys.

B. General measures

1. Establishment

The Commercial Code allows for the usual types of business organization, though foreign investors can only operate in the country via a branch under the 1995 Foreign Investment law.

Until mid-2006, it took an average of 78 days to establish a company, in a bureaucratic maze originating in the Commercial Code of 1884 and in law 3 of 2002 on the Commercial Registry. The process involved 10 different steps and 5 different Government agencies (the National Office for Industrial Property, the chambers of commerce and production, the General Direction for Internal Taxes, the Ministry of Labour and the National Social Security Council). The National Competitiveness Council, in the context of initiatives for improving the business climate, has been working since 2004 on a programme to reduce the number of procedures, the cost and the time required to establish a company, in cooperation with the main Government agencies involved in the process.

As a result of the programme, the National Competitiveness Council reports that establishment time has been reduced to 20 days, and the number of steps to the following seven:

1. Obtaining the registration of the company name from the National Office for Industrial Property;

2. Signing the articles of incorporation and preparing the list of shareholders of the company (a minimum of seven shareholders are necessary for incorporation) with detailed information on each and declaring before a public notary that the shares have been purchased and paid by the shareholders; obtaining approval of the documents at a general incorporation meeting;[41]

[41] In case all or part of the shares are paid through in-kind contributions, two general incorporation meetings are required. A first one where an officer is appointed to value the contributed assets and a second one to approve the officer's report and declare the company incorporated.

3. Paying the tax on authorized capital and other taxes (section on taxation);

4. Filing all incorporation documents with the local Chamber of Commerce and Production and paying a registry tax (variable) to obtain a certificate of commercial registry (to be renewed every two years);

5. Filing all incorporation documents and a number of other forms with the Internal Tax Office to obtain the National Taxpayer Registration number of the company;

6. Registering with the Ministry of Labour; and

7. Registering with the National Social Security Council.

A second phase of the reform is currently underway. Presidential Decree No. 191-07 of April 2007 ordered the creation of a virtual one-stop facility ("Ventanilla Unica Virtual") for company establishment. The objective is to integrate the establishment process in a single web-based platform, thereby replacing paper in the processing of company registration. All relevant agencies would then exchange the necessary information through the integrated system and an electronic payment system would be introduced. The pilot project was expected to become operational by the end of 2007 in the Santo Domingo Province, before being extended to the entire country. The National Competitiveness Council estimates that as a result of the reform, establishment time could be cut down to four days.

If successful, the reform would bring the establishment time in the Dominican Republic closer to best international practice (establishment time is two days in Australia, three days in Canada, seven days in Puerto Rico, eight days in Jamaica).[42]

Decree No. 191-07, however, also introduced the concept of "deemed approval" (in Spanish: silencio administrativo) for all permits and licences necessary to initiate a business activity in the country (art. 6). This provision means that no approval within a given time can be taken as consent. It is unclear, as drafted, whether this applies narrowly to company incorporation or encompasses all licences and approvals (e.g. environmental permits). Whatever its scope, it is strongly recommended that this provision be repealed before the implementation of the virtual one-stop facility. Aside from sending a negative signal to investors concerning the need to respect Dominican laws and regulations, the provision disregards public interest in the permitting procedure. Alternative and more effective ways to ensure efficiency and expediency in the Government's response to business can be devised. Indeed, the virtual one-stop facility, as foreseen in the project proposal, already contains mechanisms to ensure that each permitting agency is directly and immediately accountable for complying with its set deadlines. An electronic and automated alert system will notify first the responsible officers and then their direct supervisors as soon as the deadlines set are missed. The system will also collect information on the origins and frequency of the delays (Presidency of the Dominican Republic, 2006). It is recommended that this information be used to apply the necessary efficiency reforms, rather than granting permits without ensuring that the relevant public interest is protected.

The Commercial Code itself dates from 1884. The need to modernize it has been recognized and action is being taken. For example, the requirement to have a minimum of seven shareholders to form a company is archaic. A full review of corporate governance rules is required and the Dominican Republic should consider adopting international accounting standards.[43] Both of the latter measures would facilitate the development of an equity capital market – a development that is needed to support the venture capital industry, an important component for innovation and private sector development.

[42] See World Bank Doing Business Indicators 2006.
[43] It is understood that this is opposed by the Dominican Republic professional body.

2. Taxation

The level of general corporate taxation in the Dominican Republic is, by developing country standards, relatively high on profits and royalty and services payments abroad when considered together. There is a high exemption threshold on personal income tax; such that the Dominican lower middle-class effectively pays no tax on employment income. The corporate tax burden is significantly reduced by incentives for investment in priority industries, especially export manufacturing based in free zones and tourism. Import tariffs have fallen in recent years and will fall again in respect of the imports from DR-CAFTA partners, which already account for more than 50 per cent of total imports of the Dominican Republic, although many local products are protected by phase-in arrangements. Indirect taxes, and value-added taxation and excise on selected goods in particular, are the future mainstay of tax collection as presently structured.

The principal taxes in the Dominican Republic are corporate and personal income tax, capital gains tax, import duties, value-added taxation known as the tax on the transfer of industrial goods and services (ITBIS), selective excise on consumption, and various taxes on property and corporate capital. Income is taxed on a modified territorial basis so that residents are, in principle, taxed only on Dominican Republic source income. Thus, business income from outward investment is not taxed in the Dominican Republic. However, passive investment income derived abroad is taxable (although a credit is obtainable against home country taxes). In brief, the main taxes are:

Corporate income tax: The corporate tax rate will be 25 per cent from 2008 (down from 30 per cent in 2006 and 29 per cent in 2007). The ability to carry losses forward was increased in 2005 from three to five years, although no more than 20 per cent of the accumulated loss can be applied in any year and there are further restrictions as to the amount of taxable income that can be reduced in the fourth and fifth years. Depreciation allowances are moderate, ranging from 5 per cent on buildings to 15 per cent on plant and equipment and 25 per cent on other assets. There are no accelerated depreciation or investment allowances. However, depreciation allowances (and loss carry forward) are indexed on inflation, which is a sensible provision in a country with a history of relatively high inflation.

The Dominican Republic has a form of imputation system in which distributions to shareholders are taxed, but this tax can be credited against the underlying corporate tax within the current or following year. This appears to dilute the incentive value of exempting certain investments from corporate tax because it leaves an unusable credit arising from tax at the dividend level. In the past, the excess credit could be used against other income of the principal shareholder, although this possibility was removed in 2004. Obviously, transferability would be of little value to an investor with a single business (such as a new foreign investor). Free zone enterprises are exempt from corporate tax and it is understood that an administrative ruling exempts dividends paid by these enterprises from tax so that the overall tax-exempt status of zone investments is preserved.

A tax of 1 per cent on the book value of business assets was introduced from 2006. This can be credited against corporate income tax liability and may be waived if tax losses are recorded.

Personal income tax: Personal income is taxed at 15 per cent (beginning from an income of about $700 monthly), rising incrementally to 20 per cent for incomes of between $1000 and $1450 monthly and to 25 per cent for incomes of over $1450 monthly. The top marginal rate will apply in 2008, as it reduces in step with the corporate tax rate.

Capital gains tax: Capital gains, which are calculated on a price-indexed basis, are taxed at the corporate and top personal rates of 25 per cent. The imputation system applies when capital gains at the corporate rate level are distributed to shareholders.

Non-resident withholdings: Interest, fees and royalties paid abroad are taxed at 25 per cent. If interest is paid to a foreign financial institution the rate is 15 per cent. Dividends fall within the general withholding arrangements for dividends described above.

Double tax treaties: The Dominican Republic has only one treaty, with Canada. Under the treaty, withholding rates are reduced to 18 per cent. The Dominican Republic territorial system may reduce its perceived need to enter into tax treaties.

Value-added taxation: ITBIS applies at 16 per cent, having increased from 12 per cent in 2004 and 8 per cent in 2001. Exports are zero-rated. ITBIS excess-input value-added taxation can be credited against other taxes owed. Any further balance is refunded.

Selective consumption tax: At rates from 5 to 8 per cent of sales price this tax is applied to some goods and services deemed non-essential, including alcohol and tobacco products, electric goods, fuel, telecommunications and hotel rooms.

Import tariffs: These are applied in five bands of 0, 3, 8, 14 and 20 per cent although certain sensitive agricultural products have much higher rates.

Other indirect taxes: Taxes on property include a tax on real estate, including luxury housing, commercial and industrial land and buildings and vacant urban lots, and tax on real estate transfers of 3 per cent of value. Subscriptions to the capital of Dominican companies are taxed at 1 per cent of amount subscribed, excluding land subscribed in kind.

Fiscal incentives for investment in priority activities are summarised in box II.3 and box II.4. Overall, the fiscal regime (including the incentives) appears to have been supportive of the employment and diversification strategies of the Dominican Republic. Fiscal incentives have strongly favoured a shift towards manufacturing exports and the growth of tourism. The ability to deduct investment in developing free zone and tourism infrastructure from other business income is an especially noteworthy feature. It has helped to encourage local investors to move to new areas and provide infrastructure and facilities for manufacturing businesses and hotel operators, many of them foreign investors. It has been a useful partnership. It is understood that this form of incentive is being phased out.

In 2007, the Competitiveness and Industrial Innovation Law was adopted as a result of work on the National Competitiveness Plan. The Law contains new incentives for manufacturing (box II.4).

The business community's major complaint is the frequency and unpredictability of changes in specific tax measures. There is some justice in this complaint. It is difficult to find a single tax measure that has not changed its rate or base of application over the last five years.[44] In fairness to the current Government, it inherited a severe economic crisis. Following the collapse in 2003 of Baninter bank,[45] the Government's recovery measures included a standby arrangement, involving fiscal targets, with the International Monetary Fund.[46] The Government has also had to find alternative revenues to compensate for lower customs duties under the DR-CAFTA, which amount to revenue losses of 2.5 per cent of GDP. Nevertheless, some changes appear to be meaningless tinkering; for example, various restrictions on use of loss carry-forward introduced when the carry-forward period was increased to five years.

[44] For example: ITBIS has doubled since 2001; selective consumption excise rates have changed often; a tax on financial transactions was repealed in 2001, reintroduced in 2004, will be reduced from 2007 and repealed again in 2009.

[45] Central bank support to Baninter and Bancredito (another troubled bank) amounted to at least 13.5 per cent of GDP.

[46] The stand-by agreement of 2003 was superseded by a new stand-by agreement in 2005. In these arrangements the Dominican Republic agreed to reduce the public sector deficit from 6.7 per cent of GDP in 2004 to 1.8 per cent in 2006, a major undertaking.

Box II.3. Fiscal incentives for investment in the Dominican Republic

The Dominican Republic offers fiscal incentives to promote exports, tourism, local raw-materials processing and the development of border regions. New fiscal incentives have been proposed to encourage innovation, infrastructure development, renewable energy and foreign residence.

I. Free zones

Free zones began in 1960s as export-processing zones to promote exports and employment creation. The current legal basis of the zones is Law 8 of 1990, as amended. The free zones have extra-territorial customs status, and a special unit of the national customs administration handles clearances. Companies in the free zones must export at least 80 per cent of their output. Duty-paid sale of up to 20 per cent of output to the domestic market is permitted. More local sales can be made if the product is not manufactured domestically and if local inputs account for at least 25 per cent of value. Import duty is payable on local sales but excludes the value attributable to local inputs.

Free zone companies have wide-ranging fiscal exemptions, including from corporate income tax, import duties, ITBIS and property taxes for the first 15 years (20 years in the case of free zones in provinces on the Haitian border). Withholding taxes apply on services fees, royalties and interest paid to non-residents by export free-zone companies (see text for treatment of dividends). Suppliers from the domestic economy to zone enterprises are exempt from import duties on their raw materials.

Private free-zone developers are encouraged. They obtain the same fiscal incentives as free zone companies. Moreover, developers may deduct zone investment from their taxable income from other sources. At least 50 per cent of the investment can be deducted in this way. A 100-per-cent deduction of this kind is available for developing a free zone in a province on the Haitian border.

II. Tourism

Law 158 of 2001 provides incentives for investment in a wide range of tourist businesses, including hotels and resorts and complementary facilities such as conference centres, amusement parks, associated leisure and entertainment complexes, as well as infrastructure such as cruise ship ports and water supply and sanitation services.

The incentives (which apply for 10 years and cannot be changed) are corporate income tax exemption, relief from import duties and ITBIS on equipment and materials used in the construction and initial outfitting of facilities, and relief from tax on the capital of companies and on real estate holdings and transfers. Moreover, investors can deduct the investment cost from their other taxable income at the rate of 20 per cent per year for five years.

The incentives aim to encourage investment in areas of the country with unfulfilled tourism potential. In some areas, the full range of incentives applies. In more developed tourism areas, such as Puerto Plata, the incentives only apply for complementary facilities (i.e. excluding hotels and resorts). In two areas, only the relief on indirect taxes on constructing and equipping hotels applies. The incentives can extend to concessions entered into with the State, for example, for the construction of public infrastructure.

III. Non- zone exports

Exports generated outside free zones qualify for incentives under Act No. 84 of 1999. Imported inputs qualify for a temporary admission scheme for import duty and refunds of ITBIS and selective excise.

IV. Border development

Law 28 of 2001 promotes investment in the seven provinces near Haiti, which are deemed to be a special zone for border development. Sweeping incentives apply to any established or new business in this zone. All lawful businesses are eligible and export is not required. Incentives include exemption from all taxes of any kind as well as a 50-per-cent reduction on port and airport levies. Also, investors in the border special zones can deduct the investment from their taxable income from other sources. In 2005, the exemption from ITBIS was revoked and the selective excise tax re-established on alcohol and tobacco products (it is understood that these exemptions led to smuggling and tax evasion); however, the law was declared unconstitutional in 2007 and the incentives have been reinstated. The incentives apply for 20 years to existing projects and those established within the first five years of the scheme.

Each year thereafter, the term reduces by one year. Any new taxes introduced during this period will be halved for border-zone businesses.

V. Raw-materials processing

The Free Zone law of 1990 provides a special category of free zone to cater for raw-materials processing that must be located either near the raw-material source or a transportation facility. All the incentives of the principal law apply.

VI. Technological development

The principal fiscal incentive for technological development is to extend the free-zone incentive regime to enterprises operating in the Santo Domingo Cybernetic Park.

VII. Renewable energy

In 2007, a range of incentives on corporate and indirect taxes was introduced to encourage investment in renewable energy sources including solar, mini-hydro and bio fuels.

VIII. Foreign residents' scheme

In 2007, a scheme was created to encourage retired and wealthy foreigners to reside in the Dominican Republic through a low tax regime on personal requisites and reduced taxes on capital gains, property and inward investment remittances. The scheme also applies to Dominican citizens whose principal source of income is derived abroad.

Source: UNCTAD.

Does the current fiscal approach best serve the objectives, opportunities and constraints of the Dominican Republic for future?

The current approach has several limitations:

i. The free-zone incentives are designed to attract greater volumes of investment into export activities. Offering tax exemptions provides no fiscal scope to calibrate tax policy with a view to diversifying zone investments into higher-value-added activities or technological or cluster development, which is the main thrust of the National Plan for Systemic Competitiveness.[47] The tourism incentives are somewhat more targeted. They are designed both to attract more investment in less developed areas but also to encourage complementary attractions and quality supporting infrastructure in more developed tourist areas such as Puerto Plata. But they do not explicitly target goals such as encouraging a move towards more upmarket and higher employment-generating, tourism.

ii. The free-zone incentives give a corporate tax advantage to exports, which is an impermissible export subsidy under WTO rules.[48] The Dominican Republic has been covered in the transition period allowed to certain lower-income developing countries for the application of this rule. In 2001, a transition period was granted until 2007. Notwithstanding that deadline, the Dominican Republic was at serious risk of litigation by continuing to grant 15-year corporate tax holidays to zone companies. In 2007, Congress granted corporate tax holidays to apparel and footwear producers regardless of whether they are exported or sold domestically. This response maintains the Government's commitment to investors and avoids violation of the export subsidy rule, but it is a short-term response that sustains the Dominican Republic's existing industrial profile rather than directing incentives to future objectives.

[47] Except for incentives designed to encourage development of zones away from developed areas and especially in the Haitian border area.
[48] WTO Agreement on Subsidies and Countervailing Measures.

Box II.4. Recent tax initiatives to promote innovation and modernization

Under the 2007 Competitiveness and Industrial Innovation Law, Fomento Industrial has been converted into a new Centre for Development and Industrial Competitiveness (PROINDUSTRIA) with a wide remit to provide financial assistance and grant fiscal incentives to support the upgrading and diversification of manufacturing.

In particular, the Law offers incentives to support: logistics facilitation; exports; coordination between various special incentives regimes (such as free zones, industrial parks, etc.); the formation of clusters and industrial districts; and innovation and modernization. Details of the individual measures are reflected where pertinent throughout this report. The main tax initiatives contained in the Law given below.

Enterprises qualified by PROINDUSTRIA will be exempted from ITBIS on all imports of capital goods and raw materials that attract zero import duty. This exemption will also apply to the relevant imports of qualified enterprises whose products are affected by reduced tariff protection as a result of the DR-CAFTA.

For any local supplier of goods which, if imported, are exempt from import duty, ITBIS or selective consumption taxes under an incentive scheme (e.g. for free zones), their supplies will be similarly exempt. There is also a drawback scheme to reimburse qualified enterprises for indirect taxes on inputs used to produce exports.

Developers of industrial parks that foster the development of chains and clusters are exempt from construction permit fees, import duties and ITBIS and other taxes on construction materials, fittings and equipment. Local suppliers are accorded equivalent exemption on their supplies to park developers.

For a five-year period, special tax measures are introduced for qualified enterprises to promote manufacturing modernization. These include double-accelerated depreciation on fixed assets, 50-per-cent tax credit arising from the acquisition of new equipment and technology and removal of the 1-per-cent tax on assets for such equipment. Capital goods for all industries affected by lower tariff protection arising from the DR-CAFTA may qualify.

Qualified enterprises may also be exempted from withholding tax on payments abroad for technology developmental services.

PROINDUSTRIA may, in conjunction with the tax authorities, develop additional tax incentives to support innovation in specified industries, especially "green" activities.

Source: UNCTAD.

It was recently decided that the transition phase will again be extended, to 2013 with a final phase-out by 2015. This gives a further window to rethink the free zone's fiscal regime, which has been a cornerstone of Dominican Republic industrial policy for three decades. In recent years, there have been sharp increases in indirect taxes such as ITBIS, selective consumption tax and taxes on property and capital. Most are designed to apply to consumption, not to business, but inevitably business costs and competitiveness are affected to some extent: those that fall directly on business transactions include taxes on property transfer and taxes on capital contribution, needlessly affecting investment costs. The non-zero rating of value-added tax on consumables in hotels and resorts (which are effectively providing export services) is another case.

iii. In recent years, there have been sharp increases in indirect taxes such as ITBIS, selective consumption tax and taxes on property and capital. Most are designed to apply to consumption, not to business, but inevitably business costs and competitiveness are affected to some extent: those that fall directly on business transactions include taxes on property transfer and taxes on capital contribution, needlessly affecting investment costs. The non-zero rating of value-added tax on consumables in hotels and resorts (which are effectively providing export services) is another case.

iv. Public revenue-raising does not appear to be generating sufficient resources to support the growth of public investment in infrastructure and education needed to make a decisive leap to become a middle-income developing country. Yet, indirect tax increases have reached their limits owing to the competitiveness implications referred to above, and because their regressive impact on income equality and poverty. This suggests that some growth in income-related taxes is needed.

v. Some incentives simply relieve taxes that have little justification in any event – in particular taxes on capital. These contribute minor amounts to total revenue collection and could be eliminated entirely.

Recommendations

Six main recommendations on reorienting tax policy to better serve the investment and development objectives of the Dominican Republic have been formulated as a result of this review:

i. Reduce the general rate of corporate income tax to between 15 and 20 per cent and apply it to all business, including those in free zone and tourism development and operations.[49] Remove across-the-board exemptions from these taxes in favour of more targeted incentives as recommended below.[50] At the same time, consider reversing the imputation system to a more conventional arrangement by treating tax at the corporate level as a credit against taxation of dividends. This avoids issues of excess credit and permits closer targeting of tax incentives to the kinds of investment that are to be encouraged.[51]

ii. Eliminate the taxes on investment including the tax on assets and the tax on capital contributions and reduce the tax on property transfers: these taxes add to investment costs with no regard to the return on investment. In any event, several incentive packages already contain exemptions from these taxes.

iii. Reduce withholding taxes on payments abroad for services, royalties and interest to 10 per cent. Present withholdings of 30 per cent on gross charges are unusually high and discourage utilization of best practice services and technology from abroad. The provision in the new 2007 law (box II.4) is just a partial solution, as it applies only to enterprises qualified by PROINDUSTRIA; there should be a general reduction

iv. Develop specific fiscal measures to promote national goals. Such measures could include:

   a. *In manufacturing:* Allow accelerated depreciation of manufacturing plants and equipment in all industries and an investment allowance of, for example, 50 per cent for investment in a broad range of higher technology industries that the Dominican Republic wishes to promote. The 2007 Act (see box II.4) goes a long way towards this approach by providing a five-year window for accelerated depreciation and tax credits for capital expenditure by qualifying enterprises. These are very generous provisions, however, that apply to a very wide range of industries. They are not sufficiently targeted at technology-intensive industries (for example, banana production qualifies).[52]

[49] Many countries such as Chile, Croatia, Ecuador, Ireland, Latvia, Mauritius and Singapore have over the past 10 years adopted similar corporate income tax rates ranging from 10 to 20 per cent and a more targeted incentives approach. See KPMG's Corporate Tax Rate Survey 2006.

[50] Very few exceptions to this approach can be justified. They include e-enabled services and free port logistics, which are highly incentivised export services in the region and beyond. The other exception should be strategic projects. These exceptions are covered in (v) and (vi). On the other hand, economic rents in the extractive industries justify a separate and higher structure of taxation.

[51] Transitional arrangements would need to be made for enterprises that currently enjoy incentives. Existing fiscal incentives may run for 10, 15 or even 20 years.

[52] These provisions are concerned with modernisation and adjustment to DR-CAFTA of less-competitive domestic industry serving the local market and traditional commodities rather than technological upgrading of Dominican Republic industry as a whole (including that based in zones).

b. *In tourism:* Allow accelerated depreciation on buildings by way of an additional first-year allowance of, for example, 20 per cent to improve investor cash flow (equipment and furnishings already obtain rapid depreciation, which encourages regular refurbishment).[53] Offer investment allowances to encourage the more specific outcomes sought through national policy; for example, apply an investment allowance of say 25 per cent on all fixed assets but only to hotels being built or upgraded to 5 star rating. More generally, in tourism there is a case for rebalancing direct and indirect tax to improve competitiveness: i.e. corporate income tax should apply but there is a case for reconsidering the full application of customs duties and ITBIS to consumables, since tourism is effectively an export service.

c. *To support border development:* Provide tax allowances on labour and capital costs rather than corporate tax exemption so as to target the outcomes of border development more precisely.

d. *To support research and development:* Implement a research and development tax incentive such as that proposed in the draft bill on industrial competitiveness, but extend it to all qualifying expenditure in all industries, including services and the primary industry.[54]

e. Remove the restrictions on utilisation of loss carry-forward so that the above measures are effective in giving relief at an early stage.

f. Continue to permit investment in selected infrastructure to qualify for tax relief on unrelated income of the investor. This has been a powerful device in encouraging private investment in the development of zone and tourism facilities and is now being deployed to encourage private investment in border areas. It could be extended to private investment in selected education and infrastructure facilities that are vital in underpinning the competitiveness of the Dominican Republic.

v. Continue to provide corporate tax exemptions, but limit them to 10 years for e-enabled export services. This is necessary to match regional competitors, bearing in mind that services' exports are not subject to the WTO subsidies' discipline. Regional logistics (Freeport-type services) are also traditionally free of corporate tax.

vi. Establish a strategic projects window through which special fiscal and other incentive arrangements can be made for large developmental investments of strategic significance. Such projects should have manifestly high spillovers that would justify special treatment.

The thrust of these recommendations is to provide a markedly attractive corporate tax regime for all business with the flexibility to apply specific measures to support outcomes that are more clearly in line with national competitiveness goals. The major implication is that there would no longer be a distinction between zone companies and domestic companies for tax purposes. All investors should have a competitive tax regime. Reinvestment and upgrading in line with national goals would be particularly encouraged whether or not the investment is within zones. Exporters, whether in the zones or not, should continue to have relief from import duty and zero rating of ITBIS on operating and capital inputs. Of course, such a change would have implications for overall budget revenue collection. But this is unlikely to be too severe, as

[53] E.g. Mauritius depreciation rates contemplate refurbishment every four years.

[54] The R&D tax incentive proposal has been removed from the bill which became the Law on Competitiveness and Industrial Innovation. The concept was a 30 per cent tax allowance capped at 50 per cent of taxable income with unused allowances carried forward for 10 years. The proposed rate of allowance was not especially generous to investors (among OECD members, allowances range from 13.5 per cent to 125 per cent). More technical work would have been needed to define eligible expenditure (for example, payments for R&D contracted to universities should be encouraged) and local content rules. This concept should be revived.

some reductions would be set against fewer exemptions. Also, corporate income taxes represent a minor component of total public revenue (about 10 per cent).

These recommendations run counter to the proposal of the National Plan for Systemic Competitiveness to focus new incentives only on domestic industry hardest hit by the DR-CAFTA. Nevertheless, the proposed regime would mean lower taxation for this group of businesses, but not exclusively, to facilitate those that invest in modernization.

In addition, the proposal of Congress to fully exempt all textiles, garments and footwear producers from taxation would be withdrawn if these recommendations are followed. Special treatment for these industries as a group should change in favour of supporting sustainable investment, for example, in vertically integrated (full package) apparel manufacture.

3. Foreign exchange arrangements

The Dominican Republic maintained some foreign exchange controls until 2002. For decades, its system was characterized by multiple exchange rates based on an official rate and parallel market rates. By 1991, only strategic enterprises (including those in coffee, sugar, cocoa, minerals and telecommunications) were required to surrender foreign currency proceeds, which substantially liberalized the system. These conversions were performed and free zone exporters' requirements for currency to meet local costs were met at the official rate. By 1995, domestic banks were allowed to lend in foreign currency, by which time the economy had become highly dollarized. In the main, convertibility was maintained within the system of multiple exchange rates. Capital account controls were maintained until 2002, although responsibility for approving foreign equity and technology transfer arrangements was delegated to the predecessor of CEI-RD in 1995.

The Monetary and Financial Act of 2002 fully liberalized the foreign exchange market. It established the principle of free convertibility of the Dominican peso and empowered economic agents to perform transactions in foreign currency under conditions freely agreed upon (art. 28). Adherence to article VIII of the Agreement of the International Monetary Fund provided further guarantees for currency convertibility for current account transactions and banned multiple currency practices. However, it was only in January 2004 that the official exchange rate and the inter-bank rate were unified.

The exchange rate is freely determined in the inter-bank foreign exchange market and the Central Bank uses the weighted average of the market exchange rate to set the rate for its own operations. Importers can obtain foreign currency directly from commercial banks and exchange agents.

4. Labour

The labour regime in the Dominican Republic is based on the Labour Code of 1992 and the rules for its application. Overall, the regime is quite liberal and industrial relations are excellent.

The main internationally recognized labour standards are guaranteed in domestic legislation and the country has ratified 36 International Labour Organisation (ILO) conventions, including the eight core ones.

Employers are required to provide their employees with social security, Christmas salary, paid vacation and participation in the profits of the company.[55] A payroll levy of 1 per cent to finance the National Institute for Technical-Vocational Training (INFOTEP) also applies. It entitles companies to make use of the training services of the institute (see the following section for more details). It is estimated that the social security contribution represents 13.72 per cent of employees' wages, which is generally comparable to or lower than

[55] Equivalent to 10 per cent of the net annual profits or benefits to all of the indefinite-time workers according to the accrued employment period (from 0 to 1 year: monthly salary x number of months / 12 x 1.5; from one to three years: equivalent to 45 days of ordinary salary; more than 3 years: equivalent to 60 days of ordinary salary).

the contribution rates of competitors in CAFTA (table II.2). There is a minimum wage that varies according to the type of business and the business's capital, as shown in table II.3 below. The rates are revised at least once every two years by the National Salaries Committee of the Ministry of Labour, a tripartite panel representing the Government, employers and employees.

Table II.2. Social security contributions

Country	Employer rate as % of employees' wages
Dominican Republic	13.72
Costa Rica	26
El Salvador	9.5
Guatemala	12.67
Honduras	7 to 8.5
Nicaragua	15

Source: IBFD, Country Surveys 2007.

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Table II.3. Monthly minimum wage by sector[a]

Businesses in general (by capital)	
$125,000 and above	$200
$62,000 to $125,000	$136
Up to $62,000	$121
Hotels, casinos and restaurants (by capital)	
$15,500 and above	$155
$6,200 to 15,500	$110
Up to $6,200	$100
Other sectors	
Free zones	$138
Private security firms	$168
Non-profit organizations	$ 80

Source: Ministry of Labour.
Notes: [a] Dollar conversion of corresponding value in Dominican pesos at 16 April 2007.

The economic rationale behind the positive relation between the minimum wage and the capital of a company is questionable, since it might represent a disincentive for a company to grow. In general, the levels of the minimum wages do not appear to impose rigidities on the labour market, as reflected in employer views. Moreover, in real terms, minimum wages in the Dominican Republic are lower than in most other Latin American countries, with the exception of Mexico (IDB and World Bank, 2006).

General labour law applies in the free zones, as is made clear in free zone law. For example, rights to unionize are identical, although most reports suggest a low rate of union membership and low incidence of collective bargaining. The Labour Code makes some special provisions for wages in the zones. The minimum wage is lower (see table II.3 above) and profit-sharing is not compulsory. In practice, wages in the free zones are often not only higher than the zone's minimum wage but also higher than in the economy as a whole.

The procedures for hiring and employment termination set out in the Labour Code are straightforward, except in relation to severance payment. Employment contracts can be written or verbal (the latter prevail in practice), for an indefinite, seasonal or limited period of time according to the nature of the work.

Both parties have appropriate avenues to terminate employment and recourse in the case of unjustified conduct. An employee can be dismissed for just cause on grounds set out in the Labour Code, provided that the employee and the Ministry of Labour are notified as to the reasons. Just cause dismissal does not generate liabilities for the employer. Termination generally requires an employer to make a severance payment ("auxilio de cesantía) and to give prior notice (or pay in lieu of notice) at the rates set out in table II.4 below, even when initiated by the employee. Investors believe that the prospect of collecting a substantial lump sum upon severance encourages employees to switch jobs and could discourage employers in investing in employee training.[56]

The accumulation of such benefits can provide employees with strong incentives to leave. A preferable approach would be to allow employees to access these funds on a periodic basis, subject to conditions set by law, and thus remove the job-hopping incentive of large fund accumulations. Moreover, these funds could be deposited in banks and remove the obligation of employers to pay interest. A similar system was installed in the Bolivarian Republic of Venezuela about 10 years ago.

Table II.4. Severance and notice compensation in the Dominican Republic

Seniority	Severance (days of salary)	Prior notice (days of salary)
3–6 months	6	7
6–12 months	13	14
1–5 years	21 per year worked	28
5 or more years	23 per year worked	28

Source: Labour Code of 1992.

Industrial relations represent a strong comparative advantage of the Dominican investment climate. The right to strike and the right of the employer to lock out workers are guaranteed by the Constitution and by the Labour Code, though strikes in essential services (such as utilities, communications and hospitals) are illegal (Labour Code, arts. 403 and 404). In practice, strikes are very uncommon and the Ministry of Labour reports that the lack of statistics on days lost due to strikes reflects the non-occurrence of strikes in the country.

The low incidence of strikes may be due in part to the efficiency of the labour dispute solution mechanism, but also to the fact that only about 10 per cent of the labour force is unionized (United States Trade Representative, 2006, and the International Confederation of Free Trade Unions, 2002) and the stringent requirements for calling a strike. According to the code, a union must seek to solve the dispute via mediation before calling for a strike. Even if mediation fails, a strike is possible only with the support of an absolute majority of the company workers (unionized or not), and after the intention to strike is notified (at least 10 days before the strike date) to the Ministry of Labour (art. 407).

5. Labour skills and the employment and residence of non-citizens

The legal framework for obtaining work and residence permits in the Dominican Republic is confusing and in need of revision. It has, however, traditionally been operated in a liberal fashion. Nevertheless, while interviews with investors confirmed its liberal operation, they also highlighted dissatisfaction with the skills level of workers coming out of the Dominican education system. This is a major problem for a country

[56] This issue featured in an investors' roundtable event held in Santo Domingo in March 2007 to launch the fact-finding mission for this review.

wishing to move into more sophisticated manufacturing and services. Addressing the skills issue will require a boost to the traditionally low levels of education spending in the Dominican Republic. With relatively little change, however, the regime for the entry of foreign labour can also be revised in such a way as to contribute more actively to the diffusion of skills in the country.

The entry of foreign workers in the Dominican Republic is regulated by the General Migration Law of 2004 (Law 285-04). The Secretary of State of Internal Affairs and Police – through the General Directorate of Migration – is responsible for applying the law. All non-citizen employees and the self-employed are required to have residence permits. For permit purposes, foreign entrants are divided in three categories:

i. Permanent residents: Immigrants with professional qualifications "necessary for the country's development" or not available locally and foreign investors that carry out activities "of interest to the country" for an investment amount to be fixed by regulation. After 10 years of permanent residency, a definitive residence permit is granted.[57]

ii. Temporary residents: Professionals, technicians and specialized personnel contracted by private or public institutions; businessmen, investors, traders, managerial staff of national and international companies established in the country to carry out business, etc. Temporary residents have the right to residence of up to one year, renewable annually.

iii. Non-residents: Businessmen visiting the country for business reasons or to evaluate investment opportunities; also includes temporary (seasonal) workers, defined as any foreign national who enters to work for a fixed period of time. Non-residents have the right to stay up to 60 days (up to one year with the possibility of extension for temporary workers).

The Dominican Republic does not have a work permit system separate to the above immigration controls. Thus permanent and temporary residents once admitted can work or do business throughout the authorized period of residence.

However, certain company-level restrictions apply in the Labour Code. At least 80 per cent of the total workers of any company must be Dominican nationals (the provision does not apply to staff in managerial positions or to technical workers). Employment of technical workers is dependant, however, upon satisfaction of a labour market test, i.e. if there are no unemployed Dominican citizens who could perform the same functions, as judged by the Labour Department. There are no mandatory localization or training obligations, aside from a monthly contribution to INFOTEP (see later in this section). Overall, these provisions are quite liberal by international standards and their application and administration do not appear to pose particular difficulties to investors.

One provision in the Labour Code of 1992, however, requires employers to offer equal economic rights and conditions to Dominicans who replace foreigners in managerial positions (art. 144). This provision, meant to ensure non-discrimination in the treatment of local employees with regard to foreign employees, is problematic. As emerged in UNCTAD interviews with representatives of the private sector, the provision tends to make it less interesting to train local managers to replace higher cost expatriate staff.

The design and coordination of migration policy is the responsibility of the National Migration Council. This is a body created by Law 285-04, composed of representatives of eight ministries and other Government agencies, including internal affairs, labour, tourism, foreign affairs and representatives of the Parliament. The Migration Law empowers the Council to set the maximum amount of seasonal workers to be allowed entry within the various economic sectors according to the labour market needs, in a consultative process with representatives of the productive sectors and with unions (Art. 49). Such sectors cannot include tourism

[57] The permanent residency permit is valid for one year upon its first emission; it is then renewed for four-year periods.

and the free zones, with the exception of border zones. It appears, however, that no such amounts have been set to date.

Prior to the residence schemes described in the 2004 Law, a special "Residence by investment" programme was introduced in 2001 (Decree 950-01) as a regulation to the 1939 Migration Law. This still appears to be operational, notwithstanding that the new Migration Law fails to make any reference to it. The programme allows investors with an investment of at least $200,000,[58] as well as their employees (managers and technicians), families and economic dependants. to obtain an accelerated residence permit valid one year and renewable. The decree created an ad hoc foreign investment window within the General Directorate of Migration to receive and process applications for residence by investment within a maximum delay of 45 days.

This special programme also extends to designated investment projects, i.e. investments considered by the executive power as high priority for their contribution to the socio-economic development of the country. For these investments, the minimum invested amount can be lower than $200,000. While the 2001 Decree is explicit in categorizing investments in the free zones as designated investment projects, it does not specify what minimum investment amount applies to such investments.

A guideline issued by CEI-RD indicates that the scheme also applies to companies entering sectors that benefit from special incentives regimes (Export Incentives Law 84-99, Free Trade Zones Law 8-90, Tourism Incentives Law 158-01 and Border Zones Law 28-01). For such investors, the minimum investment threshold to qualify for the scheme does not apply. Moreover, Law 171-07 extends the special residence scheme to retirees and wealthy Dominicans and foreigners who derive the principal source of their income from abroad.

Other issues add to the confusion in the legal framework for immigration. First, the 2004 Migration Law does not indicate which previous laws are abrogated by its introduction. It only prescribes that all contrary laws are abrogated, thereby raising queries on what provisions of the 1939 Migration Law are still in force. Second, while the new migration law appears functional regarding the entry of foreign investors and workers, no regulation of application has entered into force, notwithstanding the requirement set in the law itself that this had to be passed within 180 days of the law's promulgation. Therefore, many articles of the law cannot be implemented, including the ones related to the permanent residency described above, since no minimum investment amount has been fixed by regulation nor has any guideline been provided on what investments can be considered "of interest to the country".

It is therefore recommended that legal clarity be brought to the system. If revising the 2004 Migration Act itself might prove difficult, the regulation of application of the new law will have to determine what laws and decrees on migration are retained, including the "Residence by Investment" programme. It should also provide clear guidance on the eligibility conditions to obtain permanent residency. One revision considered necessary is that of the duration of temporary residence for employees. This is too short to allow employers to bring those skills not available in loco into the Dominican Republic and should be extended to three years.

The migration regime could also be utilized more efficiently to help disseminate skills within the country. Investors interviewed during the course of the review process highlighted that the Dominican workforce is highly receptive to training and extremely flexible. However, they also stressed that the national educational system fails to provide them with a set of entry-level skills that are adequate for business. This is not surprising, as the levels of spending on education in the country have historically been low (1.9 per cent of GDP in 2005, 2.3 per cent in 2000 compared to a regional average of above 6 per cent of GDP; Lizardo, 2005). A number of analyses have highlighted that the educational system produces a workforce that has an insufficient number of secondary and tertiary graduates (McArdke, 2005, and Ripiani, 2006).

[58] The definition of investment is quite liberal and includes investment in capital, in kind, in "financial instruments" or technology.

The above might help explaining why the percentage of firms that carry out training in the Dominican Republic is high compared to the regional average (85 per cent in the Dominican Republic against 67 per cent in the Caribbean and 75 per cent in the Latin America and Caribbean region; World Bank, 1999). Many of these firms resort to the services of INFOTEP, the country's post-schooling vocational and technical training institute, which offers a large spectrum of training services both within its regional and local training centres and directly inside the companies (box II.5).

Box II.5. INFOTEP, an innovative capacity-building institution

INFOTEP is an autonomous non-profit institution created under Law 116 of 1980, in charge of technical vocational training and capacity-building for the Dominican workforce. Its primary objective consists of "providing technical professional training to workers in all areas of the economy and levels of employment, in order to organize training programmes, mastery, specialization and retraining of working adults, and provide didactic and financial support to those public or private entities, either permanent or temporary, that train employees".

INFOTEP has 574 registered training centres in the country, offering professional training courses, including several institutes of technical vocational education.

INFOTEP also delivers on-site courses and training programmes for companies, which consist of organizing courses at the workplace. Today, over 40 per cent of its training is carried out in companies directly, and the institute can organize and customize training according to company requirements. Moreover, INFOTEP uses an enterprise service consultant office to design and implement productivity measurement and improvement programmes using a methodology developed by the International Labour Office (ILO). INFOTEP also coordinates training programmes with the free zones and tourism associations.

Both local companies and foreign affiliates make use of INFOTEP services. Over its 27 years of operation, INFOTEP has offered training to around 100,000 Dominicans annually and customer feedback is very positive. All companies interviewed in the course of this review indicated their appreciation for the agency. Its current training capacity has reached 180,000 persons per year.

All the agency's activities are funded through an original scheme whereby all private employers in the Dominican Republic pay to INFOTEP a 1 per cent payroll levy and their employees pay 0.5 per cent of their bonuses. The new Competitiveness and Industrial Innovation Law (Law 392-07) calls for cooperation between PROINDUSTRIA and INFOTEP in promoting industrial innovation. Following the law, INFOTEP is to employ 50 per cent of the resources it receives from the manufacturing industry in the financing of capacity-building programmes for the sector.

The board of INFOTEP reflects a strong tripartite structure, including representatives of the Government, business and labour, and is presided over by the Secretary of State of Labour. The strong private sector involvement in its decisions ensures that INFOTEP's supply reflects the needs of the market. This is recognized by a recent comparative evaluation of public company and worker training schemes in the Caribbean carried out by the World Bank and ILO, which concluded that the Dominican Republic "appears to have achieved a better mix of stakeholder involvement, linkages with industry and diversification of providers than is true elsewhere".

Source: UNCTAD interviews, ILO and World Bank (2006).

The following changes to the labour and migration regimes are recommended to help attract and disseminate skills more effectively:

1. Repeal the "Residence by Investment" programme and revise the permanent residence provisions of the Migration Law to adopt a full-fledged business talent scheme to attract talented business

people. Such schemes focus on the business experience of applicants, rather than the amounts to be invested, but typically set minimum investment thresholds to ensure the bona fides of the proponents. Australia sets its threshold at 250,000 Australian dollars (US$205,000) and the Canadian scheme sets it at 300,000 Canadian dollars (US$270,000). On this basis, a threshold in the $100,000–200,000 range could be considered for the Dominican Republic (noting that the current threshold for the "Residence by Investment" programme is US$200,000). Families should have permanent residence rights. This mirrors the provisions of the current permanent residence scheme. All residence rights should be conditional on monitoring that the investment has been completely realized within a period of two years from approval.

2. Extend the validity of temporary visas to a minimum of three years or the total duration of the employee's contract, if shorter.

3. Implement a skills dissemination scheme, whereby companies hiring workers with foreign skills increase their contribution to INFOTEP from a payroll levy of 1 per cent to a levy of 2 per cent.

4. Remove the Labour Code's provision requiring that, when a Dominican citizen replaces a foreigner in a managerial position, the same salary, rights and work conditions apply, as it removes an incentive to train and localize management.

6. Land

Access to land and the administration of land titles are among the key regulatory issues affecting both foreign and domestic investment. FDI incentives and investment promotion efforts have indeed limited impact if investors cannot secure property titles which are safe, bankable and easy to transfer. The long neglected land system in the Dominican Republic has traditionally been problematic for business. A bold reform of the entire land system was started in 1998, which, if completed, would significantly contribute to improving the investment environment.

The Torrens system of State registry of land was established by the Land Registries Law of 1947 (No. 1542). Accordingly, a title certificate produced by the relevant registry is sufficient to prove title to land and to transfer a property. The certificate also records easements and the creation and discharge of mortgages. Against the principles of the Torrens system, however, the same law also introduced an instrument that allowed transferring a portion of a property without undertaking a new cadastral survey or reflecting the transfer on the original title certificate. Such subtitles are called "Constancia Anotada" or "Carta Constancia".

The use of Carta Constancia was limited in the law to a maximum of three partial transfers (i.e. sub-divisions) for each title certificate. However, over time, registries abused these instruments which proliferated to the point that currently about 46 per cent of land property rights in the country are based on Cartas Constancia and, according to current transactions data, this figure has been rising (IDB, 2006). In effect, the Cartas Constancias undermined the principles of the Torrens system and have become a major element of confusion and delay in the Dominican Republic land property rights system, though not the only one. The imprecision of property boundaries and the lack of control and safekeeping of documents in registries have led to disputes and over-reliance on the judiciary rather than administrative land procedures to achieve secure land transactions.

These problems have been recognized for some time. In 1998, the Inter-American Development Bank (IDB) and the Supreme Court of Justice launched a $40 million programme to modernize the real property adjudication and registration system. Its ambitious objectives included restructuring the legal and institutional framework of the land jurisdiction, modernizing its physical and information technology infrastructure and strengthening its human resources. Among the main achievements of the programme, which ended in 2006, are:

- The approval of the new Land Registry Law (Law 108 of 2005) and new regulations for land tribunals, titling and registry authorities which greatly simplify title management and processing of title registration, and establishes deadlines for administrative response;
- A shift from judicial to administrative procedures. Around 85 per cent of all cases of administrative nature which were handled by the land tribunals and contributed to their congestion will be now resolved via administrative procedures.
- The establishment of a title registry insurance fund.
- The digital geo-referenced mapping of the entire territory of the Dominican Republic.
- The digitalization of all paper documents (title certificates, plans, judgements etc.) in 8 of the 23 land registries. The public can now access and search the registries' databases online.
- The introduction of automated (completely paperless) registries in San Cristóbal and Santo Domingo. According to the Land Commissioner's office, this resulted in a reduction of the time necessary to register a title transaction in Santo Domingo from 90 to 25 days.

Significantly, the new Land Registry Law prohibited the issuance of new Cartas Constancia (art. 129).[59] This was complemented by the entry into force, in April 2007, of a regulation from the Supreme Court of Justice on the "Control and Reduction of Constancias Anotadas" (No. 517 of 2007). The regulation allows transferring the property rights under a Carta Constancia without the need to proceed to a full cadastral survey and the issuance of a new title for one last time and provided the Carta Constancia was issued before the regulation's entry into force. Upon transfer, a new Carta Constancia that specifies its non-transferability is to be issued. This solution has the merit of reducing the pressure on the land registries which would have resulted from an immediate transition to a proper title-based system.

The reforms implemented under the IDB programme represent a clear improvement and modernization of the land system in the Dominican Republic. However, the programme needs to continue and extend to the registries not covered in the first phase. In 2006, the IDB estimated that investments of at least another $30 million would be required to complete the programme. Because of the restrictions on external debt faced by the country, the Government only agreed in March 2007 to a $10 million programme focused on two main objectives: (1) to extend the digitalization process to the most active registries of the country and (2) to support the control and reduction of the Constancias Anotadas, both in terms of designing the relevant regulations and supporting their execution.[60]

The improvements in land administration procedures are probably the most impressive administrative reform to improve the investment climate and cut administration that has been carried out in the last decade.[61] Of course, such improvements have been expensive for the Government, but the cost reflects the need to address a systemic problem that had been allowed to grow. The benefits should be seen in reduced costs and delays and greater security for investors and individuals alike. It is recommended that the Government should:

- Digitalize records and move to paperless systems as fast as budgetary constraints allow and continue until fully accomplished.

[59] The law specifies that the rule does not apply to condominiums.

[60] This includes strengthening the capacities of judges, title registrars, land surveyors, technical lawyers etc., but also assisting the local registries in responding to the additional demand generated by the entry into force of the new regulations. For example, the program includes the survey and geo-referencing of those lands for which more than 500 Constancias Anotadas have been issued.

[61] This has yet to be reflected in the Dominican Republic's international rankings in respect to ease of property registration. The World Bank's Doing Business Report shows no improvement in the time or cost of title registration and still ranks the Dominican Republic as second worst among CAFTA countries in its 2007 report. The Government strongly disputes this assessment and its own research suggests that it takes 43 days on average to register title rather than the 107 days indicated in the World Bank review.

- Introduce a system of corporate titles to handle situations of condominium-type ownership of residential and commercial properties. Under a corporate-title system, a single land title is maintained in the Land Registry by a corporate entity and individual ownership rights (e.g. of each apartment) and common rights are recognized by individual shares in the corporate entity. Transfers of ownership are made by a transfer of shares not by a transfer of underlying title. This approach would greatly reduce pressure on the Land Registry. This approach is used successfully in other countries, for example, New Zealand.

7. Environment

The modern and comprehensive Environmental Framework Law was introduced in 2000 (Law 64-00). The law brought several agencies with environmental and natural resource management responsibilities under the newly established Secretariat of Environment and Natural Resources (SEMARN)[62] and introduced new tools for environmental management and protection, including environmental impact evaluation studies and environmental reports. Implementation of the new environmental regime and standards, however, has been partial and uneven, due primarily to limited technical capacity, lack of institutional coordination and governance issues.

Law 64-00 requires any company interested in executing projects that may have an impact on the environment to obtain environmental licences and permits. These are designated and regulated by that law and by the regulations introduced by SEMARN resolution No. 05/2002. In line with international best practice, the law and regulation differentiate between projects requiring environmental impact analysis on the basis of the size and potential environmental impact. Four categories of projects are listed:

Category A: Projects with a complex environmental impact, of large size (regional or national) and a strategic economic or social nature. These require the investor to file an environmental licence request based on an exhaustive environmental impact study.

Category B: Projects with significant environmental impact, but limited to the area of the project and their zone of direct influence. These require the investor to file an environmental permit request based on an environmental impact statement and, if required, additional environmental studies.

Category C: Projects with limited potential environmental impact that may be easily identified and corrected. These require the investor to file an environmental permit request based only on an environmental impact statement.

Excluded: Projects not expressly mentioned by Law 64-00 or by the regulations, which do not require any environmental permit.

Despite the quality of the legislation introduced and a substantive body of regulations, its implementation has proven partial and uneven. A number of studies have been conducted in recent years to analyse the reasons for this.[63] Their conclusions, consistent with the findings of UNCTAD's field research for the purposes of this review, point to a number of issues:

a. SEMARN has insufficient human and financial resources to enforce the environmental regulations. It has many talented and dedicated employees, but needs to improve the competencies of technical core staff;

[62] The agencies include the National Directorate of Parks, the National Institute of Forestry Resources, the Water Resource Institute, the National Institute of Environmental Protection and the environmental units of the ministries of agriculture, public works and the national planning office.

[63] See: Foundation for Environmental Security & Sustainability and USAID, *Environmental Security in the Dominican Republic: Promise or Peril?*, May 2005. Also see: World Bank, *Environmental Priorities and Strategic Options, Country Environmental Analysis, Dominican Republic*, by the Caribbean Country Management Unit, LCR Region, June 2004.

b. The various agencies with environmental responsibilities that were incorporated into SEMARN have not been effectively integrated. They still operate from separate locations and in some cases retain the developer outlook of their previous ministries;[64]

c. There is inadequate coordination with other ministries and stakeholders in policy formulation and the approval process. SEMARN has not established its leadership and authority in the environmental permit process;

d. Political considerations have often driven environmental decisions and corruption continues to be a concern in obtaining or fast-tracking environmental approvals.

Most of the above issues affect the environmental impact assessment process, the responsibility of the Environmental Management Sub-Secretariat. The human and financial resources of the environmental evaluation unit, for instance, are very limited (only 18 evaluation officers and funds are not sufficient to cover on-site inspections). Low salaries result in high turnover and environmental permits and licences are often delayed because of problems in coordinating with the four other sub-secretariats.

The permit process, however, is also slowed down by a lack of technical expertise outside SEMARN. The consultants that produce the environmental impact studies and statements on behalf of the investors only need to be registered with SEMARN and often lack the required expertise. This results in a high rate of rejection of environmental impact assessments (SEMARN sources indicate that 25 to 35 per cent of all studies received are sent back because they are not complete) and significant delays in the permit process.

Environmental regulation is an essential aspect of business regulation because of the tendency for private decisions to have wide economic and social implications. It is also a complex process because various stakeholders can have markedly divergent interests in resources such as water. Yet investors should also be allowed to plan investments within an overall resource management framework that provides clarity as to what is likely to be permissible and fair and prompt assessments of project licence and permit applications: the Dominican Republic seems not to provide either. An important longer-term objective should be to prepare a resource management framework and detail its implications for land use, zoning and building regulations at provincial and municipal level. Meanwhile, some practical steps should be taken to improve the environmental permit process itself:

- Service charges for the permit process should be set on a cost-recovery basis so as to ensure that the relevant sub-directorate is adequately funded.

- A professional certification procedure among environmental consultants is being encouraged by SEMARN, with the support of the World Bank, to reduce the workload and backlogs caused by poor submissions. This could be further encouraged by offering a discount on permit applications prepared by certified consultants. If a voluntary process does not work, a mandatory certification process should be introduced.

8. Governance issues

Ease of complying with Government regulations, the effectiveness and predictability of the judiciary, the enforceability of contracts and the incidence of corruption all affect investors' confidence in committing their capital and effort to a country. In the Dominican Republic, none of these issues are insuperable obstacles for foreign investors. In some respects, the Dominican Republic performs well, but overall it has a mixed record and cannot present itself as clearly the best in the region. This matters because the fundamentals of foreign investment attraction for the Dominican Republic are quite similar to those of other regional countries. Thus, there could be a surprisingly big pay-off in having the best reputation in all these areas.

[64] The sub-secretariats of SEMARN are currently scattered around at least five different buildings in Santo Domingo.

Ease of regulatory compliance

Investors interviewed by UNCTAD had remarkably few complaints about Government regulations.[65] An independent comparative survey of investors' perceptions of the extent of red tape and the burden of Government regulations on business corroborates this finding. Table II.5 presents the results of this survey. The Dominican Republic is ranked first in the region. With respect to red tape, in particular, the Dominican Republic also ranks above most developing and even some developed economies, ranking 18 on a total of 117 countries in the sample.

Table II.5. Bureaucratic red tape and burden of Government regulation, 2006

	*Extent of bureaucratic red tape**			*Burden of Government regulation***		
	Score	*Overall rank (out of 117)*	*Rank over selected countries*	*Score*	*Overall rank (out of 117)*	*Rank over selected countries*
Dominican Republic	***2.4***	***18***	***1***	***1.6***	***41***	***1***
Costa Rica	3.1	79	6	2.6	87	6
El Salvador	2.7	40	3	3.1	46	2
Guatemala	2.7	51	4	2.6	91	8
Honduras	3.4	103	8	2.8	70	5
Jamaica	2.5	23	2	2.6	89	7
Nicaragua	3.3	101	7	2.9	61	4
Panama	3.0	72	5	2.9	56	3

Source: WEF, Global Competitiveness Report, 2005–2006.
Notes: * Time the firm's senior manager spend dealing/negotiating with Government officials (as per cent of work time: 1 = 0 per cent; 2 = 1–10 per cent; 3 =11–20 per cent; 8 = 81–100 per cent).
** Complying with administrative requirements (permits, regulations, reporting) issued by the Government in the country is 1 = burdensome, 7 = not burdensome.

This result does not necessarily mean that all regulations are well-designed or administered to a high standard, as reported elsewhere in this chapter. The foreign investment and technology transfer registration requirements are a case in point of regulations that can be safely ignored by business (and should be abolished). Lack of diligence and petty corruption also play a part in easing business dealings with Government. Nevertheless, a key factor in this good performance is good accessibility of the bureaucracy to investors and the absence of anti-business attitudes among civil servants. The free zones have also done their part in delivering more streamlined regulatory services to their clients.

Customs operations

Customs is another area of good progress in the interface between business and the public administration. The modernization of the Dominican Republic's customs has been taking place in line with the progressive liberalization of its trade regime.[66]

The trade agreements with CACM and CARICOM in 1998 and the Caribbean Basin Trade Partnership Act in 2000 (box I.1 in chapter I) all stressed the need to modernize customs procedures. Thus, the process

[65] Apart from the changeability of tax regulations (see section 2 above on taxation).
[66] Before 2001, the Dominican custom authorities used a highly discretionary valuation of imported goods method based on a list of minimum import prices. That was incompatible with the requirements of Art. VII of GATT 1994, which determines the transaction value as the primary basis for customs value. Decree 667- 01 established a new Regulation of Customs Valuation compliant with the provisions of the WTO, except for a list of items like milk, rice, cement, plastics and ceramics for which the minimum prices were kept for an additional period of 2 years. See: WTO, *Trade Policy Review Dominican Republic,* 2002.

of computerization of the customs administration started in 2001, with the aim to automate and improve clearance operations. A specialized report in 2004 found, however, that inefficiencies persisted and the Dominican Customs (DGA from the Spanish "Dirección General de Aduanas") needed to address problems related to the professional skills of its officers (DGA, 2004).

The DR-CAFTA committed the Dominican Republic to improving the efficiency of customs procedures. An essential step in this direction was the adoption in 2006 of Law 226, which ensured the autonomy of the customs agency and established a clearance period of 48 hours to be reduced to 24 hours in the second year following the treaty's implementation. Other measures undertaken by the DGA to improve custom services were: joining in 2006 the Container Security Initiative, in collaboration with the United States Customs Agency; the progressive installation of new screening equipment; further automatization of the customs (financed by the Bank of the Republic of Korea and in cooperation with the Korean Customs Agency);[67] and the introduction in July 2007 of a unique electronic document for imports and exports, the result of cooperation between the DGA and CEI-RD.

Table II.6. Customs clearance time and cost in the Dominican Republic and selected comparators

Economy	Customs clearance and technical control for export (days)	Customs clearance and technical control for export ($ per container)	Total documents for export (number)	Total time for export (days)	Total cost to export ($ per container)
Dominican Republic	**2**	**75**	**7**	**17**	**770**
Costa Rica	4	200	7	36	660
El Salvador	2	75	7	22	515
Guatemala	3	153	9	20	1,785
Honduras	4	n.a.	6	28	500
Nicaragua	6	85	5	36	1,020
Jamaica	1	250	6	19	1,750
Panama	1	140	9	16	920

Economy	Customs clearance and technical control for import (days)	Customs clearance and technical control for import ($ per container)	Total documents for import (number)	Total time for import (days)	Total cost to import ($ per container)
Dominican Republic	**2**	**150**	**11**	**17**	**990**
Costa Rica	5	200	13	42	660
El Salvador	3	90	12	30	515
Guatemala	2	110	7	33	1,985
Honduras	2	50	15	39	670
Nicaragua	8	198	5	38	1,020
Jamaica	3	150	7	20	1,350
Panama	1	140	9	13	920

Source: World Bank, World Development Indicators 2007.

[67] The exchange of experiences and cooperation between the Korean and the Dominican agencies started already in October 2006, however the automation project did not start until March 2007. The period of implementation of the project is of 18 months.

Finally, the recently enacted Competitiveness and Industrial Innovation Law (Law 392-07), introduces a fast-track customs regime for companies classified by the customs authority as low risk. In order to implement the new regime, the DGA will issue a special industrial code that will apply to low-risk companies (arts. 18, 21 and 44 of Law 392-07).

These initiatives have resulted in a major improvement of customs operations, as reflected in the current clearance period statistics. When compared to other DR-CAFTA countries and other competitors in the Caribbean, the Dominican Republic is second to Panama not only in terms of clearance time, but also total time required for export/import procedures. On a cost basis, the Dominican Republic is less competitive, but still below the regional average (table II.6).

Despite the progress achieved, some outstanding problems continue to affect the efficiency of customs operations. Arbitrary application of custom codes by custom agents continues[68] and there is still recourse to irregular payments to obtain export and import clearances.[69]

Enforcement of contracts

One area of particular concern to foreign investors is the time and cost necessary to enforce contracts. It is evident from the table below that the Dominican Republic still has much room for improvement before it can credibly claim to offer a model investment climate. The unnecessary lengthiness of the contract enforcement process is neither the only nor the primary issue in this respect. A number of investors interviewed by UNCTAD mentioned trying to avoid recourse to the court system altogether and attempting to solve disputes extrajudicially, since the courts are considered not only too slow, but also frequently unreliable. Progress is being made, however, in improving the probity and competence of the judicial process, including in the handling of commercial matters.

Table II.7. Contract enforcement, 2005-2006

	2005				*2006*			
	Rank	*Procedures (number)*	*Time (days)*	*Cost (% of debt)*	*Rank*	*Procedures (number)*	*Time (days)*	*Cost (% of debt)*
Dominican Republic	118	29	580	35.0	108	29	460	35.0
Costa Rica	139	34	615	41.2	114	34	615	18.7
El Salvador	113	41	626	15.0	116	41	626	15.0
Guatemala	149	36	1 459	26.5	149	36	1 459	26.5
Honduras	121	36	480	30.4	124	36	480	30.4
Jamaica	45	18	415	27.8	46	18	415	27.8
Nicaragua	46	20	486	21.8	49	20	486	21.8
Panama	164	45	686	50.0	164	45	686	50.0

Source: WB, Doing Business Database.
Notes: Procedures = number of procedures from the moment the plaintiff files a lawsuit in court until the moment of payment.
Time = time in calendar days to resolve the dispute.
Cost = court fees and attorney fees, where the use of attorneys is mandatory or common, expressed as a percentage of the debt value.

[68] See: National Plan of Systemic Competitiveness, 2007.
[69] An international ranking of the recourse to irregular payments for obtaining export and import permits shows that the Dominican Republic is still the worst performer in DR-CAFTA. See: WEF, Global Competitiveness Report, 2005-2006.

Other governance issues and ongoing initiatives

Customs and the courts system are not the only areas affected by governance problems. Public procurement of goods and services are other primary sources of corruption (Anti-Corruption Department, 2004). None of these issues are major obstacles to FDI, but anachronistic anti-corruption provisions and inadequate sanctions based on the Napoleonic Criminal Code of 1844, together with weak enforcement, permit high levels of administrative corruption which are not compatible with a first-in-class investment climate.

This is reflected in the country's international corruption perceptions rankings. The Dominican Republic scored a very poor 2.8 in Transparency International's Corruption Perceptions Index 2006 (where 10 = no corruption and 0 = highly corrupt), sharing rank of 99 (of 163) with Mali, Mongolia, Mozambique and Ukraine. Compared with other DR-CAFTA regional members, the Dominican Republic is ranked as slightly less corrupt than Nicaragua and Honduras, but significantly more corrupt than Costa Rica and El Salvador.

The Dominican authorities are attempting to tackle the corruption problem and have initiated a number of reforms, the most important of which is the programme of modernization of the judicial system. The reform started in 1994 with a change in the Constitution intended to separate the judiciary from the executive power.[70] By 1997, all 16 Supreme Court Judges had been replaced. Since then, the Supreme Court has led reform to re-establish confidence in the judicial system. The first step was the "replacement or retraining" exercise: 500 new judges were appointed for the various courts in the country, in a process which entailed a major skills evaluation and capacity-building exercise. [71]

Other achievements were the introduction in 1998 of the Judicial Career Law (Law 327-98), which introduced a competitive examination for the appointment of judges and an annual competence-based evaluation system for their career promotion. The law also set-up the National Judicial School, organized with the assistance of the United States Agency for International Development (USAID). The school has so far trained more than 70 per cent of the judiciary's 575 judges in modern judicial procedures. In addition, more than 700 justice-sector employees were trained in administrative management processes and procedures. The school has now been regionally recognized as one of the most effective and credible schools in Latin America (USAID, 2006).

CEI-RD has recently launched an initiative to make the judiciary aware of the particular issues and concerns of foreign investors.

In parallel to the reform of the judiciary, new tools and initiatives to fight corruption and improve governance were introduced over the last decade. Among these are:

1. In 1996, the Dominican Republic ratified the Inter-American Convention against Corruption.

2. In 1997, an Anti-Corruption Department was created as a unit within the Office of the Attorney General (Decree No. 322-97), specialized in addressing all aspects of administrative corruption in the country.

[70] Until 1994, all judges in all tribunals (from the Supreme Court to the Peace Judges) were elected by the 30 members of the Senate, and their term coincided with constitutional term of the "sponsoring" senator. In 1994, the Constitution was amended to attribute the power to nominate the Supreme Court Judges to the National Magistrates' Council (Consejo Nacional de la Magistratura), an organ representing the Judiciary, the Executive and the Legislative powers. The Supreme Court, in turn, appoints all other judges in the country. Also, the appointment of judges for indefinite terms was introduced to strengthen their independence.

[71] More than 2,500 people among existing judges and new candidates were evaluated. Many judges were replaced and many underwent training. For information on the process, see the Supreme Court website, including: *La Experiencia de La Republica Dominicana en Llevar a Cabo una Reforma Judicial Exitosa*, an address by the President of the Supreme Court, Dr. Jorge A. Subero Isa, on the occasion of the International Seminar on the Reform of Justice Administration, Peru, 21-22 August 2004.

3. In 1998, Decree No. 149-98 created Public Ethics Commissions within each ministry and public administration agency to serve as promoters of transparency and channels of communication with the Anti-Corruption Department on governance issues.

4. In 2001, the Civil Service Ethics Code (Law 120-01) codified standards of conduct for the performance of the public service.

5. In 2005, Decree No. 101-05 created a national commission on ethics and the fight against corruption, composed of Government, business, civil society and religious bodies' representatives, to advise the executive on governance issues, develop an action plan against corruption and advocate anti-corruption legislation.

6. In 2006, the Public Procurement Law (Law 340-06) was passed and, under Decree No. 287-06, all public officials are required to present sworn statements of their assets to the Anti-Corruption Department.

7. Finally, in July 2007, Decree No. 324-07 reformed the Anti-Corruption Department, now called the National Directorate for the Prosecution of Administrative Corruption, giving it more enforcement powers (see below).

The effects of the recent anti-corruption initiatives, however, risk having little impact unless a reform of the Criminal Code is done. As mentioned above, the Dominican Criminal Code of 1844 is anachronistic both in respect to the definition of corrupt conduct in public administration and in the sanctioning of administrative corruption. To date, a number of sectoral anti-corruption provisions have been inserted in specific laws, such as the Bribery in Trade and Investment Law (Law 448-06), which addresses administrative corruption and establishes new criminal sanctions in matters related to trade and investment, or the Public Procurement and Other Public Works Law (Law 340-06), which introduces sanctions for civil servants guilty of corruption in respect to public biddings and contracts (art. 65). Encouragingly, a bill to reform the Criminal Code, which would cover the entire spectrum of corruption issues had been presented to Parliament and was being considered at the time of writing.

Implementation of the anti-corruption reforms and regulations will be key to achieving progress in this area. In this respect, the recent reform of the Anti-Corruption Department is a very welcome development. The old department was not sufficiently empowered to deliver effectively on its mandate. On the enforcement side, its powers were limited to investigation, not prosecution. It was also poorly staffed and could not count on full police cooperation. So, while the department had received a total of 436 corruption cases and studied 198, only 39 of those were referred to the Prosecutor General Office for prosecution (Anti-Corruption Department, 2004). It appears that no person received a prison sentence as a result of the Department's work.

Decree No. 324-07 transformed the Anti-Corruption Department into the National Directorate for the Prosecution of Administrative Corruption. The new authority has been granted greater prosecution powers than its predecessor and is now in charge of undertaking all necessary legal actions against public corruption before the domestic courts. The directorate is also now under the direct responsibility of the Deputy Attorney General of the Dominican Republic, who will act as national director and coordinate all members of the Attorney General's Office and other public agencies in the investigation and prosecution of administrative corruption.[72] Moreover, the decree orders the Ministry of Internal Affairs, the police, the Defence Ministry and all other Government agencies to collaborate with the directorate.

[72] The old Anti-Corruption Department was only under the obligation to coordinate its actions with all other relevant agencies.

While the above reforms will take time to produce the radical change in attitude which is needed to effectively curb corruption, encouraging signs of progress should maintain the momentum for change. According to Transparency International's Global Corruption Barometer survey for 2006, 54 per cent of the respondents consider that the Government's efforts in the fight against corruption are effective or very effective. This is a significant achievement, if one considers that only Hong Kong and Singapore score a higher percentage in a sample of 63 developed and developing countries.

9. Protection of intellectual property

As a result of a comprehensive reform of the intellectual-property protection regime which started with the introduction of new intellectual property legislation in 2000 and continued into 2007 with the implementation of the DR-CAFTA's intellectual-property-related obligations, the Dominican Republic has adopted one of the most advanced legal frameworks for intellectual property protection in Latin America, at least on paper. This includes the Industrial Property Act of 2000 (No. 20), the Copyright Law of 2000 (Law 65) and Law 424 of 2006 implementing DR-CAFTA's intellectual property obligations. The country is also a signatory to or member of the following treaties and organizations:

- The Convention Establishing the World Intellectual Property Organization (WIPO)
- The World Trade Organization (WTO), including the Agreement on Trade-Related Aspects of Intellectual Property (TRIPs)
- The Paris Convention for the Protection of Industrial Property
- The Berne Convention for the Protection of Literary and Artistic Works
- The Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods
- The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
- The WIPO Copyright Treaty (since January 2006)
- The WIPO Performances and Phonograms Treaty (since January 2006)
- The Patent Cooperation Treaty (since May 2007)
- The International Union for the Protection of New Varieties of Plants (since June 2007)
- The Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (since July 2007).

The National Office for Industrial Property established in 2000 under the Industrial Property Law, is the main agency responsible for granting and enforcing property rights and trademarks. Patents can be obtained to protect inventions, utility models and industrial design. The National Office for Industrial Property is also in charge of registering all types of trademarks and enforcing them. Patents are granted for a period of 20 years and trademarks for a period of 10 years, renewable. In the case of unreasonable delays in granting patents, a compensatory extension of up to three years is offered. No local patents were issued, however, during the period 2002–2005, although up to 200 applications were received each year. The reason, according to representatives of the National Office for Industrial Property, was a lack of human resources qualified to review the applications. Since then, six new technical staff members have been hired and the National Office for Industrial Property hopes this will improve the patent examination process.

High standards of copyright protection are guaranteed under Law 65 of 2000,[73] which replaced a 1986 law to ensure compliance with the TRIPs agreement. Protection is granted to any original intellectual creation, whether literary, artistic, or scientific, that may be fixed, transmitted or copied by any existing or future printing, reproduction or divulgation. A long, non-exclusive list of protected works, including

[73] Authors have lifelong moral rights on their works. Commercial rights are also lifelong. After the author's death, they transfer to the immediate heirs for a period of 50 years (arts. 17 - 29 of Law 65-2000).

musical compositions and software, is contained in the law. The Government agency in charge of protecting copyright is the National Office of Copyright.

Violations of industrial property and copyright can lead to administrative, civil and criminal sanctions. However, foreign businesses in intellectual-property-sensitive industries, such as pharmaceuticals and the media industry, have struggled against widespread piracy and intellectual property infringements due to weak enforcement (International Intellectual Property Alliance, 2007).

The estimated trade loss to industry resulting from piracy of sound recordings and music in the Dominican Republic was $10.8 million in 2005. The estimated loss resulting from business software piracy amounted to another $10 million (International Intellectual Property Alliance, 2007). The two industries lament lack of coordination between the National Office of Copyright, the police (both of which can undertake anti-piracy actions) and the Attorney General's Office, and a general lack of resources and technical expertise to conduct effective inspections involving software piracy.

The implementation of DR-CAFTA obligations is expected to significantly improve the enforcement of intellectual property rights. The intellectual property provisions of DR-CAFTA are more extensive than those stemming from the TRIPS agreement. They provide more comprehensive terms of protection, stronger enforcement measures (for example, end user piracy is now criminalized) and specific coverage of electronic and digital media. However, enforcement requires capacity and will and, unless there are more determined efforts to effectively implement the intellectual property protection framework, the expectations concerning the impact of the new intellectual property provisions risk being frustrated.

In a side letter to the trade agreement, the Dominican Government also committed to taking measures to halt television broadcast piracy and provide quarterly reports to the Government of the United States. The latter has since noted improved coordination among the various Government agencies and better intellectual-property enforcement (United States Commercial Service, 2007).

10. Technology transfer requirements

The Dominican Republic retains a traditional legal regime on the regulation of the entry and acquisition of foreign know-how and technology, although it is actively exploring more modern approaches.

As discussed earlier in this chapter, the Foreign Investment Law of 1995 requires all technology transfer and technical service contracts to be approved by CEI-RD in order to repatriate payments resulting from such contracts. Decree 214-04, regulating the application of the Foreign Investment Law, mandates CEI-RD to register all licensing agreements for the transfer of technology once it has determined that the required conditions are satisfied. The registration application must be accompanied by a copy of the relevant contracts and documentary evidence that the transferor is the owner of the technology. More documentation is required from investors intending to remit royalty payments abroad.[74]

In reality, the technology transfer registration procedure is not applied and CEI-RD has never developed a framework of staff qualified to do so. It is timely to consider whether the current legal regime should formally lapse, and other approaches should considered as means of protecting and enhancing the Dominican interests in technological advancement. Broadly, there are two approaches to achieving these objectives. As set out in box II.6, these can be divided into the regulatory approach and the targeted approach.

[74] This includes a copy of the form for sale of foreign currency duly stamped by the bank selling the currency; evidence of compliance with the tax obligations of the transferor in the Dominican Republic; a communication from the conceding corporation containing the calculations made for the determination of the amount of royalty paid and evidence that the foreign grantor of the technology received the royalty payment being documented.

Box II.6. Evolution in the approach to technology transfer regulation

Regulation of technology transfer issues has evolved significantly over the last three decades and the regulatory approach typical of the 1970s has been largely abandoned in favour of a more targeted approach. The characteristics of both are described below.

The Regulatory Approach: The underlying rationale is to control the potentially adverse economic consequences of technology transfers for the weaker party, which include both the licensee and the developing host country. Hence, the major features of such provisions include prior screening of transfers of technology from abroad and the outright prohibition of certain terms in technology transfer transactions that are deemed to be detrimental to development goals. This approach was adopted in the domestic laws and policies of numerous countries during the 1970s, following a model well-established in Japan and the Republic of Korea and later abandoned. It is most fully exemplified at the regional level by the Andean Community's policy on technology imports as contained in decision No. 24 of 31 December 1970, the *Common Regulations Governing Foreign Capital Movement, Trade Marks, Patents, Licenses and Royalties*, which has also since been superseded.

The Targeted Approach: In this approach, the technology transfer transaction is not necessarily seen as one between unequal parties. Rather, the private property character of the technology is stressed and a transnational corporation that (in most of these cases) owns the technology is seen as being free to transfer it by the means it sees fit. However, given the potential inequality of market power between the owner and recipient of the technology, this freedom for a transnational corporation is subject to certain obligations not to abuse its market power, whether in the case of an external transfer to a licensee or in the course of internal transfers within the network of transnational corporations. Nevertheless, the willingness to prohibit specific terms in technology transfer transactions that is characteristic of the regulatory approach is abandoned. The targeted approach relies rather on adequate ex-post monitoring by those agencies that are most competent to address the various issues arising from technology transfer agreements. Hence, competition rules and agencies control market abuses, taxation authorities ensure correct reporting of taxable income, while training and transfer of technology is addressed by formulating general policies on these matters. These include incentive regimes by both the transnational corporations' home and host countries, so as to encourage technology transfer to developing countries.

Thus over time, the emphasis has shifted away from the regulation of technology transfer transactions in the interests of the weaker party – normally the recipient in the developing country – towards a more market-based model, under which increased technology transfer to developing countries is intended to be encouraged through the proper operation of the market, coupled with targeted regulation, to counter potentially detrimental effects and an appropriate incentive structure to support diffusion.

Source: UNCTAD.

A number of countries such as Brazil and Kenya still retain a screening – or regulatory – approach to transfer of technology. A more modern approach (the targeted approach), which does not rely on prior approval of technology transfer agreements, has emerged and is currently adopted by the majority of developing countries.

It is recommended that the Dominican Republic formally remove the legal requirement for prior approval of technology transfer agreements and adopt the targeted approach. Indeed, the move to a more modern approach is well under way. As regards protection, in 2006 transfer pricing rules were included in the Tax Code and these will improve the ability of the tax authorities to ensure that overpayment for technology is not a means of underreporting Dominican taxable income. The very high withholding rates imposed on fees and royalties paid abroad have, in any event, acted as a barrier to transfer pricing. Earlier in this chapter, it was proposed that these withholding rates be sharply reduced in order not to discourage the adoption of foreign know-how and technology. Provided that this change is made in conjunction with a lowering of the corporate tax rate, this effect will remain. Also, the proposed competition law should give the Government legal powers to ensure that technology-related agreements are not anticompetitive.

As regards enhancement, the National Plan for Systemic Competitiveness has proposed many measures to support the acquisition and development of technology in the Dominican Republic. These include the establishment of a national council for innovation to oversee the establishment of a "national system for innovation and technological development".[75] An early output of this approach is the 2007 Competitiveness and Industrial Innovation Law, which proposes many specific measures, including tax incentives (section 2).

11. Competition policy

Since the early 1990s, the Dominican Republic has carried out many pro-market reforms. But, until very recently, reforms to foster competition had not been among them. It cannot be assumed that reducing regulatory barriers to FDI necessarily involves a reduction in private barriers to entry and anticompetitive behaviour of established firms. Nor can it be assumed that the entry of transnational corporations will necessarily create more market contestability and lead to lower prices, improved quality or increased choice. Pro-competition measures need to be put in place (UNCTAD, 1997). For this reason, the introduction of a competition law in January 2008 is a very welcome development.

Until this landmark law, the Dominican Republic had no legal capacity to protect consumer interests or prevent the emergence of private monopolies in the economy, apart from the Constitutional Law, article 8, which forbids all monopolies except for those created by law in the interests of the State. The lack of a pro-competitive regulatory framework has been permissive of anticompetitive practices, such as abuse of dominance and monopolization in certain sectors of the economy, which hindered the entry of potential investors to the market and caused inefficiency in the allocation of resources.[76] The decision to adopt a competition law will protect the competition process and further encourage healthy private-sector participation in the economy, thereby contributing to economic growth and development.

The Dominican economy has a concentrated market with high costs of entry (Agramonte, 2007). Barriers to entry impede the participation of more competitive enterprises in the market or the emergence of new enterprises, as a result of which employment possibilities are reduced. Furthermore, consumers are deprived of access to goods and services at lower prices, while enterprises have less incentive to innovate or improve efficiency.

Comments made by investors interviewed by UNCTAD support these reports of uncompetitive practices in particular reference to transport and logistics. Competition is also not forcefully pursued in granting concessions and licences in key regulated sectors (section 12).

Taking into consideration the above factors, the objectives of economic growth and development pursued by the Dominican Republic cannot be fully achieved in the presence of anticompetitive practices and barriers to entry. Thus, there is strong need for the effective implementation of the new competition law and policy by an efficient and capable competition agency.

The Code of Market Regulation drafted in 1999 was a first attempt to encourage fair competition. It initially covered the following areas: protection of consumers; protection of intellectual property; unfair

[75] Decree 190-07.

[76] In practice, there are significant barriers to entry and anticompetitive practices in many areas of business and in one instance there is a long-standing anti-competitive Law. Law 173-66 makes it difficult to terminate contracts with registered Dominican Republic distributors by imposing onerous charges and fees.

trade practices; competition; and the creation of an independent regulatory body for the administration of all these measures. The draft code encountered resistance in the National Congress, as a result of the great responsibilities given to the regulatory body. Separate laws were created for intellectual property; royalties; unfair trade practices including antidumping measures and for the protection of consumers in their relation with suppliers as well as some specific regulatory bodies (National Competitiveness Council, 2005). Yet, a specific law on competition was not adopted until the entry into force in January 2008 of the Competition Law (Law 42-08).

Compared to initial drafts, the law is a somewhat softened version and lacks the full complement of provisions that would be found in a model law.[77] But it is an important first step towards creating a competition authority (the National Competition Commission) with independent powers to promote and guarantee effective competition. The law forbids and penalizes the abuse of dominant position, unfair competition and horizontal agreements. It does not explicitly address important matters such as: mergers and acquisitions (initially included in the Code of Market Regulation); vertical agreements between firms; the relationship between competition rules and their administration in the regulated sectors where investment is through licences and concessions.

The enforcement of the new law is an essential step for the development of a more competitive business environment in the Dominican Republic. It should go without saying that the creation of an independent, professionally staffed and adequately funded national competition agency is required, in order to administer the law.

In addition, important implementing guidelines will need to be placed in writing. These should include:

- Implementing guidelines on vertical agreements, including the conditions for exemptions
- A precise definition of abuse of dominant position, including the minimum market-share threshold to be considered
- Working mechanisms for coordination between the National Competition Commission and other regulatory bodies on the different proceedings.

In addition, the following legislative amendments to the competition law are proposed for future consideration: expansion of the scope of the competition law to cover the control of mergers and acquisitions, including the conditions for notification, examination and authorization thereof.

UNCTAD will be providing technical assistance to the Dominican Republic so that the country can formulate implementation guidelines and institute the competition agency.[78]

As has become evident in this chapter, the Dominican Republic has an unfortunate record of not effectively implementing important investment-related legislation. In the case of a competition regime, it is vital that institutional establishment and the development of key regulations are given the high priority they deserve.

12. Selected sectoral regulations

a. Telecommunications

Telecommunications services have always been privately operated and there has only recently been a regulatory system with the explicit mandate to promote competition.

[77] For example, the UNCTAD Model Law on Competition, which has been developed with extensive inputs from country experiences. Available at: http://www.unctad.org/en/docs/tdrbpconf5d7.en.pdf.

[78] In August 2006, the Government of the Dominican Republic requested UNCTAD's technical assistance in the establishment of the new competition agency. UNCTAD will support the Republic in setting up the Competition Commission, in selecting and training its staff, as well as in advising on the necessary regulations.

Fixed line services were long dominated by CODETEL (owned by Verizon of the United States and its predecessors) until the entry in the early 1990s of Tri-Com and All American. The new entrants offered international calling but were hampered by high interconnection rates to the local network charged by CODETEL. Meanwhile, provision of local services was stifled by low regulated tariffs. In 1995, mandatory interconnection charges were imposed and tariffs were rebalanced. Landline connections increased 50 per cent in the ensuing five years.

Eventually, a modern regulatory framework was introduced in 1998 by the new General Telecommunications Law. This law explicitly pursues competitive solutions through open entry, competitive bidding for commercial spectrum allocation and allowing consumer choice of long-distance and international service providers independently of the local network. Prices are to be set by competition and the regulator is only to intervene if there is inadequate competition or if the parties cannot agree on matters such as interconnection charges. The law establishes a regulator, INDOTEL, an autonomous body that is funded by a charge on telecommunications revenues. The World Bank has assisted in preparing important technical regulations and in the organisational development of INDOTEL.

The telecommunications infrastructure of the Dominican Republic is regarded as one of the most modern in the Caribbean and Latin America and often features in marketing material aimed at investors. International connectivity is provided by three submarine cables, mobile telephony has expanded rapidly,[79] including some 3G services, and there is extensive fibre-optic cabling. Some issues remain:

- Landline telecommunications coverage (10 per cent in 2006) remains low for a middle-income developing country. The Universal Services Fund is addressing the legacy of underprovided local landline services through financing from an earmarked levy on telecommunications revenues, and will subsidize, on a competitive basis, services in remote areas to be provided by commercial operators.
- As a consequence of poor landline coverage, Internet access remains low (4 per cent) despite having tripling since 2001. Less than half of customers with Internet access have broadband and many businesses still rely on dial-up. The initiative of the Universal Services Fund to improve services in remote areas, in addition to the availability of technologies such as Wi-Max and 3G, serve as a basis for addressing this deficiency. INDOTEL has commissioned a study of the infrastructure needs to improve broadband access.
- International call costs have fallen, but, surprisingly, local call costs are high and may have increased in the last few years over and above the effects of increases in selective taxes on telecommunications (table I.13). This is despite the range of choice available especially in mobile telephony and raises the issue of whether there are genuinely competitive outcomes in the industry.

The independence of INDOTEL has been called into question by the acquisition in 2006 of Verizon Dominicana by America Móvil. The acquisition was conducted through a sale of offshore holding interests, which avoided capital gains tax in the Dominican Republic. It is reported that INDOTEL blocked its approval of change of corporate control of the licensee to support the Government's mission to collect capital gains tax. The issue was only resolved after high-level political negotiation of a settlement payment. Subsequently, the tax law of the Dominican Republic was quickly amended to extend its reach to acquisitions of Dominican Republic interests via offshore transactions.

b. Electricity

Ten years ago, electricity services were irregular, costly and reached very few people for a middle-income developing country. Much change in the industry has occurred since then, including the introduction of FDI, but service quality and coverage have hardly improved for this most basic of services.[80]

[79] The total number of mobile subscribers rose from 1.27m in 2001 to 4.61m in 2006. Source: INDOTEL.

[80] See chapter I. Only 67 per cent of the Dominican Republic population has electricity supply compared with 88 per cent in the region. Source: World Bank (2006), Country Economic Memorandum.

Until 1999, the industry was run by the State-owned utility CDE.[81] CDE was formed in 1955 to take over private power utilities that had been nationalized. Energy policy was the responsibility of the National Energy Commission of the Ministry of Industry and Commerce.

From the mid-1990s, CDE began to purchase power from independent power-generation projects, which, by the end of the decade, accounted for 50 per cent of total supply. During the 1990s, there were unsuccessful attempts to reform the sector. In 1999, CDE was partially privatized under a 1997 umbrella law for public enterprise reform.[82] Foreign investors acquired 50 per cent ownership of its three regional distribution companies and the remainder of the shares were transferred to a State holding entity, the CDEEE. Two thermal-generation companies, Haina and Itabo, were divested in a similar 50/50 manner (table I.6). Successor companies of CDE were left with hydro-generation assets (accounting for about 3 per cent of total capacity), the transmission grid and responsibility for electrification of poor and rural areas.

This substantial industry restructuring preceded the development of full governing law and independent regulatory institutions.[83] This occurred with the 2001 Electricity Law and, a year later, its implementing regulations. The key regulatory principles of the law are:

- Strict vertical separation of ownership of generation, transmission and distribution. (The only exceptions are that distributors may self-generate up 15 per cent of their requirements and generators may directly supply large users, described as deregulated customers,[84] at negotiated rates).
- Promotion of competition in generation, but not in transmission or distribution (thus wholesale prices are to be market-determined, but transmission tolls and retail prices are to be regulated).
- Private investment in generation, to be invited by way of 40-year renewable concessions, open equally to national and foreign investors. Hydro-generation and transmission are reserved for State-owned enterprises.
- Long-term power sales of generators, to be done by competitive bidding and to account for no more than 80 per cent of total system sales.
- The Superintendence of Electricity (the licensing, concession-granting and regulatory body), to have independent status and funding. The National Energy Commission (the policy body), to have separate legal status under political direction.

The Dominican Republic has made a reasonable attempt to develop a regulatory framework which can attract private investment into the sector, under conditions that promote competitive outcomes. However, these good intentions have been undermined and the industry is in crisis. Consumers are beset by power blackouts and power, when available, is expensive. At the same time, private investors have been extremely disappointed in the performance of their investments. In some cases, private investors have withdrawn, while the Dominican Republic is currently facing two major international arbitration cases related to foreign investment in a distribution company. Two of the three distribution companies are now back in full public ownership.

The origins of the problem are a long-standing culture of non-payment for electricity by consumers, including many business users. Experienced foreign investors in distribution companies were unable to overcome this culture of non-payment and, in retrospect, were naive or guilty of excessive confidence to

[81] Corporación Dominicana de Electricidad.
[82] General Law for the Reform of Government Enterprises (141-97).
[83] As a stopgap measure a Superintendency of Electricity was established in 1998 in the Ministry of Industry and Commerce.
[84] The 2007 Law on Competitiveness and Industrial Modernisation deems free zones and industrial parks to also have unregulated customer status.

believe that they could.[85] Ultimately, they reduced supply and – in turn – their demand from the generators (who by some reports may now have 30–60 per cent) excess capacity and resulting financial difficulties.[86] The Government developed an expensive subsidy programme, costing over $500 million, to maintain power supply: in part to relieve power costs arising from rising fuel prices, but also to subsidize the low-cost provision of power to poor areas. This subsidy contributed to the Government's financial difficulties at a time when it was coping with a banking crisis.

There is now widespread agreement that strong political backing must be given to tackling theft of power and that a less expensive and better-targeted approach is needed if subsidies to poor consumers are to continue. In 2007, Congress passed a law criminalizing the theft of power. Adequate enforcement of this law will be a vital first step towards re-establishing a viable industry that provides reliable power at economical cost.

It will take some years to restore the confidence of mainstream foreign investors in the electricity market. Meanwhile, it is likely that new-generation investment will only be undertaken if power purchase agreements have strong Government guarantees, given the risks faced by distribution companies. The Dominican Republic may be moving to a de facto single-buyer model, at least for the medium term. This may, in any event, be a better model for the Dominican Republic's small market (Adam Smith International, 2006). However, the single buyer should not be CDEEE, a role that it filled under existing independent power producers' contracts when the distributors were privatized. CDEEE now controls two distributors, hydro-generation and the grid and there is too much potential for conflict of interest. Greater independence in grid ownership should also be considered. Despite the setbacks, the framework for a competitive electricity sector should not be eroded.

c. Airports

Airport operations are governed by the civil aviation law, which was comprehensively modernized in December 2006. Overall responsibility for civil aviation is vested in the Dominican Civil Aviation Institute (IDAC). IDAC powers include the licensing of airports.

Any party, Government or private, may be licensed to develop and operate an airport, and there is no restriction on FDI. IDAC is required to ensure that airports are operated safely, securely and with good-quality facilities. It is not explicitly required to ensure that there is competition in the provision of airport facilities. Rather, the law permits competition by not imposing barriers to entry to technically qualified applicants (a similar approach is typical in commercial banking).

The AERODOM consortium received the concessions for six of the nine public airports in the Dominican Republic under a 20-year build-operate-transfer scheme in 1999. The term was later extended to 30 years. All six airports are international airports and handle 65 per cent of total air passenger traffic. The consortium consists of a local construction and tourism companies and other investors, while a 7.75 per cent equity stake is held by a commercial subsidiary of the Vancouver International Airport Authority (which provides airport management services).

It is reported that the concession contract obliged AERODOM to invest in airport rehabilitation and development: $203 million in the first two years and $208 in the next two years. The initial investment commitment was only half met, although the contract provided for reduced investment if the consortium was unable to obtain finance. In 2004, AERODOM obtained loans from the International Finance Corporation and Export Development Canada; however, it has also been reported that the Government has agreed to

[85] Resumption of government ownership of two distribution companies did not stem the problem. By 2005, distribution losses had risen to nearly 40 per cent and Dominican Republic had moved from 7th worse in the world in 2002 to 4th worse on this indicator (Adam Smith International, 2006).
[86] Thus blackouts are sometimes referred to as "financial blackouts" because they are not caused by a lack of capacity.

co-finance one of the concession projects, at El Catey (Samana). More recently, private investors have built airports to service their tourism interests in both Punta Cana and Romana. The Club-Med financed airport in Punta Cana, for example, is now one of the largest in the country in terms of tourist volumes.

A 2005 report from the World Bank (A Time to Choose – Caribbean Development in the 21st Century) shows that airport charges in the Dominican Republic are higher that in other regional airports (although it notes that several publicly owned airports in the region do not fully cover costs). Of more concern is that airport charges are 2–3 times higher than in Singapore and New Zealand, countries which are used in that report to provide a competitive benchmark. Much of this cost is in high Government taxes. There is also some evidence in this report to indicate that charges to airlines are very high by regional standards, although the report notes that some publicly owned airports fail to cover costs.

The dominance of the major airport operator and the high airport charges raise competition issues. The Dominican Republic is not the only country in this situation, yet these issues should be addressed under the proposed national competition regime.

The terms of the AERODOM concession are not publicly available.

d. Ports

Dominican Republic ports are regulated under a 1970 law which established the Dominican Harbour Authority (APORDOM). APORDOM is the regulatory authority and owns all of Dominican Republic's major ports except for the Caucedo complex near Santo Domingo. APORDOM may give the concession for port operations to private interests, for which detailed regulations were approved in 1998. It operates seven ports and has awarded operating concessions in two other ports, the most important of which is a 20-year concession, awarded in 2002, to a local group of shipping companies to operate and modernize the major port of Haina near Santo Domingo.[87] [88]

The 1998 regulation establishes a competitive bidding process for port concessions, which are open to national and foreign interests, except for minor services that may be restricted to nationals. Appropriate dispute resolution mechanisms are set out, including an experts' conciliation panel and the possibility of stipulating recourse to international arbitration. The statutory maximum duration of a port concession is 10 years. This is obviously too short for concessions with significant investment commitments in port infrastructure and a way has been found of offering much longer concessions for the Haina port, reportedly by means of a renewable 10-year concession.

The Caucedo multimodal port was privately constructed to target the strategic location of the Dominican Republic in the Caribbean for transhipment business. It began operations in late-2003, has already attracted a major share of Dominican Republic cargo business and will expand to an integrated facility linked to a logistics centre to be developed nearby and the airport (box II.7). The Maersk line operates a private terminal facility on the east bank of the Haina port, servicing its own shipping operations.

A 2004 audit of the Dominican Republic's public ports efficiency found that in water-side operations they are on a par with regional ports, but behind leading world ports. In land-side operations, they perform much worse than regional peers and competitors. Most regional ports are, like Dominican Republic ports, Government-owned, while some allow private terminal operations. Over-staffing, low worker productivity, inefficient internal transportation, inadequate maintenance and capital investment were observed in Dominican Republic ports. Port efficiency is also hindered by customs delays and by closed-shop practices of drivers' unions. In 2004, average turnaround time for Dominican Republic public ports was 12 days,

[87] There are 12 ports of which Haina and Caucedo, near Santo Domingo, handle about 80 per cent of total national sea cargo.
[88] Another concession, reportedly for 30 years, has been recently awarded to local group to redevelop that cruise ship facilities in Santo Domingo.

compared with about 9 days in a sample of other four Latin American/Caribbean countries and 2 days in a sample of seven OECD countries.

Quite apart from the impact of inefficient public port operations on local industry, the competitive potential of the Dominican Republic as a regional transhipment base was not taken advantage of until the development of the Caucedo port,[89] which aims to eventually compete directly with Miami and Panama as a full logistics centre (box II.7).

The Government has recently commissioned a strategic review by a presidential commission on the modernization and security of ports. This should help to foster greater competition and is to be carried out with World Bank assistance. The key proposal seems to be that APORDOM should be repositioned according to the landlord model, which will permit a more balanced mix of public ownership and private operations.

The Dominican Republic has been very slow to evolve from a public port model and APORDOM remains an asset owner/operator and regulator. Public ports are inefficient and the public sector has not pursued the opportunity to utilize the strategic position of the Dominican Republic to provide transhipment services. This is changing. The value of pursuing efficiencies and new business opportunities by involving more private investment is now better appreciated. This has been catalysed by the private initiative to develop a new port at Caucedo. There appears to be genuine competition now among the Santo Domingo ports. Pursuing competitive outcomes more proactively at other ports, involving private sector investment where feasible, should be a primary aim of the above-mentioned presidential commission. It should modernize the 1970 law. This would entail separating the two inconsistent functions of APORDOM – a last-resort asset owner and port operator and a regulator.

e. Infrastructure concessions

The Dominican Republic has a relatively long history of offering concessions for private development of public facilities and services. This includes those above-mentioned concessions in electricity generation, airports and port terminals. More recently, concessions have been granted for toll roads. These concessions have been undertaken on an ad hoc basis, including under public works and sectoral laws, which do not necessarily have comprehensive procedures. In 2006, a general law on concessions was introduced[90] to establish a universal set of procedures for concessions.

A draft bill on concessions is now before Congress which includes a number of improvements to the 2006 law. It will remove measures dealing with general Government procurement, set up a central body to oversee concessions, enable public-private partnerships and provide more detail on permitted commercial and financing arrangements. Comments below are addressed to the 2006 law and to provisions of the bill as appropriate.

The 2006 law and the bill set out a comprehensive framework. A new statutory authority, the Directorate-General of Concessions, is to be created to plan and award concessions and to monitor the performance of concession projects. It appears to have wide scope extending, for example, to telecommunications and public transport. Electricity projects are not explicitly mentioned and it is not made explicit whether ports and airports are considered as public transport. Nor is it clear exactly how the responsibility for oversight of tariffs and other performance obligations will be shared with sectoral regulators which have licensing powers in these areas. All types of concessions including build-operate-transfer and its variants, public-private partnerships and service concessions can be instigated within its ambit.

[89] Transhipment accounts for only 3 per cent of the business of Haina, the other major port.
[90] Law 340-06 subsequently substantially amended by Law 449-06.

Box II.7. DP World Caucedo: Could the Dominican Republic become a regional transport hub?

The DP World Caucedo port near Santo Domingo commenced operations in December 2003, after an estimated initial investment of $300 million. It was developed by DP World and local investors and is operated by DP World, one the world's largest marine terminal operators, with 42 terminals across 22 countries.

Caucedo is a deep-water port container terminal with a capacity of 1 million twenty-foot equivalent units on a 50-hectare site. The average container dwell-time from arrival to departure is 15 days – time that the operator is constantly trying to reduce, 2 days being the goal. DP World Caucedo, in cooperation with Dominican Customs, aims to offer first-class facilities and efficient services and everything is being done to accelerate shipments from and to the port (United States customs officers' presence, identification of low risk importers, etc.). It has recently achieved the international standard ISO/PAS 28000:2006 for security management and participates in the United States Container Security Initiative, which sees United States Customs officers located at the terminal to check cargo destined for the United States, the most important export market of the Dominican Republic.

Today, 52 per cent of the market is served by Caucedo, which services 17 lines and operates on a continuous basis. Caucedo and is becoming the primary facility for international shipping to and from the Dominican Republic. Furthermore, it is planned to utilize the country's central location in the Caribbean region to rapidly develop Caucedo into a strategic shipping hub for the Caribbean Basin. To that effect, DP World Caucedo plans to invest another $70 million in the near future in building additional berths and a container yard and in constructing an adjacent Caucedo logistics centre with direct access to the port facilities. This builds on Caucedo's privileged location between one of the country's most important international airports and a very successful free trade zone and will enable it to provide exceptional logistics services.

These plans fit well with DP World's mission of providing quality services designed to enhance customers' supply-chain efficiency through an integrated port-management model which brings together container terminals, other cargo, free zones, infrastructure development and consultancy services.

Source: UNCTAD based on interviews with the commercial and administrative managers of DP World Caucedo.

The draft law has detailed provisions to protect the public interest and to accommodate the key commercial concerns of investors. Concessions can only be awarded as a result of competitive bidding. The Directorate-General must submit an annual plan of proposed concession projects and these must have been subject to economic, financial and environmental appraisal. Nevertheless, there is a window for private origination of projects with a mechanism to protect the interests of private sponsors, if their projects are approved, within a competitive bidding process.

Key investor concerns are dealt with as follows:

- While not explicit, it seems possible that charges may be priced in foreign currency
- Clear rights to remit funds abroad are set out
- Lenders may access charges directly and appear to have step-in rights.

However, dispute settlement provisions do not appear to be adequate. Such provisions are especially important in long-term commercial arrangements where circumstances affecting the net benefits of the parties will inevitably change over the years and cannot all be foreseen in the original documentation. The bill proposes a conciliation panel, which is a useful procedure. However, the panellists should be experts in the industry rather than the academics proposed. There is a precedent for the industry expert approach, as this is the procedure in the ports' concession regulations. Industry experts are more likely to propose authoritative solutions that can be accepted by the parties in good faith. The bill also provides that the parties may agree in the concession contract to refer a dispute to an international arbitration chamber. This is imprecise (for example it would rule out the International Centre for Settlement of Investment Disputes) and there should be a contractual right to stipulate that international arbitration rulings will be binding.

The Dominican Republic has taken the sensible legal step of introducing a procedure for systematic granting of concessions of public services. Two precautions should be taken, however, given the track record of the Dominican Republic of poor regulatory oversight:

i. Concessions should only be conducted where competitive outcomes are likely and it should not just be ensured that there is competitive bidding but also structuring transactions so that concessions operate in a competitive market. Long-term quasi-monopolies such as in airport concessions should be avoided in future.

ii. Highly sensitive public services, such as water and sanitation services should not be concessioned, as there could be intense pressure not to sustain commercial outcomes. The risk premiums demanded by private investors will be extremely high given the experience of the capitalizations in the electricity sector. At present, the Dominican Republic does not have the regulatory track record needed to uphold public interest and act in a consistent manner over the long term towards investors.

13. Assessment and recommendations on general measures

This assessment of general measures in the investment framework has resulted in four general findings:

1. The reform process which started in the mid-1990s with the economic and trade liberalization continues. During this period, the Dominican Republic has generally adopted modern legislation to bring its regulatory framework for private-sector development up to the best international standards. Examples include the adoption of new legislation on environment, land, intellectual property and foreign exchange arrangements. The recently enacted competition law fills a key gap in the investment framework, although it is not comprehensive. It is a welcome start to tackling the Dominican Republic's historical hesitancy about applying pro-competition measures and a modern corporate governance approach to the established local business community. This step should be followed through by tackling non-competitive outcomes in licensing services and concession of public infrastructure. A remaining gap is the need to modernize the Commercial Code.

2. Tax policy needs to be reworked.

3. Many of the existing laws are only partially implemented and often inappropriately administered. Regulatory failures in banking and electricity are only the more visible of these problems; other examples can be found in environmental permitting, immigration, governance, intellectual property and concessions.

4. A comprehensive comparison of the quality of the Dominican Republic's investment framework with other developing countries in CAFTA has not been made. One widely used benchmark suggests that the Dominican Republic ranks poorly.[91] Nevertheless, it is possible for the Dominican

[91] Dominican Republic is ranked second worst in the 2006 World Bank "doing business" indicators, although this assessment is strongly disputed the Dominican Republic authorities, with some justice.

Republic to achieve within five years a regional-best investment framework that meets all the reasonable expectations of investors and fully safeguards public interest.[92] This assessment is based on the excellent progress made over the last 10 years and depends upon taking the actions suggested below.

The actions listed below are considered essential to achieve these goals.[93]

A. Fill the remaining major gaps in the regulatory framework with high standard law:

1. *Competition regime:* Enforce the new competition law, while at the same time establishing and operating a model competition agency. This is key, not only to ensure a balanced and competitive local private sector development, but also to minimize the risk of monopolistic behaviour of foreign investors in those new sectors of the economy that the Government is trying to develop.

2. *Commercial Code:* Revise the code to bring it up to modern standards on a number of areas, including accounting standards and corporate governance.

B. Among the necessary steps to improve the administration of regulatory procedures, top priority should be given to:

1. *Environmental permitting:* The environmental agency should be properly resourced and given adequate political backing in its dealings with other ministries. It is not just a question of streamlining the granting of permits, but also ensuring that high-quality environmental planning and protection safeguards national assets. If not given sufficient attention, this area risks becoming the next major area of regulatory failure after the banking crisis and the electricity troubles.

2. *Access to secure land title:* The digitalization of land records should be extended to all the land registries in the country. Land titling and transfers are a basic process at the heart of secure property rights, and the current work must be completed if the Dominican Republic is to offer a best-in-region investment climate.

3. *Governance:* Efforts should continue to create a highly competent and impartial judiciary that will enforce the rule of law and contract. It should be ensured that the new anti-corruption agency and other measures are given the power to change the lax attitude towards corruption. These measures will pay off by giving investors a positive image of the Dominican Republic among competing destinations for investment, quite apart from lowering business costs.

C. The following should be done when reworking the objectives and measures of tax policy:

All investors should benefit from a competitive tax regime, without distinction between zone and non-zone companies. Once this is in place, application of specific measures to support outcomes that are more clearly in line with national competitiveness goals should be considered. In particular:

1. *General regime:* The general rate of corporate income tax should be reduced to between 15 per cent and 20 per cent and applied to all business. The current imputation system should be reversed so that corporate tax is credited against shareholder tax liabilities.

[92] It is unwise, and not expected by responsible investors, to adopt extreme measures to streamline the regulatory process through the deemed approval provisions of the recent Decree 191-07. These are an abdication of the Government's role to protect the public interest.
[93] For details on each recommendation, please refer to the relevant sections of this chapter.

2. *Incentives:* The blunt instrument of full corporate tax exemptions should be abandoned for measures more clearly targeted to new goals of upgrading and innovation. Corporate tax holidays should be preserved only in exceptional cases where international competition warrants them, such as in e-enabled export services and free port activities. On the other hand, resource rents in the extractive industries warrant a separate and higher structure of taxation, including mineral royalties.

3. *Taxes in investment:* The taxes on investment should be eliminated, including the tax on assets and the tax on capital contributions, and the tax on property transfers should be reduced.

4. *Taxes on payments abroad:* Withholding taxes on payments abroad for services, royalties and interest should be reduced to 10 per cent.

5. *Strategic window:* A strategic projects window should be established, through which special fiscal (and other) arrangements can be made for large developmental investments that are of strategic significance.

D. A number of further improvements should be made with a view to achieving the goal of best-in-region. These should be easily achievable, as they are either incremental improvements or clear away legacy regulation that is no longer practised or needed:

1. *Entry of foreign labour:* The good standard 2004 immigration needs to have regulations to clarify residence permits conditions. Within this law an active programme to attract new business talent and spread skills should be drawn up. Also, the requirement that a citizen taking over a position from an expatriate must have the same remuneration package should be changed as it is a disincentive to localisation.

2. *Labour severance:* Labour regulation and industrial relations are sound but attention must be given to severance-pay arrangements that may encourage high labour turnover and discourage in-house training. A system to allow employees to access severance-payment funds on a periodic basis, similar to that adopted in the Bolivarian Republic of Venezuela, should be considered to reduce the incentive for employees to job hop.

3. *Technology transfer:* The transfer of technology registration procedure, which is already being overtaken by other measures, should be revoked.

4. *Governance:* The proposed modernization of the Criminal Code in respect of sanctions for corruption by public officials should be carried through.

Chapter III

INVESTMENT PROMOTION

Introduction

The Dominican Republic has achieved a major boost in FDI since reforms were undertaken in the 1990s. As chapter I notes, FDI has been a significant force in economic diversification. The Dominican Republic has now adopted a more ambitious development objective that emphasizes a shift to higher-value-added and more technology-intensive goods and services. Again, FDI can play a leadership role in achieving this objective.

These ambitions are reflected in CEI-RD 2005–2008 strategic plan. Its key objectives are threefold: to develop a world class investment promotion agency, become the most competitive FDI environment in the Caribbean region and attract FDI in the areas of higher-value-added manufacturing and high technology.

The Dominican Republic's goal is to attract $1 billion of FDI per year. This has been achieved since 2005 and chapter I suggests that this quantitative goal should be raised to $2 billion per year by 2015 and include quality targets, such as attracting FDI in more advanced industries and services, if FDI is to play a full part in this transformation.

The review in chapter II concludes that the Dominican Republic could well achieve a best-in-region investment regulatory framework in five years. This will have a pay-off of attracting more sophisticated FDI to industry and services by clearly differentiating the Dominican Republic from competing destinations in the region that offer similar investment fundamentals.

This chapter reviews the particular role that investment promotion should play. A broader strategic review of the role of FDI has not been undertaken; however, certain important strategic issues should be noted as they affect the ability of the Dominican Republic to attract and gain the most benefit from FDI, which will foster its economic upgrading.

First, the goal should be to create an integrated approach to FDI attraction which sets new standards. The short-term goal will be a qualitative improvement in FDI coming into the Dominican Republic. The medium-term goal will be a repositioning of the Dominican Republic as the hub of the Caribbean Basin and Central American regions for specialist manufacturing and high-value services.

Second, the future positioning of the Dominican Republic as an investment location of the kind required is likely to depend more on skills and talent availability at competitive costs, and less on low-cost labour and automatic fiscal incentives. It is essential that current skill needs are met and that future skills requirements are developed before the overwhelming demand materializes. Currently, skills availability is more of a constraint than an opportunty.

Third, FDI can contribute to national productivity growth and competitiveness by reaching into more areas of the domestic economy. The National Plan for Systemic Competitiveness, launched in March 2007, is a key instrument for achieving higher levels of competitiveness (box III.1) on a systematic basis throughout the economy. FDI should extend beyond export production in zones to become a contributing force in this regard.

Lastly, the problems of electricity supply must obviously be overcome and more attention given to competitive provision of key backbone services in ports, telecommunications, airports and other infrastructure.

Box III.1. National Plan for Systemic Competitiveness

The National Plan for Systemic Competition was launched by the President of the Dominican Republic in March 2007. It was elaborated by the National Competitiveness Council with the help of the Institute of Systemic Competitiveness and Development. The Council is an agency composed of public- and private-sector representatives, which was created in 2001 by Decree No. 1091-01 and ratified in 2006 by Law 1-06, with the objective of formulating, implementing and developing competitive strategies for the economy.

The plan represents the first and most systematic effort to improve the country's international competitiveness across the entire spectrum of the economy. It contains strategic horizontal recommendations (i.e. those that apply to the entire economy) and vertical (i.e. sector-specific) programmes to boost competitiveness.

The plan considers national industry as the driving force for growth in the Dominican economy and sets forth an industrial systemic competitiveness strategy for moving the various industrial sectors towards higher-value-added activities. With this aim, the plan includes policies on industrial restructuring; innovation and technological development; export promotion; cluster development; and the improvement of the regulatory and institutional framework for business development.

- Moreover, the plan sets out a competitiveness strategy for each of the following areas:
- Free zones
- Exports
- Micro, small and medium-sized companies
- Strategic clusters (i.e. tourism, textile, footwear, agribusiness, building industry and housing)
- Innovation and technological development
- Government and public administration
- New institutional market economy
- Infrastructure and logistics
- Macroeconomic framework.

Individual programmes to implement each of the above strategies are further described in the plan. Generally, they recommend measures aimed at: improving the business climate and sustaining business development (e.g. business establishment facilitation and creation of a programme for the promotion of small and medium enterprises); promoting innovation and investment (e.g. incentives for the modernization of productive plants and for the investment in strategic clusters); facilitating access to finance (e.g. programme for financing export companies); building technical and scientific capacities (e.g. strengthening INFOTEP and e-learning); and modernizing the legal framework (e.g. adoption of a competition law). In some cases, the measures presented are very specific; in others the plan provides only general guidelines. The specific actions required for the implementation of such programmes are currently being elaborated by the National Competitiveness Council with the assistance of UNDP. A few examples of actions already taken are the creation of the National System for Innovation and Technological Development, the presentation of the National Plan for the Competitiveness of the Tourism Sector in April 2007 and the enactment of the new Competitiveness and Industrial Innovation Law in December 2007 (Law 392-07).

The participation of all the sectors of the economy and all relevant Government agencies is considered key towards achieving the Plan's objectives. To this end, the plan recommends an institutional framework whereby the executive directorate of the National Competitiveness Council is responsible for the overall coordination and monitoring of the plan's execution. The council, through individual departments for each of the key programmes (e.g. the business climate reform department and small and medium-sized enterprise department), works currently together with other relevant private and public agencies to ensure progress in achieving the plan's objectives.

Source: UNCTAD, National Competitiveness Council, National Plan for Systemic Competitiveness.

The existing FDI platform is functional, but there are inherent weaknesses that limit the ability of the Dominican Republic to reach a new growth trajectory. It is a model which requires updating in line with the goals that the Dominican Republic has defined, in particular, increasing the scope and depth of its FDI portfolio and moving up the value chain. Momentum to improve performance in the number and quality of investments secured must be increased if the Dominican Republic is to achieve its broader goal of creating a competitive FDI environment in the Caribbean region. This can only happen if the Dominican Republic works in a more coherent, focused manner.

Successful countries engaged in the process of investment attraction and retention have developed a model which fits seamlessly into their country's wider economic development programme. This applies equally to developed and developing countries. Investment promotion and foreign investors are not treated in isolation, but are seen as a part of the overarching strategy. There is a high degree of coordinated planning which translates into concerted action, particularly in the area of developing human capital to meet the society's needs.

Given the strategic objectives outlined in the 2005–2008 CEI-RD plan, advancing to more sophisticated investment promotion requires a new approach. This chapter proposes the creation of a national system of investment promotion (NSIP). This would be a new operational platform responding to the needs of international investors and the requirements of the Dominican Republic. It draws on international best practice for organizational development but, in essence, is a modern, practical, essentially Dominican solution. There are three main elements within this system: (1) an enhanced CEI-RD organization; (2) formalization of the investment promotion relationships among all stakeholders; and (3) appointment of a minister of investment to drive strategy and coordinate the NSIP.

A. Enhancing the Centre for Export and Investment Promotion

1. Overview of the Centre for Export and Investment Promotion

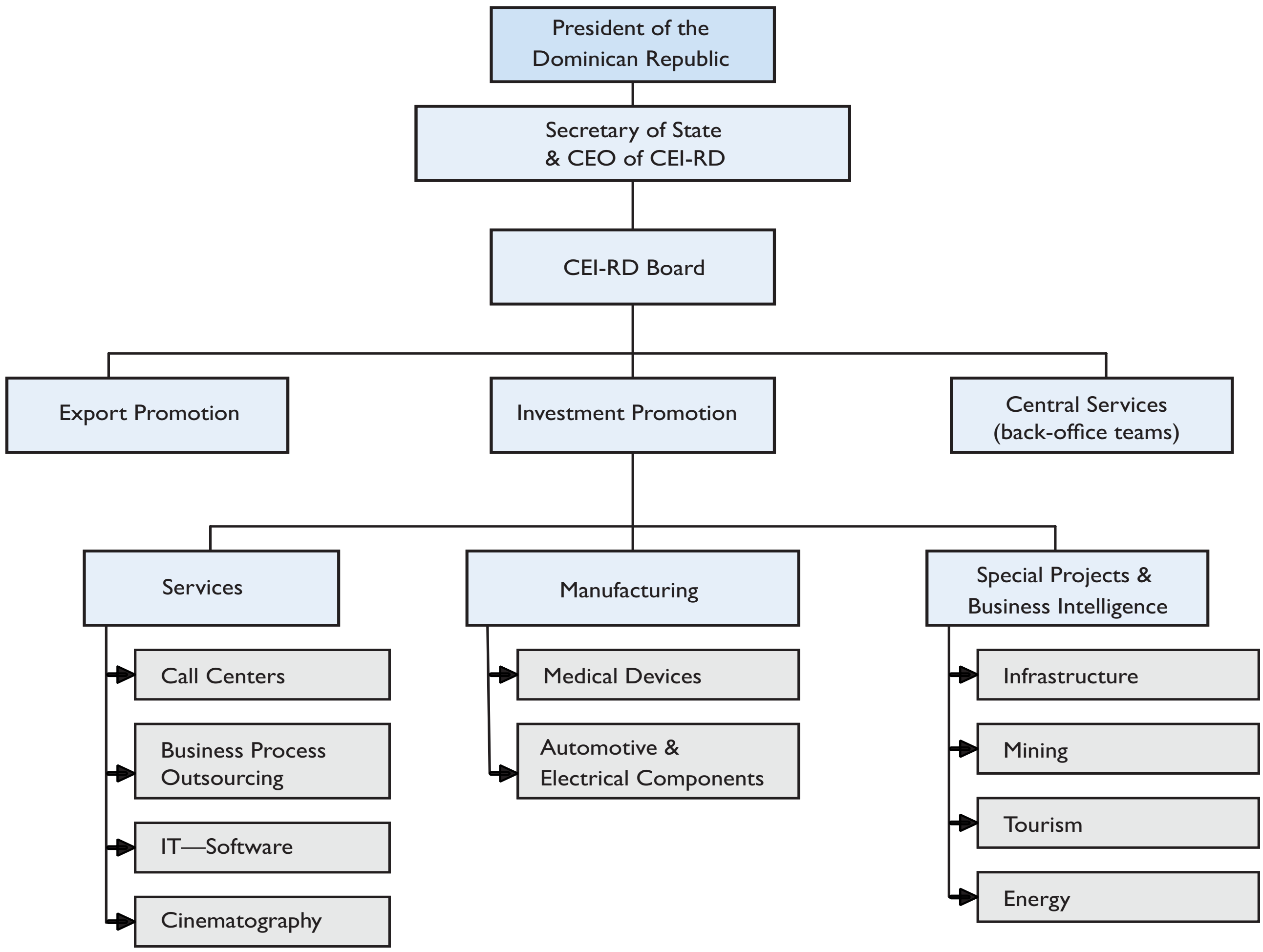
The Centre for Export and Investment Promotion (CEI-RD) was created under Act No. 98-03 in June 2003. It brought together the functions of the Foreign Investment Promotion Office and of the Dominican Export Promotion Centre. Its headquarters are in Santo Domingo with regional satellite offices in Santiago, Puerto Plata and San Pedro do Macorís. International offices are found in Puerto Rico and New York, among others, with additional representation through various embassies worldwide. Its mission is to work with the appropriate Government departments to develop and implement the national policy for investment and export promotion. The geographical focus for CEI-RD has historically been North America, but, although this remains unchanged, attention has increasingly been given to Asia (India and Taiwan Province of China, in particular) and, more recently, Europe. In all of the markets in which it is active, CEI-RD cooperates closely with its diplomatic posts, which provide market intelligence and logistical support.

At present, there is a CEI-RD executive director coordinating the activities of CEI-RD, who has Secretary of State status and reports directly to the President. There is also a CEI-RD board, comprised of both public- and private-sector representatives, which acts as an oversight and steering committee. Within CEI-RD, there is a central services team responsible for back-office operations (i.e. legal, information technology, finance, etc.) and there are two promotion departments, the investment promotion team and the export promotion team (see figure III.1).

There are 215 staff members at the CEI-RD headquarters. In addition to the staff at headquarters, there are 11 staff members in Santiago, 2 in Puerto Plata, and 3 in San Pedro de Macorís whose focus is principally export promotion. Internationally, there are 40 liaison officers at diplomatic posts, 2 in the Puerto Rico offices and 3 in the New York offices. The employees located outside the Dominican Republic are not specialized and handle both investment and export promotion. The staff members located at the headquarters in Santo Domingo who handle promotional activities, however, are specialized, with 18 staff allocated to the investment promotion team and 20 to the export promotion team. The balance is divided among back-office support teams. The 18 staff members of the investment promotion team are further divided into three teams (as detailed below), with the remaining two staff members attending to general coordination of the investment promotion department.

- Services (six staff members): This team encompasses several sectors, including call centres and business-process outsourcing, information technology, software and cinematography. It is engaged in proactive investor targeting largely aimed at the call centre sector (there are currently 42 primarily English-speaking call centres in the Dominican Republic, focused on the United States market). The team is also developing a proposition for French-speaking call centres targeting the French and Canadian markets. In addition to call centre activities, it advises investors planning to establish operations in Santo Domingo, in the Cybernetic Park of Santo Domingo and in the free zone of San Isidro.
- Manufacturing (eight staff members): Within this team are the auto-parts and electronic-components sector and the medical equipment sector. Promotional activities are largely focused on the auto-parts sector where 70 companies are targeted by sales initiatives. The primary target markets are the United States, the Republic of Korea and Taiwan Province of China.

Figure III.1. Current organizational structure of CEI-RD



Source: UNCTAD.

- Special projects and business intelligence (two staff members): This team is responsible for all other sectors not covered by services or manufacturing, such as infrastructure, tourism, mining and energy. As a result of the breadth of sectors covered, investor promotion is primarily reactive, taking the form of a response to a request or a specific project initiative.

The teams are responsible for developing their own business plans, which form the basis for annual requests for operational budgets. The CEI-RD budget overall has more than doubled over the last three years from $3.4 million94 in 2003 to $8.4 million in 2006. The investment promotion budget has shared in this increase with funding rising from $1.4 million in 2003 to $3.1 million in 2006. Historically, investment promotion has received roughly 50 per cent of the budget, while the export promotion's share has decreased from over half of the budget in 2003 to just 12 per cent in 2006.

Staffed by highly motivated individuals who are committed to reaching the new strategic objectives, the organization has accomplished much under the current structure in regards to boosting FDI attraction. There have been several recent attempts at structural adjustment that have met with some success. Primary among these is forming sector-specific teams for call centres, auto parts and electronic components and medical devices. Given the new FDI attraction goals, however, the next step is to increase the pace of the progress.

2. Challenges facing the Centre for Export and Investment Promotion

Although CEI-RD has met with some successes, these have been driven largely by the enthusiasm of the teams. This is an important component, but one that will not, by itself, create a world-class investment promotion agency. To realize its goals, CEI-RD needs be an organization that can develop compelling propositions for investors. Some of the reasons for which this is not yet happening are as follows:

- Promotion activities are too general
- Sector specific knowledge is limited
- Roles and responsibilities are unclear
- No systematic aftercare is carried out
- Formal coordination both within CEI-RD and with other agencies is lacking
- There are no programmes to develop linkages
- There is no tracking of investors either potential or established
- Staffing inadequacies
- The dual role of the Secretary of State as both a minister and chief executive officer of CEI-RD.

Given the challenges facing the organization in reaching the goals outlined in the new CEI-RD strategy (i.e. attracting FDI in higher-value-added manufacturing and high technology), a new approach to the organization of staff and functions within the investment promotion department is needed.

3. Proposed organizational structure

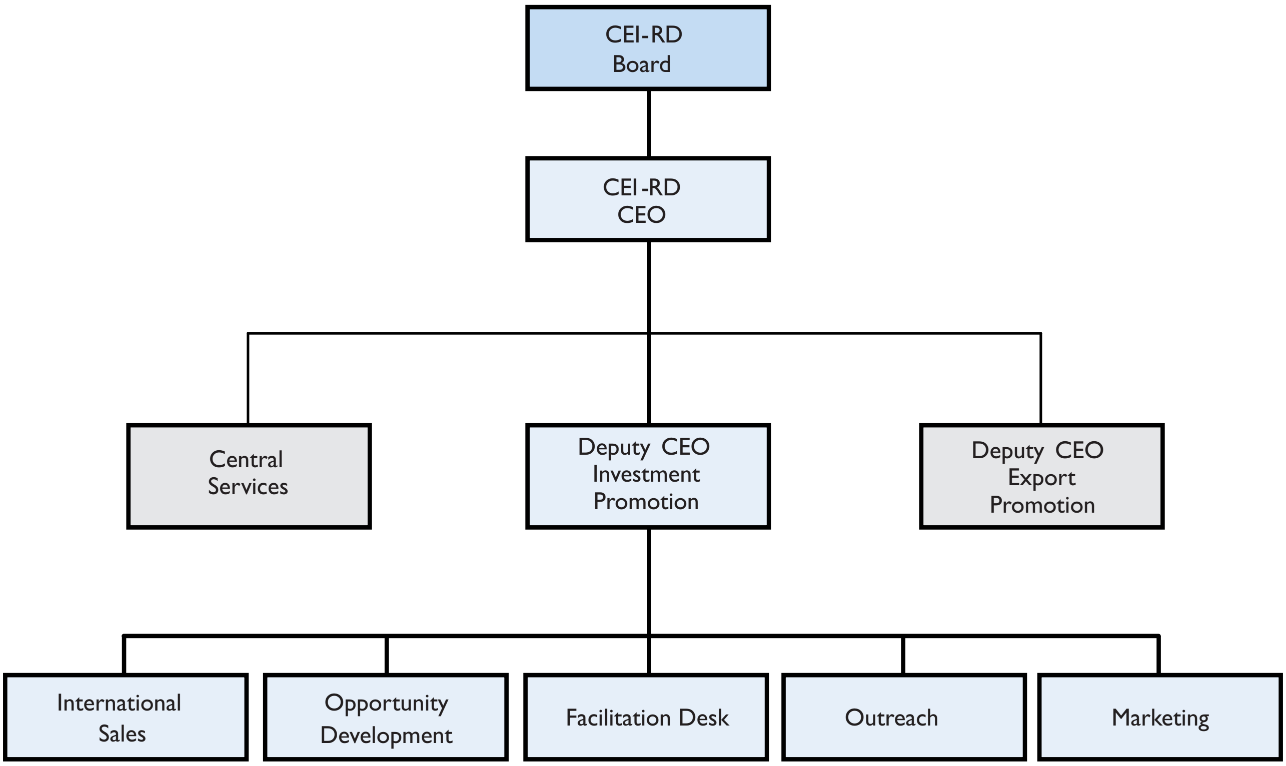
Earlier restructuring efforts, such as the creation of the auto-parts and electronic-component sector team and the call centre and business-process outsourcing team, began the move towards a much-needed sector focus. It is proposed that CEI-RD consider a new structure that adds a functional approach. By organizing first by function and then by sector, roles and responsibilities should become clearer and this should, in turn, enhance efficiency and productivity.

[94] Budget data provided by CEI-RD, Dominican Republic. Converted into US dollars based on exchange rate of $1 = Dominican Pesos 33.6597 as of July 17, 2007 as listed on Economist.com.

The new structure should be composed of five teams (figure III.2):

- Opportunity development
- International sales
- Facilitation desk
- Outreach
- Marketing

Figure III.2. The New CEI-RD: Proposed organizational structure



Source: UNCTAD.

a. Opportunity development

Under the current organizational structure, there is too much emphasis on general promotion and participation at trade events. Investment attraction initiatives should become more targeted. The key to this approach is to have greater clarity and to present the Dominican Republic as offering a series of defined business opportunities. CEI-RD has already made great progress in developing specific solutions for foreign investors, such as the 10 infrastructure projects showcased at the Latin American Leadership Forum in spring 2007. Work is now necessary in all of the sectors in which promotion is active. Two noteworthy examples are the propositions for medical devices and automotive components which need to be reworked and presented in a more compelling manner, given the goals of the 2005–2008 strategic plan.

As part of the initiative to bring greater clarity to Dominican investment propositions, more information is provided in promotional material. A principal theme should be the preparation of market opportunity briefings that describe and expand upon specific sector opportunities in the Dominican Republic. The opportunity development team should be very involved with marketing, guaranteeing substance of marketing materials.

The 2005–2008 CEI-RD strategy has highlighted several sectors on which it will focus promotion and sales efforts. To accomplish this part of the strategy, staff members dedicated to identifying, defining and quantifying investment opportunities are needed. Specifically, their work would include researching and analysing international companies which represent the best fit with the Dominican Republic supply and the best prospects for success. At present, the services, manufacturing and special projects teams are handling the targeting aspect of investment promotion, in addition to selling. The opportunity development team would separate analysis and targeting from the sales function, allowing greater focus on each. The sector specialists who support the special projects and sector teams should in future operate from this specialized team of analysts.

Market-scoping studies will be carried out by the opportunity development team to evaluate the international competitiveness of all new investment propositions. This should include market testing on selected geographical markets. This will help approved propositions to be marketed professionally, rather than just being enthusiastically promoted. This process will also encourage CEI-RD to be more ambitious in its geographical reach. Large, strategic investment opportunities should be marketed on a global scale.

b. International sales

While the promotion teams have been successful in closing sales, they need to be able to work faster to reach CEI-RD targets. Members of the sales staff are doing too many tasks in the current structure, which detracts from their ability to focus solely on selling. The proposed functional structure would move all tasks not related to sales to other functional areas. While keeping their sectoral focus, the services, manufacturing and special projects teams should become an international sales team of relationship managers.

Under the new structure, relationship managers will engage in a consultative selling process. The primary role of the relationship manager is to engineer solutions based on the investor's needs. Although tasks not related to sales will be assigned to other teams, this new role would continue to encompass many responsibilities. Relationship managers should be responsible for lead generation and coordination with the opportunity development team to target specific investors. Once the investor is engaged, the relationship manager should manage the investor relationship from initial contact throughout the life of the investment, including aftercare. When sector expertise is needed, relationship managers will rely on sector specialists in the opportunity development team or experts in individual ministries and external sources as appropriate.

Aftercare is an activity that has been largely neglected in the current sales process. In future, aftercare should be a particularly important function of the relationship managers. Aftercare is crucial in extracting the full benefit from existing FDI, beyond simple job creation. Experience in other countries suggests that as much as 32 per cent of new investment comes through existing foreign investors via expansion activities and new projects (in some countries, reinvestment can average up to 70 per cent of annual FDI) (UNCTAD, 2007b).

Relationship managers will be the first point of contact for requests from existing foreign investors as part of aftercare, but will also be responsible for introducing reinvestment and expansion opportunities. This extended sales effort would also include interfacing with the parent companies of existing investors in the Dominican Republic. Often foreign subsidiaries become separate entities from their parent companies and thus contact with both entities is necessary.

Other key activities of the relationship manager will include coordinating visits with potential investors, updating the investment promotion project database (section I.f. on overarching operational enhancements) with inquiries and new investor information, representing the Dominican Republic at international exhibitions and conferences and, in conjunction with the marketing team, liaising with the Dominican Republic's diplomatic posts on investment promotion activities.

Regarding coordination with embassies, at this stage, the opening of dedicated CEI-RD offices overseas, staffed by long-term, full-time personnel is not considered necessary. Experience suggests that such offices increase market profile without necessarily increasing market penetration, so the returns do not justify the costs. Young, dynamic, commercial-minded relationship managers should be based in-market on short or medium-term assignments. It will provide them with important early career exposure to the market and, at the same time, present the new face of the Dominican Republic to the international investment community.

c. Facilitation desk

One of the initiatives under consideration by CEI-RD is the development of a one-stop facility. Typically, a one-stop facility brings together all of the persons and processes required to receive applications for permits in one location, usually the investment promotion agency. As described in chapter II, the most time-consuming processes in the Dominican Republic are land permits, environmental approvals and the CEI-RD registration process. Although there may be some time savings or perceived ease of doing business on the part of the investor if all parties are located in one office, there is no clear advantage in locating a one-stop facility in CEI-RD. Government agencies in the Dominican Republic are generally accessible and amenable to investors. Investors are not faced with large monolithic Government agencies with a poor client service attitude. The problems investors unquestionably face in obtaining timely approvals result from in poor regulations or organizational capacity in certain agencies. A one-stop facility will not make a decisive difference. Chapter II identifies where the underlying improvements are needed.

Under these circumstances, and even when the permitting processes in other agencies are improved, the best approach for CEI-RD is to create a small, dynamic facilitation desk. This facilitation desk, composed of CEI-RD staff, would not only be responsible for introducing new investors to the permitting requirements of various Government agencies but would also act as an interface between investors and these agencies. This interface role has the important task of ensuring that investors seeking information are put in contact with knowledgeable and helpful officials in the appropriate agencies.

Within reason, the interface could extend to direct support in assisting investors to obtain permits, including existing investors who wish to expand. When investors experience repeated difficulties of the same type, the facilitation desk should be able to channel the issue to management (and the proposed ministry of investment – see below) for advocacy action.

Given its function as the interface between CEI-RD and the other Government agencies in investment facilitation, the facilitation desk should also oversee the implementation of CEI-RD commitments under service-level agreements (a new tool to formalize inter-agency cooperation as proposed in sect. II below).

d. Marketing

The tasks of the proposed marketing team would be twofold. The first would be to develop a brand, image and message that fits the new strategic direction. The second is to make sure the new image and message are communicated consistently throughout all promotional materials and activities not only of CEI-RD, but of all agencies that deal with investors. To date, consistency has been addressed in part by developing a range of materials (brochures, disks) created with the tag line "Catching the Future". These materials are professionally produced and capture the essence of Dominican Republic supply in a concise way. CEI-RD should capitalize on this work and extend the message throughout all materials and activities (e.g. brochures, opportunity briefings, booths and promotional giveaways). This includes inter-agency promotional materials and synchronizing activities to ensure proper representation of the investment promotion effort.

The part of the challenge that has not been addressed by the new materials and should be included in the development of a brand is the agency name. It is commonly referred to by the acronym CEI-RD, but this has little meaning to the international investor and does not communicate the idea of investment opportunity. A new name should be given to the investment promotion arm of CEI-RD that is a clearer representation of its role and more user-friendly to an international audience.

In the name of consistency, the marketing team needs to avoid a situation where individual organizations give out a variety of messages to potential investors, creating confusion and wasting resources without improving competitiveness. At present, some of the best material available on investing in the Dominican Republic, albeit technical, is produced by the professional services firms, especially the law firms. They are well-produced and readily available at places such as business hotels and airport lounges. CEI-RD should supplement these promotional materials with a range of sector-specific opportunity briefings (as mentioned in the opportunity development section) and work with the professional service firms in the production of materials. Ultimately, marketing should be the central source of information, which it feeds to other organizations and monitoring, to a reasonable extent, what is published to ensure consistency and accuracy.

A communication strategy and brand will need to identify all points of investor contact (i.e. internet, telephone or personal visit) and ensure that the CEI-RD message is communicated consistently and in a manner easily accessible by current and potential investors. There is a need for a more extensive website with more links to other related organizations involved in the FDI process and more information in English. An effort is already under way to develop the CEI-RD web presence. Crucially, the new version of the website should incorporate a look, feel and message in line with the new brand and image strategy. Contact with CEI-RD by telephone could be much more user-friendly for potential investors, especially for non-Spanish speakers.[95] The reception area and meeting rooms at CEI-RD should not be overlooked by image-building activities. As a coordinating site for investor visits, first impressions will be important in communicating the new image of the Dominican Republic. The marketing team will also need to ensure that promotional materials are presented in an investor-friendly format, available in English and hard and soft formats. All materials should relate to and reflect the new country-branding strategy as a matter of course.

To achieve consistency and operational efficiencies, marketing should be contained within one team. The team's work will require close cooperation with the Investment opportunities development and international sales teams. These teams should help the marketing team in its efforts, by providing market intelligence, details on sector-specific opportunities and direct feedback from investors.

e. Outreach

Increasing domestic linkages ties investors more closely to the economy and increases the prospects of long-term commitment to the country in the form of additional and higher-quality investment. Along with this benefit, local-supplier performance is raised to international standards, increasing domestic firm competitiveness and the reputation of the Dominican Republic for quality. CEI-RD should consider a new programme, a supplier development programme, which would be coordinated and managed by an outreach team. The programme would encourage and help foreign investors to source products and services locally from Dominican companies. In practical terms, this means carrying out a needs analysis of the investment and matching the investment with possible local sources of supply (see box III.2). This analysis would probably be started as part of the sales process, but in cooperation with the outreach team.

Such a programme would fit naturally into the National Competitiveness Council's plans to develop the technological capabilities of local companies and generate markets for high-quality Dominican suppliers. These programmes rely on highly coordinated efforts among stakeholders, including Government agencies,

[95] Currently, it is not possible to leave a voice mail message for CEI-RD staff.

private firms and educational institutions, and therefore require dedicated resources. The Outreach Team should act as the focal point for coordinating these components of the strategy as well as working with the Sales and Investment Opportunity Development teams to develop the most appropriate propositions.

Box III.2. Supplier development programme case study: The Chamber of Industry of Costa Rica

The Supplier Development Project for High-Tech Multinational Companies of Costa Rica was established in 1999 as a pilot project, aimed at:

- Helping to increase domestic added value in the output of high-tech transnational corporations
- Improving the competitiveness of small and medium-sized enterprises (SMEs)
- Enhancing the technological capacities of SMEs.
  The overall aim of the project was to enable SMEs to attain the technology levels necessary for their vertical integration into high-tech transnational corporations' production chains.

The pilot project was funded by the Foreign Trade Promotion Agency of Costa Rica, the Costa Rican Coalition of Development Initiatives, the Chamber of Industry, transnational corporations and SMEs.

Following successful completion of the pilot project in 2003, a domestic-supplier development office (Costa Rica Provee) was created, which has been integrated into the Foreign Trade Corporation of Costa Rica (PROCOMER).

The project supports the manufacture of products by SMEs for high-tech transnational corporations' production chains. It selects, according to motivation and quality criteria, SMEs to be admitted to the programme. A methodology is then drawn up by an international expert, on the basis of analysis of product demand from the high-tech multinational companies and on the technical and entrepreneurial status of the SMEs. The project fosters the development of the selected SMEs through technical assistance and training activities.

There is also an information-gathering system in operation to provide the enterprises involved in the project with access to sources of supply of and demand for products and services, to establish links with SME support institutions and to guide the SMEs in their search for funding and venture capital.

Source: UNCTAD and the United Nations Industrial Development Organization.

In order to find appropriate matches to investors' needs, an annual skills' audit should be conducted, based upon the experiences of existing investors and the needs of potential investors to identify skills' development needs. As indicated in chapter II, the Migration Law of 2004 assigns the Ministry of Labour responsibility to carry out this skill needs' assessment. The natural next step is one that incorporates opportunities for skills' development. The Outreach team will need to develop a systematic approach that incorporates Government agencies, such as the National Institute for Technical-Vocational Training (INFOTEP), into the overall cooperative effort.

f. Overarching operational enhancements

Several areas relate to the operation of the investment promotion department as a whole and, as such, are dealt with outside of the organizational structure and the roles of the staff. These include project tracking, departmental capacity-building, budgeting, staff empowerment and financial negotiations and information-sharing.

Project tracking

At present, there is no satisfactory method of monitoring current or new prospects or evaluating prospects based on their strategic importance. There is a lack of comprehensive, relatively up-to-date data on existing investors and an absence of detailed profiling of existing investors, in terms of current needs and future, potential investment intentions. Nor is there formalized performance measurement of how much FDI has actually come in and how much it has contributed to the economy and national goals, such as jobs creation and linkages.

The solution to this problem is to create a central, credible investment database of all existing foreign investments in the Dominican Republic, to be managed by CEI-RD. Such a database would be the basis for the relationship management programme, provide tracking of timelines and actions taken on behalf of investors (e.g. permits and approvals) and allow evaluation of additional opportunities. Information for the database will be supplied by all of the investment promotion teams: relationship managers will enter inquiries and prospective investor information and update the database regularly with additional information as relationships progress. The opportunity development team will contribute evaluations of future opportunities and the outreach team will give details of which investors are involved in which outreach programmes and initiatives. It is also expected that other organizations involved with foreign investors could feed into this database where appropriate. Ultimately, this database will become an information repository that supports all foreign investment promotion activities.

Staff development

More sophisticated targeting and investor promotion strategies will emerge as a result of the creation of the project database. All that remains to do to make the investment promotions department into an effective team is to improve the relationship managers' and outreach team members' selling techniques and communication methods. Through regular capacity-building programmes within CEI-RD on these topics, investment promotion will be poised to take advantage of the information and targeting strategies.

Communication

To capitalize on the project database and new organizational structure, several areas of communications must be strengthened. The first is the internal communication in CEI-RD at both operational and managerial levels. A reporting and information-sharing process needs to be developed among the teams and departments of CEI-RD that will allow the organization to build a collective repository of knowledge and continue moving toward best practices. Possible mechanisms are weekly updates (collected from staff members then consolidated and circulated throughout the departments within CEI-RD) and regular staff meetings across teams and departments and report archives.

Staffing and budget

An appropriate number of staff will be critical in increasing momentum in the investment promotions department. It is estimated that increasing the investment-related staff of CEI-RD from 18 to 35 would be sufficient, although a more precise level would become clearer during implementation. The balance between front-line staff and support staff in CEI-RD needs to be changed in favour of more front-line staff. Some staff may be transferred from the existing support staff or other areas, provided they have the relevant competence and experience. It is essential to add staff with a commercial background in order to accelerate the cultural shift in the organization.

In light of the recommended staff increases and expansion efforts, the budget would need to be increased. Once the new teams have been established, they should be required to submit annual budget reports and requests. The process should be open and transparent and completed in due time before the new financial or calendar year.

B. Strengthening national investment promotion

In every country, many organizations in the public and private sectors contribute to the investment promotion process, beyond the efforts of the designated investment promotion agency. The designated investment promotion agency, in this case CEI-RD, cannot do all the investment promotion, no matter how large or effective it is. In the Dominican Republic, the other organizations involved in investment promotion include individual ministries (e.g. the Ministry for Tourism, the Ministry for Agriculture and the Ministry for Mining), specialized Government agencies, regulatory authorities and the free trade zones, including those in private ownership.

All these entities are stakeholders in what should be a joint initiative to promote the Dominican Republic to international investors. Their coordination is, however, haphazard and their promotional activities not harmonized in such a way as to present a coherent promotional message to the outside world. This is not to say that the agencies do not work together. Relationships among them are friendly and informal, but not systematic: they rely primarily on the participation of the various agency representatives in supervisory boards.

Promoting FDI in new areas and deepening its impact, whilst reaching the $2 billion annual inflow FDI target recommended in this report will require a much more systematic and interactive approach to investment promotion. The challenge is how best to utilize each agency's resources and their industry expertise in an efficient way and to present to the world a coherent, well-branded message about investing in the Dominican Republic. To this end, this review recommends the adoption of a system approach to investment promotion, towards the establishment of a national system of investment promotion (NSIP).

A system is traditionally defined as a set of interacting actors or entities bound together by a set of rules and relationships into a unified whole to accomplish a goal. The national investment promotion effort in the Dominican Republic to date has lacked a formal set of rules and relationships, common goals and leadership/monitoring mechanisms to ensure cohesiveness and accountability in achieving them. This section maps out the elements of the NSIP, starting with the identification of: (1) the entities in the system; (2) the rules that will define their interrelation and (3) the leadership and monitoring mechanisms to ensure the performance of the NSIP.

1. Entities in the national system of investment promotion

Each well-functioning system is a combination of several connected and mutually interacting components. The components of the NSIP will be all the agencies that are central to investment promotion in the Dominican Republic. These will therefore include:

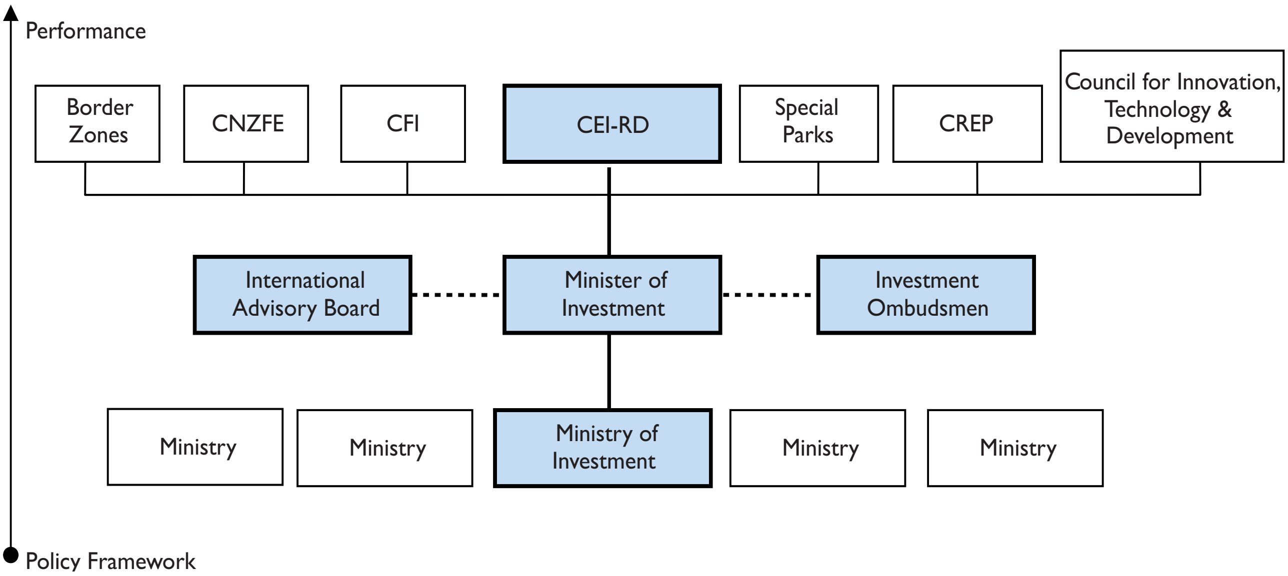
- CEI-RD, as reorganized and strengthened in accordance with the recommendations to be made below. It will remain the lead agency for investment promotion. It has specialized skills in areas such as sales and proposition development. Moreover, it should have a leading role in country branding, coordination and investor facilitation. While ministries and agencies are experts in their subject areas, they may not have specialized FDI promotion skills and may welcome support from CEI-RD in specialized areas of investment-attraction and supplier-development programmes. The following section describes how to formalize the relationship and the functional division of labour between CEI-RD and the other agents in the NSIP.
- Those ministries which have investment promotion functions. Primary among these are the State Secretariat of Tourism, which already performs quite extensive investment promotion activities

and is currently facing the challenge of upgrading the tourism offer in the Dominican Republic; the General Directorate of Mining, within the State Secretariat of Commerce and Industry, which has the technical knowledge necessary to deal with investors but could benefit from support in generating more investor interest; and the State Secretariat of Agriculture, an area where the potential of the Dominican Republic to attract new foreign investors could be boosted more systematically.

- The PROINDUSTRIA centre for development and industrial competitiveness (called Corporación de Fomento Industrial until the enactment of Law 392-07), the public agency created to foster Dominican industrial development, especially that of small and medium-sized enterprises.[96] It also operates 20 free zones (42 per cent of the total zones). PROINDUSTRIA carries out investment promotion activities for investments in the country at large and in the publicly operated zones. These include several international missions and meetings with investors.[97] Its board includes the State Secretariy of Finance, the State Secretary of Commerce and the State Secretary of Industry, one representative of the presidency and one representative of the private sector chosen by the President.
- The National Export Zones Council, the authority that oversees the regulation and implementation of the Free Trade Zones Law 8 of 1990. It is composed of private and public-sector representatives, including the State Secretary of Commerce, the State Secretary of Industry and the State Secretary of Finance (who acts as President), the Director General of the Corporación de Fomento Industrial, the executive director of the CEI-RD, two zone operators, two representatives of the zone business associations and one representative of the Association of Dominican Exporters. The council evaluates, approves and promotes the establishment of new companies in the zones, as well as the development of the existing ones. In the council, a specialized investment promotion team assists investors both in the pre- and post-establishment phases. Promotional activities include the preparation of promotional material, the maintenance of a website and participation in overseas promotional missions.
- The Coordination Council of the Special Border Development Zone, created by Law 28-01, the Government agency in charge of evaluating and approving investment projects in the border zones. It is composed of representatives of the executive, senators and congressmen of the seven provinces that host the zones, the State secretaries of tourism and commerce and industry, and representatives of CFI and the Catholic and Evangelical churches. Its mandate includes investment promotion, though all promotional activities are currently undertaken by the CEI-RD.
- Special parks, including the Cyber Park of Santo Domingo and the Baseball Theme Park. The former is the first technological free zone park in the country. It specializes in information and communications technology (ICT) and related industries, including information services exports, software development and computer design, as well as in the manufacture of technology products. The designer and current president of the park is Minister Eddy Martinez Manzueta, current chief executive officer of CEI-RD. The Baseball Theme Park is a project to be developed by Dubai-based Select Contracts, which has delivered the conceptual design and feasibility study for a 700-acre leisure and entertainment centre. Promotional activities for the special parks are handled by CEI-RD.
- Regulatory bodies, e.g. for telecommunications, energy, ports, airports and highways. Currently, some regulatory bodies, such as the telecommunications regulator INDOTEL, carry out proactive investment promotion and targeting. Improved coordination and division of labour with the CEI-RD is needed.
- The Commission for the Reform of Public Enterprises, an organization that reports to the Presidency of the Dominican Republic, created by Law 141-97, set up to carry out the privatization process (capitalization).

[96] Created by Law No. 5909 of 1962, and modified by Law 288 of 1966 and Law 147 of 1967.
[97] In 2005, the Director of CFI carried out investment promotion missions in Puerto Rico, Mexico, the United States, Italy and Belgium.

Figure III.3. The national system of investment promotion



Source: UNCTAD.

Cooperation needs to be formalized so that each agency can contribute its specific expertise to broader countrywide efforts to attract FDI and can be held accountable for its performance. Engaging with the different stakeholders and leveraging their individual contribution to the common goals is the essence of the NSIP. Figure III.3, above, presents an organization chart of the NSIP.

2. Relationships within the national system of investment promotion

A new mechanism, the service-level agreement (SLA), is proposed to facilitate the inter-agency cooperation necessary to achieve a stronger and more systematic overall national investment promotion effort. This voluntary framework agreement would aim to clarify and confirm the parameters and the obligations of the CEI-RD and the stakeholder in working together to promote FDI in the Dominican Republic. SLAs must include agreed actions and performance measures binding both the stakeholder and the CEI-RD. Taken together, SLAs add up to a practical national investment plan with agreed actions and outcomes that can be measured and monitored. Each SLA would be negotiated with each stakeholder and would include central services and customized services.

Central services are those that must be led by CEI-RD because they require central coordination to avoid duplication or confused messages or have significant economies of scale in delivery. These services are:

a. *Central marketing* services: legal responsibility for country branding, image creation, and coordination of cross-cutting promotional programmes;

b. *Central facilitation* services: investor support (e.g. via the facilitation desk) to investors in any industry requiring help with various operating approvals.

Customized services are those agreed on an individual basis between CEI-RD and the other stakeholders, whereby CEI-RD fills specialized gaps in their investment promotion expertise. For these services, each SLA describes the working relationships and allocates responsibilities to both CEI-RD and stakeholders, based on each agency's particular requirements. Services could include proposition development, opportunity evaluation, the development of a marketing strategy, proposition testing, joint-lead generation and visit coordination. Aftercare and supplier development support are other possible services.

It is likely that the range of services required by stakeholders that are regulatory bodies (covering telecommunications, energy, ports, airports or highways, for example) will be significant. It is important that regulators avoid any potential for conflict of interest by being drawn too deeply into the "sales" process within investment promotion.

It is possible to anticipate a more limited demand for CEI-RD services in sectors such as mining, given the specialized nature of the industry. However, SLAs in this sector could lead to significant efficiency gains in investment promotion. Prospective mining investors will go directly to the responsible ministry to get geological information and to talk to fellow professionals such as geologists and mining engineers. But the mining ministry professionals could welcome CEI-RD support in organizing marketing material and promotions and in providing up-to-date information on general business issues. CEI-RD could also help with locating and developing suppliers, and might work on developing downstream processing propositions that add value to mineral operations. All these activities enhance the core expertise and interests of mining professionals.

The tourism sector has developed quickly in recent years, particularly in terms of hotel investment. The ministry responsible for tourism actively facilitates tourism investment and promotes tourism, while the private sector has an active members' organization. Elements of a strong platform are in place for hotel and resort investment and have resulted in joint ventures between inward investors and local companies. Additionally, several examples of reinvestments by foreign investors suggest that there is no strong market demand for aftercare services. Added-value from CEI-RD is likely to come in parallel entertainment facilities and in providing marketing support to strategic shifts in the sector (e.g. towards ecotourism). It is through new investment propositions focused on ancillary aspects of the tourism market (as with the Baseball Theme Park) that benefits will be realized from project-specific SLA negotiated support.

Privately-owned zones will continue to manage their own external sales. They should have the opportunity, individually and collectively through the Zones Council and the Zones Association, to enter into SLAs with CEI-RD. They could benefit from inclusion in national marketing campaigns and international marketing events and also from initiatives to bring pioneering industries to the Dominican Republic. An example of an SLA between CEI-RD and the National Council of Export-processing Free Zones (CNZFE) is shown in box III.3.

Service-level agreements represent an organizational challenge in that cooperation among many public and private stakeholders requires significant effort. It is a solution that requires support from all participants and is based on collective responsibility. SLAs are proposed as a key step in the operationalization of the NSIP. This would be a pioneering approach and thus it is difficult to identify other country experiences to guide the Dominican Republic. One important issue to resolve is whether an SLA should be a legal requirement or a voluntary instrument. Certainly, the key central services (box III.3) should be performed by a single agency (i.e. CEI-RD) and this should be set out in the law. The recommended revisions to the Foreign Investment Law (1995) and the law on CEI-RD provide an appropriate opportunity to incorporate these issues.

For CEI-RD specifically, it poses the challenge of creating services and solutions that are compelling to stakeholders. That being said, the SLA approach is a practical, modern response that will set the Dominican Republic apart from competitors and optimize its investment promotion efforts.

Box III.3. Example of a service-level agreement between CEI-RD and the National Council of Export-processing Free Zones (CNZFE)

Objective

This voluntary framework agreement seeks to confirm the parameters and the obligations of the CEI-RD and the CNZFE in attracting FDI to the Dominican Republic. It is part of a series of SLAs between CEI-RD and other entities of the national system of investment promotion designed to provide the Dominican Republic with a coordinated, coherent approach to investment promotion.

Parameters

- Service provider: CEI-RD
- Stakeholder: CNZFE
- Service to be provided: promotion of the free zones as locations for foreign direct investment
- Target markets: the Americas, Asia, Western Europe
- Target sectors: specialist manufacturing and business services
- Purpose: to introduce potential investors to the free zones
- Timeframe: January 2008–December 2008.

Obligations of CEI-RD

CEI-RD has been mandated by the President of the Dominican Republic to provide a range of central marketing and facilitation services with the aim of attracting and retaining foreign direct investment. These services are as follows:

Central marketing services

- Develop an international marketing strategy for the Dominican Republic
- Coordinate international promotional activities on behalf of the Dominican Republic
- Develop a range of investment propositions for foreign investors based on selected sectors
- Promote the country brand
- Produce appropriate promotional materials.

Central facilitation services

- Investor support via the facilitation desk
- Organize promotional events aimed at the international business community
- Representation at international exhibitions/conferences
- Project management of investment enquiries.

These services will be provided by CEI-RD on behalf of the stakeholder. The cost of providing these central services will be borne by CEI-RD. In addition to these central services, CEI-RD is able to provide a range of customized investment promotion services to the stakeholder to assist the latter in meeting specific objectives. These services will typically be provided on a project basis at an agreed cost. These services include:

Customized services

- Proposition development
- Market-testing of propositions
- Joint-lead generation
- Aftercare of existing investors
- Supplier development programmes
- Capacity-building
- Inward visit coordination.

The provision of customized services will be covered by a project-specific service-level agreement containing details of the scope of the project, objectives, timelines, deliverables and associated costs.

Source: UNCTAD.

3. Leadership and monitoring mechanisms: the Minister of Investment

A complex system with many entities, such as the proposed NSIP, requires strong political leadership. This cannot come from CEI-RD as the latter is part – indeed an important part – of the system. All the Government agencies in the system report to their ministers or directly to the President. The NSIP will not supplant these arrangements. A new position of Minister of Investment is proposed in order to ensure that the interrelationships work effectively and that the overall FDI promotional effort is consistent with the Dominican Republic's national development objectives.

CEI-RD is currently administered by one person who acts as both chief executive officer and Secretary of State with ministerial responsibilities. The broad range of responsibilities encompassed by this arrangement has created a bottleneck in the administration of CEI-RD. Under the proposed national system of investment promotion, the roles would be separated. Policy and oversight responsibility would be vested in a new post of Minister of Investment. CEI-RD, which is an operational agency, would be headed by a full-time chief executive officer who reports via the board to the Minister of Investment.

The Minister of Investment will report directly to the President and will be supported by a small, highly specialized ministry. The minister will direct the strategic development of the NSIP and be responsible for its coordination.

A network of investment-related agencies will report directly to this minister rather than to the President or another minister. The agencies include: CEI-RD, CNZFE, PROINDUSTRIA, Border Zones, Special Parks and the Commission for the Reform of Public Enterprises. It should also include the new Council for Innovation and Technological Development, to ensure that its primary focus is the commercialization of technology. The minister will foster cooperation among these agencies and the wider range of stakeholders to ensure there are no gaps or confusion in service provision to investors, and that investment attraction priorities are consistent with national development goals. The minister will add his personal voice to key promotion activities.

Advocacy will be one of the new minister's primary roles, as he or she will be best placed to advocate policy change to other ministers and the President. The minister will receive inputs and feedback on the Dominican investment climate directly from the various parts of the NSIP, from his or her own dealings with investors and from the two new specialized units discussed later in this section: the Investment Ombudsman and the International Advisory Council. The National Competitiveness Council will be also be a strategic partner of the new ministry, and will forward to the minister the results of its country surveys on the Dominican Republic's international competitiveness, as well as foreign investors' satisfaction surveys. In performing the advocacy role, the minister will also promote transparent procedures and guidelines for investment.

As discussed in chapter II (section B.2), a "Strategic Projects Window" should be established to provide a coordinated and prompt response to incentives proposals for major projects of high interest for the country. This Window should be coordinated by the Minister/Ministry of Investment who will:

a. Assess whether the candidate investment project has sufficient strategic significance to warrant a customized support package;

b. Coordinate the responses of the various Government agencies (since it is likely that the proposed support package will include various components, such as fiscal incentives, infrastructure provision, land allocation, training support etc.);

c. Lead negotiations with the investor. It is recommended that the Minister take on this role, rather than the CEI-RD or sectoral agencies and ministries more directly concerned by the candidate investment project, so as to ensure that the proper balance is stricken in the consideration of the public interest;

d. Obtain the necessary executive and legislative approvals on the negotiated package of incentives;

e. Ensure that from the investor's standpoint, the process is handled efficiently and promptly.

The Ministry will also be responsible for monitoring the implementation of such projects to ensure the responsible use of public funds or tax incentives. Appropriate "claw back" arrangements should be in place in the event of project failure.

Box III.4. Case study: Office of the Investment Ombudsman, Republic of Korea

In 1999, the Republic of Korea Trade-Investment Promotion Agency (KOTRA) created the Office of the Investment Ombudsman (OIO) as part of its overall investment promotion initiative. Its mission is to address and resolve difficulties foreign-invested companies may encounter in the Republic of Korea and to "create a more favourable overall investment environment, while upgrading the country's bureaucratic/administrative system in conformance to global standards".

The OIO created a team of "Home Doctors" which are private sector specialists in areas that include construction, finance, tax, labour and legal matters. These "Home Doctors" are assigned to foreign firms with personalized assistance in "resolving management grievances by tackling bureaucratic red tape and cumbersome administrative procedures".

From 2000 to year-end 2005, the OIO has received more than 2,400 grievance cases from foreign firms in the Republic of Korea. The cases have covered a wide variety of issues such as customs, construction, financial affairs, labour, taxation, legal matters, investment procedures, etc. The majority of the cases are processed either directly by the OIO's "Home Doctor" staff or through proposals to relevant Government bodies seeking their cooperation or revision of regulations.

During 2005, 264 of the 351 grievances (70.6 per cent) filed with the OIO were settled directly by Home Doctors. By field, taxation accounted for 17.4 per cent of all directly resolved grievances, followed by labour complaints (12 per cent).

Source: Office of the Investment Ombudsman, Republic of Korea.

Two new specialized activities are proposed. These deal directly with the Minister of Investment:

Investment Ombudsman: one of the findings of chapter II is that the Dominican Republic does not provide to date effective mediation and conciliation services. It is important to strengthen performance in this area and ensure access to a fair and transparent mechanism in the event of disputes, which cannot otherwise be resolved. An experienced arbitration specialist should be appointed to the role of Investment Ombudsman within the Ministry to facilitate the mediation and conciliation process. It should also be within the purview of the FDI Ombudsman to make recommendations to the Government with respect to bringing investment regulations and regulations touching upon investment in line with international standards. Countries such as the Republic of Korea have successfully introduced such a position (box III.4).

The International Advisory Board: complementary to the advocacy functions, the Minister will also monitor the Dominican Republic's FDI competitiveness and performance. In this endeavour, the Minister should convene an International Advisory Board (with national and international participation) comprised of individuals from both public and private sectors with strong ties to and an interest in the Dominican Republic. This board will meet the President and the Minister of Investment twice a year and advise them on the international competitiveness of the Dominican Republic's offering and performance. Experience in other countries has shown this to be a powerful mechanism for bringing external expertise to the services of investment attraction (box III.5).

Box III.5. International Advisory Board, the experience of Scottish Enterprise

In August 2002, Scottish Enterprise established the International Advisory Board (IAB) which comprises senior business figures who are Scottish or people with a strong affinity to Scotland. Members are invited to join in recognition of their experience, positions of international prominence and influence in their respective industries, and their willingness to contribute to Scotland's wealth creation agenda.

Chaired by Sir John Ward, the IAB complements the role of the Scottish Enterprise Board by contributing international business advice and market development perspective to Scotland's economic development drive. The IAB significantly builds on the idea of accessing world-class counsel and knowledge for the benefit of Scotland. The International Advisory Board has met bi-annually since inception. At these meetings, members provide advice on strategy, guidance on key landmark projects and support to Scottish companies with significant international potential.

Outside of the formal International Advisory Board meetings, members continue to contribute their expertise and advice by (a) providing contracts for and advice on projects where their particular skills and expertise are of specific value; (b) speaking at events; (c) working with schools to encourage entrepreneurial behaviour; and (d) working with companies they have met at the formal meetings. The track records and achievements of the members of the International Advisory Board offer a uniquely exciting opportunity to advance Scotland's economic developments in a manner that is practical and inspiring. There are currently 21 board members. Some examples of their current job titles are: (a) Senior Vice President Corporate Operations, Genzyme Corporation; (b) Chief Human Resources Officer, Sun Microsystems; (c) Chief Executive, Financial Reporting Council; (d) Chairman, FormScape; (e) Vice Chairman, Forbes Inc; (f) Corporate Vice President World Wide Services, Microsoft Corporation; (g) Professor of International Business, Michigan Business School.

Source: Scottish Enterprise.

Summary

This chapter reviews the future conduct of foreign investment promotion in the light of the Dominican Republic's ambitious development strategy. FDI has been a leader of economic diversification especially in zone-based export manufacturing and tourism. The current level and organization of investment promotion has played its part in this satisfactory result. But as the ambitions for national development grow and for FDI to continue a leadership role, so demands on investment promotion grow.

Recommendations are made to enable the promotion department of CEI-RD to equip itself for this more ambitious agenda. These include reorganizing on a functional basis so as to achieve greater specialization and clarity of roles, doubling investment promotion staff, appointing a chief executive officer without ministerial responsibilities and implementing new systems and procedures. CEI-RD should curtail certain current or planned activities. This should include shedding its legacy regulatory roles of registering foreign investors and approving technology transfer agreements and shelving plans for a conventional one-stop shop.

CEI-RD cannot do all the investment promotion activities in all sectors. No investment promotion agency can. CEI-RD should position itself as the hub of the overall national investment promotion effort, which should be made more systematic. To that end, it is recommended that a National System of Investment Promotion (NSIP) be mandated. The NSIP should be headed by a designated Minister of Investment, supported by a specialist ministry, with a policy and strategic coordination role. The CEI-RD should have the lead functions in country marketing, facilitation and supplier development, but coordinate its specialist areas of proposition development, market testing and sales with the promotional needs of other ministries, agencies and private sector stakeholders. These relationships should be formalized in service-level agreements. In this way the national promotion effort should have no gaps and no confusion.

No recommendation is made as to whether the export and investment promotion activities of CEI-RD should be split, especially since they have recently been combined. The above proposals are workable within either institutional set-up.

Several specific enhancements are also proposed. These include (a) a Strategic Projects Window to be managed by the Ministry of Investment to give professional and prompt attention to major incentive packages for strategic projects; (b) an Investment Ombudsman to resolve investor grievances with the bureaucracy; and (c) an international Investment Advisory Board to convey issues arising from international trends and changes in corporate strategy to the highest levels in Government.

Chapter IV

SUMMARY OF FINDINGS AND RECOMMENDATIONS

FDI has led economic diversification and inflows have quadrupled in a decade

The Dominican Republic has long been receptive to FDI, except for a period of nationalizations in the 1950s and subsequent entry restrictions in selected industries. Export manufacturing in free zones and tourism development have received rising levels of FDI for more than 30 years, leading the Dominican Republic's diversification from an agricultural commodities-based economy. This has been the major impact of FDI on the Dominican Republic's development. It has introduced new competencies in producing for international markets.

FDI inflows have grown very strongly since a more open FDI regime was adopted in 1995 and capitalization (i.e. privatization) was relaunched in 1997. The United States is the principal source. Currently, FDI inflow is nearly $1 billion annually, almost four times its level a decade ago, despite the setbacks of a financial crisis, now overcome, and continuing electricity shortages. The DR-CAFTA free trade agreement is a major opportunity to further boost FDI attraction.

FDI can double to $2 billion and should accelerate diversification and upgrading and help to modernize domestic industry

The Dominican Republic can aim to double FDI inflows, to $2 billion annually, by 2015 and should seek to maximize its impact on development in two respects. One is to ensure that some of this FDI contributes to a second wave of diversification into more advanced export goods and services that can support higher labour costs and up-skill the workforce. This is happening, but slowly. The other is to facilitate FDI that can inject more competitive practices into domestic industry and services. The Government has developed a national competitiveness plan with a key focus on local entrepreneurship and innovation. FDI can make a contribution in this regard as well.

These are major challenges both in attracting FDI and maximizing its developmental impact. They require responses from the Government in line with its commitment to upgrading the international competitiveness of the Dominican economy. This report assesses two aspects of these responses – the regulatory framework for investment and the investment promotion effort. Are they adequate and how can they be improved?

Attending to gaps and substandard administration could complete modernization of the investment framework to a best-in-region in five years

In respect to general measures for business much has been achieved in the last decade in modernizing legislation to best international standards. But gaps remain and there is too often a frustrating lack of follow through in the essential tasks of developing implementing regulations and high-level administrative capacity:

- Recently modernized laws on the environment, land, intellectual property, telecommunications and foreign exchange control stand out as exemplary;
- The absence of a competition law until its adoption in January 2008 was a serious gap and suggested diffidence about exposing long established domestic business to competition. There also seem to be weak competitive outcomes in areas of public infrastructure concessioning. Proper enforcement of the new Competition Law is critical;
- Environmental permitting, land titling and effective enforcement of the rule of law and contracts are top priorities for administrative improvement. All require more public resources. Environmental permitting and land titling should be self-funding if appropriate user charges based on cost-recovery are applied;

- Taxation policy has served past objectives well but needs to be reoriented to meet new objectives of upgrading, modernization and innovation. Measures to be considered include a general reduction in corporate taxation and withholdings of payments abroad, removal of most corporate tax exemptions in favour of better-targeted incentives and creation of a window to formulate specific fiscal and financial arrangements for large, strategically significant projects. The incentive proposals would work better if the current system of crediting dividend tax against corporate tax were reversed.

Apart from these priorities, a package of incremental improvements should be considered in (a) labour law (moderating the accumulation of severance pay rights so as to reduce job hopping); (b) foreigner residence permitting (clearer regulations to the law, removing the restriction on remuneration when a position is localised and having a more active programme of talent attraction); (c) land law (providing for corporate title); and (d) upgrading the civil code and modernizing corporate governance provisions.

The important theme for the next five years is implementation. It is difficult to identify a single general measure which combines (a) a high standard law, (b) well-developed implementing regulations and (c) first class administration of the licensing or permitting process. To use a baseball analogy, the Dominican Republic is still looking for a "triple play"[98] as shown in snapshot assessment in table IV.1 below.

But, if the Dominican Republic can continue its drive to modernize law and can follow through in regulatory and administrative processes, it could achieve a best-in-region investment climate within five years. Apart from better protecting the public interest and providing a high-quality regulatory environment for local business, this outcome could have a surprisingly high payoff in FDI attraction. It would help to differentiate the Dominican Republic from regional countries, with whom it shares very similar investment attraction fundamentals.

The **specific legal framework for FDI** of the Dominican Republic is open and liberal, and contains very few sectoral restrictions since its modernization in 1995. Some aspects of the foreign investment law have fallen behind the good treatment of foreign investors in practice and the law is less forthcoming on standards of treatment and protection than in the Dominican Republic's international treaties. It is recommended that the investment law be revised alongside the development of a model BIT with consistent provisions that:

- Guarantee basic FDI treatment and protection provisions such as national treatment and fair and equitable treatment;
- Guarantee access to domestic and international dispute resolution mechanisms;
- Offer protection provisions in respect to expropriation, based on the principle of prompt compensation at market value; and
- Eliminate the ceiling on the repatriation of dividends.

The model BIT so developed should be used in future negotiations and be used to renegotiate existing BITs to bring greater clarity and consistency.

The investment law itself should:

- Remove the FDI registration requirement and address the need for accurate FDI statistics by introducing compulsory investor surveys;
- Remove the references to health and environment in the FDI negative list, as these matters are fully covered by the relevant national legislation; and
- Remove the screening of technology transfer contracts in favour of a more modern approach to the important public interests involved.

[98] A defensive play in which three offensive players are put out as a result of one action.

FDI entry restrictions in other laws covering professional services, transportation, oil and mining should be revisited to see if they remain consistent with the goal of upgrading national competitiveness.

Table IV.1. Dominican Republic: looking for the triple play

	Law	*Regulation*	*Administration*	*Comment*
Establishment	*	*	***	Seriously outdated commercial code but procedures streamlined. Unfortunate new proposal of deemed approval.
Foreign exchange	***	**	***	Recent international standard but regulations need updating.
Tax	**	**	**	Time to reorient corporate tax policy to new upgrading & innovation objectives.
Labour	**	**	***	Modern law and good industrial relations. Severance pay issue.
Foreign hire	**	*	**	Liberal approach but regulations missing. Lacks a proactive approach to skills attraction.
Land	***	**	**	Recent major improvements across the board but not yet complete.
Environment	***	***	*	Modern legal regime but not well respected or administered.
Rule of law & governance	**	**	**	Recent improvement in judiciary and new arbitration law proposed. Need to continue strengthening anti-corruption measures.
Intellectual property	***	***	**	Strong legal regime but poor administration and enforcement.
Transfer of technology	*	*	**	Hybrid of old and new approaches. Prior approval system is dated.
Competition	**	*	*	Law adopted in January 2008, implementation guidelines and enforcement body needed.
Sector regulation	**	**	*	Increasing scope for well-regulated private investment but vigilance needed for competitive outcomes.

Source: UNCTAD.
Notes: Code: * poor, outdated or non-existent; ** adequate but should be improved; *** good international standard.

The challenge for investment promotion is to enhance CEI-RD and create a National System of Investment Promotion (NSIP) led by a Minister of Investment

CEI-RD's Investment Promotion Department has played its part in the highly creditable FDI attraction performance of the Dominican Republic to date. In order to equip CEI-RD to meet the more ambitious future agenda for FDI promotion, it is recommended to:

- Organize CEI-RD functionally for greater specialization and clarity of roles;
- Double staff to around 35;
- Appoint a chief executive officer without ministerial responsibilities;
- Implement various new systems and procedures in line with good practice in other IPAs;
- Dispense with its legacy regulatory roles in investment and transfer of technology registration; and
- Shelve plans for a one-stop shop.

CEI-RD should see itself as the hub of an overall national investment promotion effort including the work of the zones, ministries such as agriculture, mining and tourism, sector regulatory authorities and other specialized agencies. It should lead on country marketing, investor facilitation and supplier development, but should contribute its special sales and other skills on an as agreed basis to leverage the expertise and efforts of these other stakeholders. Moreover, these relationships should be formalized through voluntary service-level agreements.

The integration of national investment promotion efforts should be formalized as a National Investment Promotion System and be coordinated by a newly appointed Minister of Investment. The Minister should ensure that priorities and execution of the overall promotion effort are consistent with the Dominican Republic's development strategies. There should be no gaps, no confusion and appropriate accountability.

The Minister should have political level responsibility for the CEI-RD and agencies with direct investment functions (such as the CFI, CNZFE, the Border Zones' Council and the Commission for the Reform of Public Enterprises). A supporting Ministry of Investment should handle policy advocacy and manage a proposed Strategic Projects Window to coordinate the Government's response to incentive packages put forward for large strategic projects. The Minister should convene an international investment advisory panel and appoint an ombudsman.

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