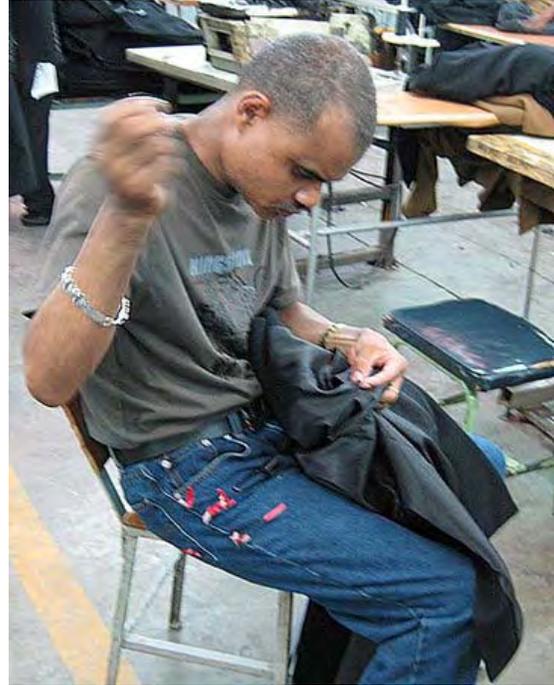




HAITI I-Trade Program –

Technical Assistance to the Investment Facilitation Center and Investor’s Roadmap.

THE INVESTMENT CLIMATE AND THE CFI



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Overview of this Final Report

This is an FINAL REPORT of the findings made during two missions to Haiti in accordance with a Statement of Work (SOW) which proposed to assess the current status of the CFI, address issues identified and address a series of specific issues designed to move the CFI forward and assist it in achieving some “quick wins” and make suggestions regarding the governance of the CFI. As will become clear upon the review of this Interim Report, many of the assumptions underpinning the SOW, are not based on fact and the CFI has neither the resources, nor staff nor governance to achieve its’ objectives. This will, in my opinion, require a restatement of the detail and objectives of the SOW. Following the Initial Report, greater emphasis will need to be placed on making the CFI operational, right-sizing its administration and objectives of CFI based on current conditions and especially within the resources available. The Consultant has created a comprehensive “work document” setting out facts established and information gathered. That document however was designed to be input for the FINAL REPORT under the full scope of the SOW. Since it is neither practical nor possible to complete the SOW as initially designed, the information will be preserved and incorporated as separate functions can be completed during subsequent missions. Meantime, sections of the Working Paper relevant and substantially completed have been extracted to provide the reader a comprehensive overview of such areas in this FINAL REPORT for the Missions undertaken and areas substantially completed.

The CFI exists but is almost entirely dysfunctional. The governance process does not work. The Government has not made adequate financial resources available, a small staff is trying to achieve objectives designed for a much larger, better governed and better funded agency. To redress this, the CFI Management, the Board of Directors and the Consultative Council will need to be engaged to correct the approved Work Plan for the CFI which was based on the Work Program detailed in the Capital Consult study presented in September 2007. That work plan was predicated on budgetary assumptions contained in the same report. It is incorrect and unfair to consider the achievements, or lack thereof by CFI and its management, without also considering the resources made available for the implementation of the agreed Work Plan. Greater details are contained in the relevant section below; suffice it to say that resources obtained represent about 30% of the proposed capital and operations budget on which the approved Work Plan was based.

1. Introduction - the Investment Promotion Climate in Haiti

Investment promotion has a lengthy history in Haiti. As the poorest country in the Western Hemisphere, the creation of non-agricultural employment opportunities has long been a political objective and a social necessity. The results obtained have

varied over time and, not surprisingly generally speaking, follow the perceived political stability and personal safety and security. An examination of the literature, supplemented by interviews, brings us to conclude that Haitians – at all levels of society – do not appear to perceive their social well being and economic future as closely linked to foreign direct investment. This is very different from most other developing countries where I have worked. Society appears highly structured and a historic elite blends comfortably with a newer, economic elite. All these factors seem to combine to lock Haitian society into a system where the political, judicial and economic elites live comfortably with the status quo without any apparent sense of urgency to address social inequities, judicial paralysis, fight poverty, improve education and create sufficient employment for Haitians young population. Haiti had SIX¹ Investment Promotion Agencies. The Agencies had variable success depending on the level of Government attention and interest – frequently with sustained pressure from the international financial organizations and bilateral donors. The creation of the “new” Investment Code in 2002 and the decree establishing the CFI thus build on long experiences – both positive and negative. The previous failures provide food for thought and examples of what worked and what did not. The Code currently in force, sets forth the rules for private investment in Haiti was passed as law in 2002 and represents a full revision of the previous code. It comprises a set of general provisions applicable to all investment, whether domestic or foreign, and a much more extensive set of provisions for investments qualifying for special incentives.

There are certain generally accepted standards in the elaboration of international investment agreements, which include the widely used bilateral investment treaties.² Broadly considered, Haiti’s *Code des Investissements* (the Code) adheres to modern guidelines. It should be noted that the generally accepted mantra is “the BEST Investment Code is NO Investment Code”. Attracting investment without an Investment Code or other incentives naturally is based on the understanding that the general business environment and legal and regulatory system as well as the institution applying and enforcing such laws and regulations, mainly government and the courts, are simple, transparent and fairly applied – equally to old, new, national or international investments. Such however is not currently the case in Haiti – “Doing Business 2009” ranks Haiti in 153 position in the World and last in the Western Hemisphere.

The Investment Code 2002

The current Code came into force by its publication in *Le Moniteur* on November 26, 2002. The Code was presented as a modification of the Decree on Investment from 1989, which in turn modified an earlier Investment Code.

¹ Le Bureau Haitien de Promotion Industrielle (BHPI); l’Office National de la Promotion de l’Investissement (ONAPI); le PROMINEX, le PROBE ; Centre de Promotion des Investissements (CPI) and finally, the CFI.

² See for example “The Legal Framework for the Treatment of Foreign Investment” (Washington, DC: World Bank, 1992) and *The Investment Laws of the World* (Geneva: The International Centre for the Settlement of Investment Disputes, 1991).

This Report will contain some recommendations in this regard. Let us, by way of introduction, briefly review the Code:

General Provisions

The first part of an investment Code contains a set of definitions and states the general purposes of the law. It outlines four key provisions, highlighted in Articles 1 to 6.

Definition of Target Investors. The target audience must be clear in the drafting of the laws. The Code as drafted in Article 6 makes clear that the target audience is all investment, both foreign and domestic, irrespective of size and, practically sectors. This is a positive approach to stimulate economic growth in a post-conflict environment but, at the same time, virtually permanently undermines State revenues needed to provide infrastructure and services both to business and the public.

Forms of Investment. Internationally, these provisions generally lay out guidelines for allowable forms of investments, especially for foreign investors, and they often distinguish between direct and portfolio investment. Under the Haitian Code, there is no mention of different statutory forms of business. The code is silent in regard to portfolio investment.³

Activities Open and Closed to Domestic and/or Foreign Investors. Many countries reserve certain sectors of the economy for national investors or even sub-groups in their societies.⁴ Typically the military-industrial complex, media, including radio and television and other “cultural” services frequently are on such a list. Haiti has no such negative list. The legal inference is that foreigners as well as Haitian nationals may invest in any sector or industry.

Ownership Regulations. Generally the Code will set out any limits on foreign ownership through equity participation. In Haiti no threshold requirements or ceiling limitations are imposed on foreign ownership. The major problem appears to be the uncertainty implicit in ownership of assets, and particularly real property, suffered by all residents, local or foreign.

Rights and Guarantees in the Investment Code

Following these general principles, an Investment Code, should offer a set of

³ Direct investment implies management presence. Frequently a minimum of 10-20 percent ownership, as well as management presence, is required to qualify an investment as direct.

⁴ Some countries go so far as to have race based limitation or preferences. In a number of African countries, investors “not of African origin” are excluded from participating in certain sectors. The same is true in South East Asian laws discriminating against citizens of specific ethnic origins. Fortunately, such is not, and should not be, the case in Haiti.

rights and guarantees to investors. The Haitian Investment Code has General Guarantees in Articles 7 through 16.

National Treatment of Investors. GATT requires National Treatment in trade, this implies equal treatment for all investors. GATT however does allow member states to reserve services for national investors. Under the Haitian Investment Code in Article 6 and, specifically Article 11 makes it clear that foreign and domestic investments will be treated equally.

Government Protection of Investment. Protection of assets from seizure, nationalization or other appropriation by government is an important protection standard that investors need. Article 13 of the Haitian Investment Code offers this assurance.

Capital Transfers. The rights to repatriation of profits, dividends, and sales of assets are often included in the sections on special incentives for foreign investors. The Investment Code, Article 12, exempts investors from taxation on reimbursement of debts incurred abroad. Similarly, Article 17 guarantees the right to transfer of dividends and other revenues.

Land Title and related issues. Investment laws should set forth policies over ownership and leasing of land for foreign investors. The Investment Code Article 11 gives foreign investors the right to own property that satisfies the requirements of their investment project. By inference this right would extend to leasing. As mentioned earlier, here too, there is “national treatment” and investors domestic and foreign suffer from a dubious land titling system with questionable enforcement procedures.

Guidelines for export and import. There is little “best practice” in this area and practice varies widely, especially in incentive regimes, in the freedom of foreign investors to import goods. There are no restrictions under the general guidelines in the Investment Code, specifically Article 7 (e).

Corporate Governance, Accounting Standards and Audits. Investors will be concerned about the rigidity and practice of corporate governance practices, accounting rules and the availability of generally accepted accounting systems in the target country. Under the Investment Code, Articles 63 and 65 apply to investments benefiting from incentives and requires the company to maintain books according to Haitian accounting standards, but no specific requirements are made in the general provisions. Interviews indicate that there is no enforcement by Government of either maintaining such standards nor for filing the documents provided in the Investment Code.

Intellectual Property Rights. Such guarantees of intellectual property have become increasingly important to all investors, but primarily to foreign industrial investors. The Investment Code in Article 14 offers a statement of protection but

a casual examination of Haitian markets and stores demonstrates that such protection is not adequately enforced.

Recommended Investment Code Improvements

An examination of the 2002 Investment Code and the earlier Decree demonstrates that the “Dispositions Transitoires” neither repeal nor otherwise render inoperable the entire previous texts. That means that those older laws continue to exist and may create confusion and indeed conflicting approaches and benefits.

This makes it difficult to speak with certainty about “the Code” and also creates opportunities for less than transparent operations in an environment where “governmental discretion” is highly valued. A key aspect to be considered is to undertake not a “revision” of the Code and related Laws but rather to undertake a “Consolidation” of these different versions of laws, decrees, etc. for the purpose of “cleaning up” and simplifying the law and make it easier to understand by Judges, lawyers and, especially, the CLARITY that investors expect.

Discretion and uncertainties should be removed. Investment Code and the residual authorities arising from older laws, the major flaw in our opinion in the 2002 Code is that the benefits offered are subject to an administrative process and are granted on a discretionary basis. The question of the type of benefits, their level and length should NOT be subject to negotiation or some other administrative allocation. Certainly investment incentives can be stratified based on the level of investment, the location of the investment, the number of jobs created, the focusing on certain sectors deemed critical by government and other transparent criteria. Each investor should know however that if they ACTUALLY MEET AND IMPLEMENT within the terms specifically stated that they WILL be entitled to the stated benefits. No “permission” should be required to invest and create employment, subject to the laws of general application being respected, the welcome mat should be out and the benefits conferred under the Investment Code, absolute.

If such discretion is removed, the DG of the CFI would be in a position to extend immediate letters of “invitation” to potential investors and give them clarity in terms of what incentives can be expected if the stated investments and objectives are in fact implemented. Removal of this discretion should also be accompanied by a simplified and speedier Application process and the elimination of unnecessary information. This would make Haiti more competitive with competing jurisdictions.

Especially Article 19, clarification is required to eliminate arbitrary matters especially as it relates to specific sectors or “autres secteurs” – other sectors ; or tax benefits for specific laws and ‘autres taxes internes” – other laws; or in fixing the period of tax exemption for “up to 15 years” – “duree ne dépassant pas “.

Such lack of clarity and open discretion, leads to a lack of impact and opens the door to lack of transparency at best and outright corruption at worse. This is especially important considering that Incentive requests maybe introduced by virtually anyone⁵ in a position of power and not limited to a transparent process through the CFI. The Inter-Ministerial Commission should, in accordance with the law, have CFI act as the Secretariat and should insist that no request for Incentives be presented without the CFI certifying that the request is fully documented, appropriately presented, within the terms of the law and transparent.

The Code should be modernized applying modern concepts of process re-engineering. Under this approach, the Investors would provide data at a single point – the CFI - and the appropriate information should then be electronically distributed to all Agencies of Government involved, requiring a reply within a limited period of time. This time period should progressively be reduced and, if no reply is made, approval can be implied and the process not be held up. In such cases the CFI should simply notify the relevant Minister that “Approval has been given considering no reply was received from your Ministry within the period specified”. Such notification allows Ministers to insist that their staff apply appropriately in subsequent matters coming before them or, if needed, replace the individuals involved.

In Conclusion:

- Revoke all previous Investment Laws, incentive regimes and benefits.
- Coordinate and harmonize the incentive provisions in sectoral laws, free zones, industrial zones and other benefits.
- Benefits should be granted as a matter of right and not be based on administrative discretion.
- No application should be allowed to be considered by the Inter-Ministerial Commission without having been reviewed, certified as complete and appropriate and transparently presented by the CFI as the SIMC Secretariat.
- Process re-engineering techniques should be designed to simplify and speed up the incentive approval process.

The Use of Tax Incentives to Attract Foreign and Domestic Investment

The increasing mobility of international firms and the gradual elimination of barriers to global capital flows have stimulated competition among governments for foreign direct investment, often through tax incentives. The usage of tax incentives, financial subsidies and regulatory exemptions directed at attracting foreign investors is no substitute for pursuing the appropriate general policy measures (and

⁵ Incentive files are introduced by the CFI, sector Ministries, individual consultants and well connected power brokers.

focusing on the broader objective of encouraging investment regardless of source).⁶

In some circumstances, such as in post-conflict Haiti, incentives may serve as compensation for proven market imperfections that cannot be otherwise addressed. The Haitian Government engaging in incentive-based strategies face the important task of assessing these measures' relevance, appropriateness and economic benefits against their budgetary and other costs, including long-term impacts on domestic allocative efficiency.

As more and more governments try to attract multinational companies and enhance the associated technology spillovers, fiscal incentives have become a global phenomenon—from tax holidays and import duty exemptions to investment allowances and accelerated depreciation. Both analysis and surveys have confirmed that tax incentives are a poor instrument for compensating for negative factors in a country's investment climate. At best, tax incentives affect the decisions of *some* investors *some* of the time.

The approach used in the Haitian Investment Code, offering a reduction in the corporate income tax rate, tax holidays or temporary is commonly used. Investment tax allowances promote new investment rather than giving windfall gains to owners of old capital, as a reduction in corporate tax rates does. That may or may not be appropriate given Haiti's history over the last two decades.

A few countries have chosen a non-targeted approach, which is to lower the effective corporate tax rate for all firms with no or limited incentives. Small economies such as Hong Kong, Lebanon, and Mauritius have typically chosen this option. International investors look favorably on a country offering a low statutory tax rate, especially one well below the international norm of 35–40 percent. A low corporate rate signals that the government is interested in letting the market determine the most profitable investments. But this approach can reduce tax revenues, at least during a transitional period (in the longer run the simplicity of the tax system may attract more investors, increasing the tax base and thus compensating for the initial reduction).

Tax holidays, such as Haiti uses, benefit primarily short-term investments, typical of “footloose” industries in which companies can move quickly from one jurisdiction to another. They also tend to reward the founding of a company rather than investment in existing companies, and to discriminate against investments that rely on long-lived depreciable capital. And they can lead to an erosion of the tax base as taxpayers learn how to evade taxation of income from other sources. For all these reasons fiscal experts have generally been highly critical of tax holidays.

2. Summary of CFI Status Issues Considered by this

⁶ See “Viewpoint” Series by the World Bank, “Using Tax Incentives to Attract Foreign Direct Investment” by Jaques Morisset.

Consultancy

The starting point for any consideration of CFI performance must be the study undertaken for USAID and presented in September, 2007 by Mr. Jacky Lamarque for Capital Consult S.A. The Report is comprehensive and Chapters have been adopted in their entirety by the CFI Board and Management as their own. This includes:

- Work Plan
- Organization of the CFI
- The Internal Regulations for the operation of the CFI.
- The Code of Ethics

A number of areas of the Capital Consult Report has NOT been acted upon. This includes:

- establishing the CFI as the Secretariat for the Inter-Ministerial Commission on Investment (Secretariat Technique de la Commission Interministerielle des Investissements)
- CFI taking over as Technical Secretariat for the National Council for Free Zones (Secretariat Technique du Conseil National Zones Franches).

As pointed out in earlier sections of this Interim Report, there are a number of structural issues, arising both from the initial planning and implementation, which have combined to make the first year of operation of CFI challenging and which may, unless quickly addressed, mean that CFI may be eclipsed by new policies, new players and ultimately, slip into total irrelevance. The Decree establishing the CFI⁷ includes structures unique in Haitian public administration, including the establishment of a legislatively sanctioned Public/Private Board of Directors and Advisory Council. Since it is not clear that such could be replicated or improved upon in the current political climate, every effort should be made to make this Decree operational and succeed.

The CFI Budget and its Impact on Performance

In quantifying the Work Plan implemented by CFI in its first year of operation, it is easy to come to the conclusion that little was achieved. If one considers however what resources were made available (or rather NOT made available) it becomes somewhat easier to understand CFI's modest achievements.

The Study by Capital Advisors, which led to the establishment of CFI, the development of its' Work plan, Operations Manuel, etc foresaw a First Year budget of about \$ 575,00 (at an exchange rate of 42,50 as used in the budget

⁷ Decret etablissant le Centre de Facilitation des Investissements, dated November 16, 2005. Attached as Annex xx.

document, that would be HTG 24,500,000)

The Budget actually approved and provided by the Government of Haiti represented approximate 48% of the budget forming the base for the work plan. That does not even take into consideration the 20% pay increase authorized by the Government, across the board, in October, 2007. As it stands, even with its limited staff level, nearly the entire budget appears to go for basic operating expenses.

The Work Plan voted by the Board of Directors of CFI was not amended to reflect this reduced budgetary resource. Somehow everyone involved appears to have assumed that the Work Plan could be achieved without the requisite resources. The results obtained by CFI in its' first year of operation, demonstrate otherwise.

A decision will need to be made what alternatives are available. The most obvious solution should be the granting of an adequate budget to implement the Work Plan. Failing such a positive solution, the alternative evident options include:

- Further reducing CFI staff, leaving 2-3 people with a limited mandate but with some budget to hire outside professionals to achieve limited objectives.
- Obtaining additional funding commitments from Government.
- Consolidating functions and budgets as they relate to CFI, SONAPI and the Free Zones agency.
- Recognizing that the work plan cannot possibly be achieved with the approved budget, reducing the Work Plan and seeking the support of Donors to undertake some of the Technical functions in support of the CFI, in the current Work Plan.

Prior to undertaking the Third Mission under this Consultancy should be postponed until such time as greater clarity has been achieved in this regard. It may be necessary to contract a Haitian consulting firm to directly engage the Haitian government and attempt to achieve clarity in this regard and, at the same time, survey donors to ascertain what other resources may be available to permit CFI to achieve the goals in its Work Plans.

Measuring CFI Performance during its First Year of Operation

Whatever the legislative structures, or budget, the question remains, what has the CFI actually achieved in the first year of operation? The best way to measure progress is to examine what had been foreseen in the approved Work Plan for Year 1 as extracted from the Three year Work Plan. This Work Plan provides a clear baseline for this examination. The observations herein are based on interviews, observations and comments from CFI Staff and Management:

OBJECTIVE 1 : Facilitate the Investment Process

YEAR 1 – OBJECTIVE 1 – ACTIVITY 1	Q 1	Q2	Q3	Q4
Activity 1: Simplify Procedures for the incorporation of companies				

Simplify Procedures for the incorporation of companies.

The Work Plan foresaw that this activity could be fully achieved during the first quarter of CFI's activities. This was perhaps informed by a statement in the Capital Consult Report which outlines in detail what the problem is and makes suggestions on how to resolve it. The reality however, appears much broader than what can reasonably be solved by a nascent agency such a CFI in the first quarter of its existence. However, CFI did make a valiant effort to work with the legal department in the Department of commerce to start measuring how long each incorporation takes and suggesting ways to simplify the process. Imagine the problem however – CFI is an autonomous agency - under the tutelage of the Minister of Commerce – but in no way does it have leverage over the Ministry or, indeed, its' legal department. CFI has undertaken to provide detailed data, in digital format, on all incorporations in 2006, 2007 and the first half of 2008. This is particularly important in measuring progress for future "Doing Business" and Freedom House studies in an empirically sound manner. Mr. Lamothe acknowledged that this matter is far from concluded. In his view, about 50% of the objective had been achieved. To date, the Consultant thinks this number is far lower. It will be followed up on the next missions once concrete data has been received and analyzed.

Activity 2: Institutional Strengthening of DAJ – Ministry of Commerce Judicial Department

YEAR 1 – OBJECTIVE 2 – ACTIVITY 2	Q 1	Q2	Q3	Q4
Activity 2: Institutional Strengthening of DAJ – Ministry of Commerce Judicial Department Company formation Equipment Registry data base				

Institutional Strengthening of DAJ – Ministry of Commerce Judicial Department. The problem is also dealt with in the previous question. The Consultant is informed that the "needs assessment" has been completed and that procurement is to begin shortly. The meeting with the Ministry of justice Judicial department was cancelled on two occasions (due to weather) and will be pursued during the next Mission.

Activity 3: Simplify Procedures for the functioning of the Inter-Ministerial Investment Commission (Investment Code)

YEAR 1 – OBJECTIVE 1 – ACTIVITY 3	Q 1	Q2	Q3	Q4
Activity 3: Simplify Procedures for the functioning of the Inter-Ministerial Investment Commission (Investment Code)				

Simplify Procedures for the functioning of the Inter- Inter Ministerial Investment Commission (IMIC). The CFI has not as yet become the Secretariat for the Inter-Ministerial Investment Commission and as such has little leverage to implement this section of the work plan. It has worked hard to “insert” the CFI in as many cases to be considered by the IMIC by offering “facilitation services” to all who ask. The difficulty is that currently there is no specified “point of entry” – an investor can go to see any one – the President, his wife, any Minister or anyone they believe has the power to get the “best deal” under the Investment Code. That makes the simplification of procedures moot – there is no “flow chart” we can draw that will reform these well established, bad habits.

The Consultant was informed by senior people within the Ministry of Justice that the Secretariat of IMIC duties will be transferred to CFI “soon”. If such is the case, CFI should initially concentrate in becoming the “gate keeper” and assure that any file going to IMIC has been fully completed, analyzed and questions and recommendations made. Should they manage to do so, it would create incentives for “other entry points” to consult with CFI early. This will then open the door for standardization of process and simplification of the process.

Activity 4: Simplify Procedures Related to Free Zones

YEAR 1 – OBJECTIVE 1 – ACTIVITY 4	Q 1	Q2	Q3	Q4
Activity 4: Simplify Procedures Related to Free Zones				

Simplify Procedures Related to Free Zones

Nothing has been done in this area. This however is partially due to the fact that there is a single Free Zone (contiguous with the Dominican Republic, in the North East) and no other applications have been received. The issue is again the lack of clarity under Haitian law – there are benefits under the Investment Code, similar benefits under the Industrial Parks Act and again, similar benefits under the Free Zones Act. Each Agency has an administrative staff, oversight functions, facilitation functions and promotion functions. The Consultant learned that it is the governments’ intention to privatize the Port-au-Prince Industrial Park and to convert SONAPI into a Regulatory Agency with a mandate to develop other industrial parks. At some stage many of these functions, laws, regulations and benefit frameworks should be harmonized and administered by a single, efficient agency.

Weaknesses in the law and administrative mechanisms is clearly demonstrated in the case of SONAPI – most of the vacant lands of the industrial park has been

“transferred” to individuals, leaving the Park with few expansion possibilities. In addition, almost 25% of the buildings are occupied by domestic investors who neither provide employment nor pay rent but have a level of immunity from eviction through political associations and an inefficient judicial system.

Activity 5: Development of Sectorial Procedure Guides

YEAR 1 – OBJECTIVE 1 – ACTIVITY 5	Q 1	Q2	Q3	Q4
Activity 5: Development of Sectorial Procedure Guides				

Development of Sectorial Procedure Guides

Without CFI being the Secretariat and establishing itself as the gatekeeper, it has neither the jurisdiction nor the technical capacity to develop such Guides. In the view of the Consultant, sectorial licenses and permits should be separated from the Benefit Grant process under the Investment Code. Benefits can (and should) be approved quickly and simply – as mentioned earlier – without discretion in terms of the length or level of benefits for investors in the same “class” in terms of location, level of investment, jobs created and other transparent criteria. The documents should simply indicate that the conferral of Investment Code Benefits does not confer any rights to over-ride or not comply with any law or regulation of general application and that the benefit will not inure until the investment is made and the business is legally established.

Activity 6: Develop a National Development Strategy

YEAR 1 – OBJECTIVE 1 – ACTIVITY 6	Q 1	Q2	Q3	Q4
Activity 1: Develop a National Development Strategy Concept/Implementation				

Develop a National Development Strategy

This activity was slated to start in the fourth quarter (Q4) and continue during the first two quarters of Year 2 (Y1 Q1 and Y2 Q2) and has not as yet commenced. CFI Management indicated that it simply does not have the resources to undertake this task at this time. Again, the TASK appears much broader than the authority of CFI and CFI does not have the image or political importance to undertake such a coordinating role in policy development.

Activity 7: Harmonization of Actions between State Services

YEAR 1 – OBJECTIVE 1 – ACTIVITY 7	Q 1	Q2	Q3	Q4
Harmonization of actions between State Services				

Harmonization of actions between State Services

A number of examples have been outlined above showing how urgent this task is.

The CFI has neither the staff, the political support, nor the resources to undertake this massive undertaking. It is a lost opportunity however – CFI should work closely with I-Trade and other donors to implement this mandate. This would help to achieve key economic development and other key objectives and strengthen and improve the image of CFI. If success can be achieved, the opportunity exists to achieve a virtuous spiral, with one success leading to others.

Activity 8: Continues Improvement Program

YEAR 1 – OBJECTIVE 1 – ACTIVITY 8	Q 1	Q2	Q3	Q4
Continues Improvement Program				

Continues Improvement Program

A nice objective but work must do before it can be improved upon.

OBJECTIVE 2: Economic and Commercial Information System

Activity 1: CFI Introduction Presentation

YEAR 1 – OBJECTIVE 2 – ACTIVITY 1	Q 1	Q2	Q3	Q4
CFI Introduction Presentation				

CFI Introduction Presentation

According to CFI Management, this item has been fully implemented but the benefit was largely lost when it did not have the resources to widely distribute the information and was forced to stop publications on specific issues in the press for the same reason.

Activity 2: CFI Introduction Presentation

YEAR 1 – OBJECTIVE 2 – ACTIVITY 2	Q 1	Q2	Q3	Q4
CFI Introduction Presentations				
Pamphlet on procedures , Quarterly Bulletin, Annual Report				

CFI Introduction Presentations

Pending full discussion and receipt/examination of documentation.

Activity 3: Database on enterprises: Development - Establishment

YEAR 1 – OBJECTIVE 2 – ACTIVITY 3	Q 1	Q2	Q3	Q4
Activity 3: Database on enterprises: Development- Establishment				

Database on enterprises: Development- Establishment

CFI made an effort to work with the legal department in the Department of

Commerce to start measuring how long each incorporation takes and suggesting ways to simplify the process. Imagine the problem however – CFI is an autonomous agency - under the tutelage of the Minister of Commerce – but in no way does it have leverage over the Ministry or, indeed, its legal department. CFI has undertaken to provide detailed data, in digital format, on all incorporations in 2006, 2007 and the first half of 2008. This is particularly important in measuring progress for future “Doing Business” and Freedom House studies in an empirically sound manner. Based on this information they intend to establish a database.

Activity 4: Documentation Center on Commerce and Investment

YEAR 1 – OBJECTIVE 1 – ACTIVITY 4	Q 1	Q2	Q3	Q4
Activity 4: Documentation Center on Commerce and Investment				

Documentation Center on Commerce and Investment

The Consultant understands that this Center has been established BUT is located in a (permanently) locked room within the Ministry of Commerce. CFI has no resources to staff and keep it open.

Activity 5: Public Information Program

YEAR 1 – OBJECTIVE 2 – ACTIVITY 5	Q 1	Q2	Q3	Q4
Public Information Program				

Public Information Program

An examination of CFI files indicates that in the early months a number of publications were prepared, weekly articles appeared in the press. When additional resources were not made available however, that initiative ended.

Activity 6: CFI Web Page – in place and continuously updated

YEAR 1 – OBJECTIVE 2 – ACTIVITY 6	Q 1	Q2	Q3	Q4
CFI Web Page – in place and continuously updated				

CFI Web Page – in place and continuously updated

The Web page is up and running but not client friendly. The Inter-American Development Bank Project is assisting CFI by re-designing the web site. The intention is to create links to leading government ministries and agencies and make a lot of information available at a single site. The Beta version is not as yet ready.

OBJECTIVE 3 : Investment Promotion

Activity 1: Develop Tools: Investor Guides

YEAR 1 – OBJECTIVE 3 – ACTIVITY 1	Q 1	Q2	Q3	Q4
Activity 1: Develop Tools: Investor Guide				
Preparation of Tools: sector catalogues (Agro alimentary, Tourism, Free Zones and assembly, Telecommunications, others)				

Develop Tools: Investor Guide

A detailed “Investors Guide” was prepared by the Ministry of Commerce and contains specific sections on CFI. The publication is only available in the French language and does not appear to have been widely distributed. The re-printing and translation of this publication into English, Spanish, Chinese, Korean, etc should be a priority, The Consultant was again informed that no funds are available to do so. With the advent of desk-top publishing however, it should be possible to produce these texts in different languages and print them on an “as needed” basis. While the Consultant was in Haiti, there was an invitation to CFI management to visit Japan and, possibly Taiwan. We suggested that one matter that should be included and “costed in” should be the production and translation of CFI materials in Japanese and Chinese. This was done and the materials are now available.

No materials have been produced for specific technical sectors such as tourism, agro alimentary, Free Zones and assembly, Telecommunications, etc.

Activity 2: Cooperation and Private Sector Partnership/ Joint and Coordinated Promotion

YEAR 1 – OBJECTIVE 3 – ACTIVITY 2	Q 1	Q2	Q3	Q4
Activity 2: Cooperation and Private Sector Partnership / Joint and Coordinated Promotion				

Cooperation and Private Sector Partnership / Joint and Coordinated Promotion

An examination of “outputs” indicates that not much has been achieved in this regard. It should be noted that those elements of the private sector which were interviewed, expressed disappointment that CFI had not done enough promotion. An examination of the Capital Consult studies however makes it clear that CFI in the first three years should do “limited facilitation” and that promotion should be left to the private sector. That clearly has not been done. Even if CFI would have wanted to perform these services, the budget would simply not have been available.

Activity 3: Regional Outreach: Conditions for Investment

YEAR 1 – OBJECTIVE 3 – ACTIVITY 3	Q 1	Q2	Q3	Q4
Activity 3: Regional Outreach: Conditions of Investment				

Regional Outreach: Conditions of Investment

Little has been done in this area. Efforts have been made to encourage tourism and other developments outside the Port-au-Prince area but without success. The incentives, be they in the Investment code, Free Zones or Industrial Zones are the same for firms establishing in Port-au-Prince or anywhere else. To make outlying areas attractive, additional incentives will likely need to be offered.

Activity 4: Cooperation with Regional Chambers of Commerce

YEAR 1 – OBJECTIVE 3 – ACTIVITY 4	Q 1	Q2	Q3	Q4
Activity 4: Cooperation with Regional Chambers of Commerce				

Cooperation with Regional Chambers of Commerce

Same as above. Little has been done in this area. Efforts have been made to encourage tourism and other developments outside the Port-au-Prince area but without success. The incentives, be they in the Investment code, Free Zones or Industrial Zones are the same for firms establishing in Port-au-Prince or anywhere else. To make outlying areas attractive, additional incentives will likely need to be offered.

Activity 5: Coordination with Diplomatic Representatives

YEAR 1 – OBJECTIVE 3 – ACTIVITY 5	Q 1	Q2	Q3	Q4
Activity 5: Coordination with Diplomatic Representatives				

Coordination with Diplomatic Representatives

A Ministry of Commerce book on Haiti, including the description of CFI and the benefits to investors under the Investment Code, Free Zone Legislation and Industrial Zones, has been distributed to the Embassies abroad and foreign Embassies in Haiti. The Director General has visited Consulates in New York and Miami and events have been held mainly aimed at the Haitian expatriate community. Little resulted we were told.

OBJECTIVE 4 : Improvement of the Legal Business Environment

Activity 1: Improvement to the Investment Code

YEAR 1 – OBJECTIVE 4 – ACTIVITY 2	Q 1	Q2	Q3	Q4
Activity 2: Improvement to the Investment Code				

Improvement to the Investment Code

There is a good understanding of the shortcomings of the Investment Code of 2002. The general feeling is that there is little appetite to ask Parliament to re-consider and amend the Investment Code at this time. This sense of unease is linked to the fact that although the investment Code enacted by Parliament but the decree establishing CFI is not considered “legitimate” by many and there may be a push to abolish or change the agency. Once political stability prevails the Investment Code will need to be amended to address the following issues:

- A “consolidation” of the old and new Investment Codes and perhaps tying in legislation related to Industrial Zones and Free Zones,
- The removal of administrative discretion in the granting of investor benefits.
- A re-consideration of the benefit structure to, inter alia, recognize that firms solely directed at the export of goods, may need indefinite benefits or will simply pack and leave.
- The benefit sections will need to be clarified, unified and made explicit for a set of different sectors and circumstances.

The Consultant will make specific recommendations in this regard in the Final Report.

Activity 3: Project to develop Five New, Already Identified Laws

YEAR 1 – OBJECTIVE 4 – ACTIVITY 3	Q 1	Q2	Q3	Q4
Activity 3: Project to develop Five New Laws in Already Identified Areas: New Corporate Structures; Co-Ownership Laws; Social Security; Capital Markets ; General Markets				

Project to develop Five New, Already Identified Laws

CFI has no skills nor legal staff to undertake the drafting of 5 new laws and policies in the areas identified in the Work Program. The five laws have been studied, re-studied and recommendations made since 1981. Whether a new law on Corporate Structures; Co-Ownership ; Social Security; Capital Markets and General Markets are truly the “priorities” for promotion of investment and the creation of employment. As pointed out elsewhere, there appears to be little political will or even appetite to tackle some of these very complex issues at this time. The Consultant’s recommendation is that a simple law be passed providing

for the Revision and Consolidation of Laws as an initial step. The Agency undertaking the revision and consolidation may at the same time as simplifying the current laws, make recommendations for future changes and harmonization of laws nationally and in accordance with international best practice. Such a Revision and Consolidation is typically presented as an omnibus law to Parliament on the basis that the Revised Statutes do not “change “ the law but rather simplify access and remove confusion about which laws and regulations are in force or not. To achieve this, the process has to be entirely “technical” and not become partisan.

CFI Resources and Market Definition

As pointed out above, CFI was given a clear mandate but not the resources with which to implement it. Perhaps the serious error on the part of CFI management is to constantly complain about the lack of resources instead of expressing constant concern about the importance of the objectives to be obtained and the costs of not doing so. Based on the Consultant interviews, the **perception** is that CFI has failed to achieve its’ objectives and that the argument about lack of resources is an “excuse” to justify this failure.

The Consultant also observed this “excuse” initially as it seemed that every issue raised was answered with “yes, we planned to do that but didn’t, we simply do not have the resources...” The detailed examination of CFI achievements above, shows how little of the approved Work Plan has been achieved. As the consultancy continued, evidence was encountered that CFI has achieved some concrete results have been achieved and that much more could have been achieved if more adequate resources would have been available during the critical first year. Results included:

- CFI has received about 50 “investors or potential investors” PER MONTH. This places a heavy burden on the small professional staff. Other than global numbers, little information is available about the nature and seriousness of such investors or potential investors.
- A good “start” in media outreach and some excellent publications during the early months of CFI.
- Several actual, large investors speak very highly about the “facilitation” received by them from CFI and its’ professional staff and, in the process, creating thousands of jobs.
- A move towards CFI becoming the “Secretariat” for the Inter-Ministerial Commission.

In an environment of underfunding and under staffing, one of the major problems facing the CFI is the broad scope of the Investor Code (2002) making it available

to a large number of sectors and then, in addition, creating an opening for virtually every other investor on an exceptional basis. If this approach is recognition of the urgent need for investment in Haiti, it is compelling and a reflection of reality, it also undermines the mandate for an agency such as CFI which is designed to facilitate those investing taking advantage of focused incentives. Several approaches are available in that sense:

- Granting tax and import duty exemptions universally to all start up businesses. In order not to destroy the tax base for Haiti, this may be limited to 3-5 years for all new businesses and available simply by claiming it on the annual tax return, subject to audit verification.
- Granting tax and import duty exemptions to all businesses entirely dedicated to exports of goods and services and continuing so long as this export focus remains and available simply by claiming it on the annual tax return, supported by sworn statements and subject to audit verification. In this case, CFI facilitation would be helpful both in the initial application and regular revision to assure or re-assure the investor that the conditions for tax-exemption remain in force.
- Granting tax and import exemptions beyond the universal exemption available to all start-ups and previously approved at any time prior to the expiration of the initial, universal exemption based on the nature of the business, the nature of the investment, level of employment generated and source of revenue to be created. Such an exemption should be granted based on a transparent and public policy where the granting of such exemptions are NOT based on some specious measure designed by the applicant such as cash flow projections but rather criteria based on public good: actual investment made, actual employment created and maintained, actual clientele and sources of revenue. All these measures should be spelled out in the exemption certificate, attached to tax returns on an annual basis with sworn statements certifying that those conditions still exist and subject to audit. These type of situations should be the principal focus of CFI facilitation activities. Especially considering that this type of Incentives Application requires the intervention and participation of several technical departments and ministries, once CFI takes over as the Secretariat for the IMC, CFI will be ideally positioned to facilitate these types of Incentive Applications – no matter where such an Application originates or who makes the application, domestic, foreign, large or small.

The CFI will need to focus its attention based on the resources it has available. Under the current conditions, with a major unfilled work plan and grossly inadequate funding, CFI must decide where to focus its limited resources. Discussion with CFI professional staff indicates that an inordinate amount of time is dedicated to walk in “investors” who in many cases are people hoping to become self employed and go to CFI hoping it can provide grant or loan funding,

assist in obtaining funding or otherwise provide services typically provided by financial advisors, lawyers and auditors. Without underestimating the level of employment that can be created by SME investors, assisting such start ups should not be the focus of the CFI. The CFI should form associations⁸ with programs designed to assist SME projects and, in doing so focus its attention on larger, better informed investors and potential investors ready to make substantial investments and create substantial numbers of new jobs. If resources are available, the CFI could develop Investment promotion training modules and information materials which could be made available to such programs, Universities and others interested in such a broad based outreach program. CFI Professional staff could be made available on a limited, as time permits basis, to support such programs – especially in the outlying regions of Haiti.

Investment facilitation is time and resource intensive. Especially during periods of resource constraints, CFI should carefully select its clientele and should define the market for delivering its services as follows:

1. Provide technical support to SME programs to train Haitians planning to become entrepreneurs to SME programs, schools, universities and other organizations.
2. Provide limited technical assistance and facilitations to those SME investors recommended by those conducting the more general managerial and financial services SME training programs.
3. Provide full facilitation services to investors and potential domestic investors aiming to invest and create employment above a stated minimum (by way of example, investing over \$100,000 and/or creating more than 25 new jobs within the next 12 months)
4. Provide full information and investment promotion services aimed at the expatriate Haitian community and foreign direct investors as resources permit.
5. Provide full facilitation services to investors and potential foreign and Haitian ex-patriot investors aiming to invest and create employment above a stated minimum (by way of example, investing over \$100,000 and/or creating more than 25 new jobs within the next 12 months)

⁸ A number of SME facilities exist. Recently the Caribbean development Bank announced a \$4 million program designed to assist SMEs in developing greater managerial and financial skills.

Inter Ministerial Commission - Examination of Submitted Files

Little information has been obtained about the method of operation of the Inter Ministerial Commission. Although the Investment Code provides for the CFI to become the Secretariat of the Commission, such has not as yet happened. Intentions to do so are expressed but no action has been taken at this time. The Commission accepts files originating from a number of Ministries, Departments and power centers from within and outside the Government. Investors, especially large and powerful ones, will seek the assistance of whomever they believe will be most effective in representing their interests according to people interviewed. CFI plays a marginal role only.

In accordance with the SOWs the Consultant was to make an inventory and review a number of investment files in different sectors. It was difficult to obtain documents and, especially given the limited number of files transacted, only 3 files were actually completed and received prior to the Consultant departure. The following 3 files are in hand and more are expected. For that reason, the Consultant does not as yet have sufficient material to write a comprehensive appreciation of the process and conduct of these files.

We should note that full files are available and that each file has been altered to preserve the confidentiality of the Applicant. That is particularly important since the file includes full financial information. The Table below summarizes information gleaned from those materials made available. Since we could not examine un-redacted files in an unscreened manner, the information provides little insight and should in no way be considered as “typical” – it maybe, but we simply do not know.

Tourism Sector	(pending receipt)
Industrial Sector	
Production of Vitamin Reinforced Milk (Full set of Documents Available)	<p>Inscription Date - July 18, 2007 Authorization to Function (MCI) July 24, 2007 Transmission to National Press August 8 , 2007 Date Le Moniteur was paid August 18, 2007 Publication in Le Moniteur #79 August 30, 2007</p> <p>Date File Received by CFI & MCI September 3, 2007 Transmitted to Technical Sector July 20, 2007 Analytical report Submitted August 1, 2007 Date File Completed November 21, 2007 Date of Transmittal to CII November 28, 2007 Date Incentives Authorized December 18, 2007</p>
Agriculture/ Aqua Culture Sector	

<p>Fish Farming Firm (Full set of Documents Available)</p>	<p>Inscription Date - September 19, 2007 Authorization to Function (MCI) October 3, 2007 Transmission to National Press October 16, 2007 Date Le Moniteur was paid n/a Publication in Le Moniteur #4 January 10, 2008</p> <p>Date File Received by CFI & MCI September 20, 2007 Transmitted to Technical Sector September 21, 2007 Analytical report Submitted October 24, 2007 Date File Completed November 5, 2007 Date of Transmittal to CII November 28, 2007 Date Incentives Authorized November 16, 2007</p>
<p>Textile Export Sector Confection Textile Enterprise (Full set of Documents Available)</p>	<p>Inscription Date - July 18, 2007 Authorization to Function (MCI) July 27, 2007 Transmission to National Press July 16, 2007 Date Le Moniteur was paid November 12, 2007 Publication in Le Moniteur #87 September 24, 2007</p> <p>Date File Received by CFI July 20, 2007 Transmitted to Technical Sector July 20, 2007 Analytical report Submitted August 1, 2007 Date File Completed August 13, 2007 Date of Transmittal to CII August 13, 2007 Date Incentives Authorized August 30, 2007</p>

3. Investment Promotion and “Doing Business”

One of the recurring themes of both CFI and the broader cross section of Haitians interviewed is that neither Haiti nor the CFI have the resources to mount a major, national and international campaign to offset the generally held perception of Haiti as an unstable, post conflict country with serious structural problems and poor personal security. It is clear that some countries in the Balkans and even a country such as Jamaica in the Caribbean, have undertaken major international “image” campaigns, generally in relation with tourism promotion. The very fact that such a country could “get it together” to create an environment conducive to tourism and “prime the pump” for economic growth through tourism growth – even in special zones – demonstrates that the capacity and will exist to not only create the image but rather, address issues. There is little evidence that “public relations” alone has any lasting impact on the level of incoming investment. One area that is directly aimed at the “target group” of international and national

investors, are the various “indexes” ranking countries, including the Transparency Index, the Freedom House index and, increasingly key “Doing Business Index”.

Doing Business builds indicators of government regulation of business across 181 countries. The project currently covers 10 areas of regulation -- from starting to closing a business. The “Doing Business” index ranks countries based on 10 indicators of business regulation that track the time and cost to meet government requirements in starting and operating a business, trading across borders, paying taxes, and closing a business. The rankings do not reflect such areas as macroeconomic policy, quality of infrastructure, currency volatility, investor perceptions, or crime rates. These indexes thus allow a ready comparison with regional and income level countries Haiti has to compete with. In addition, by comparing such indexes year over year, allows potential investors to identify a “trend” – are things stagnant? Are they improving? How rapidly? In what areas? In the case of Haiti therefore, comparison with the Dominican Republic is especially cogent and instructive.

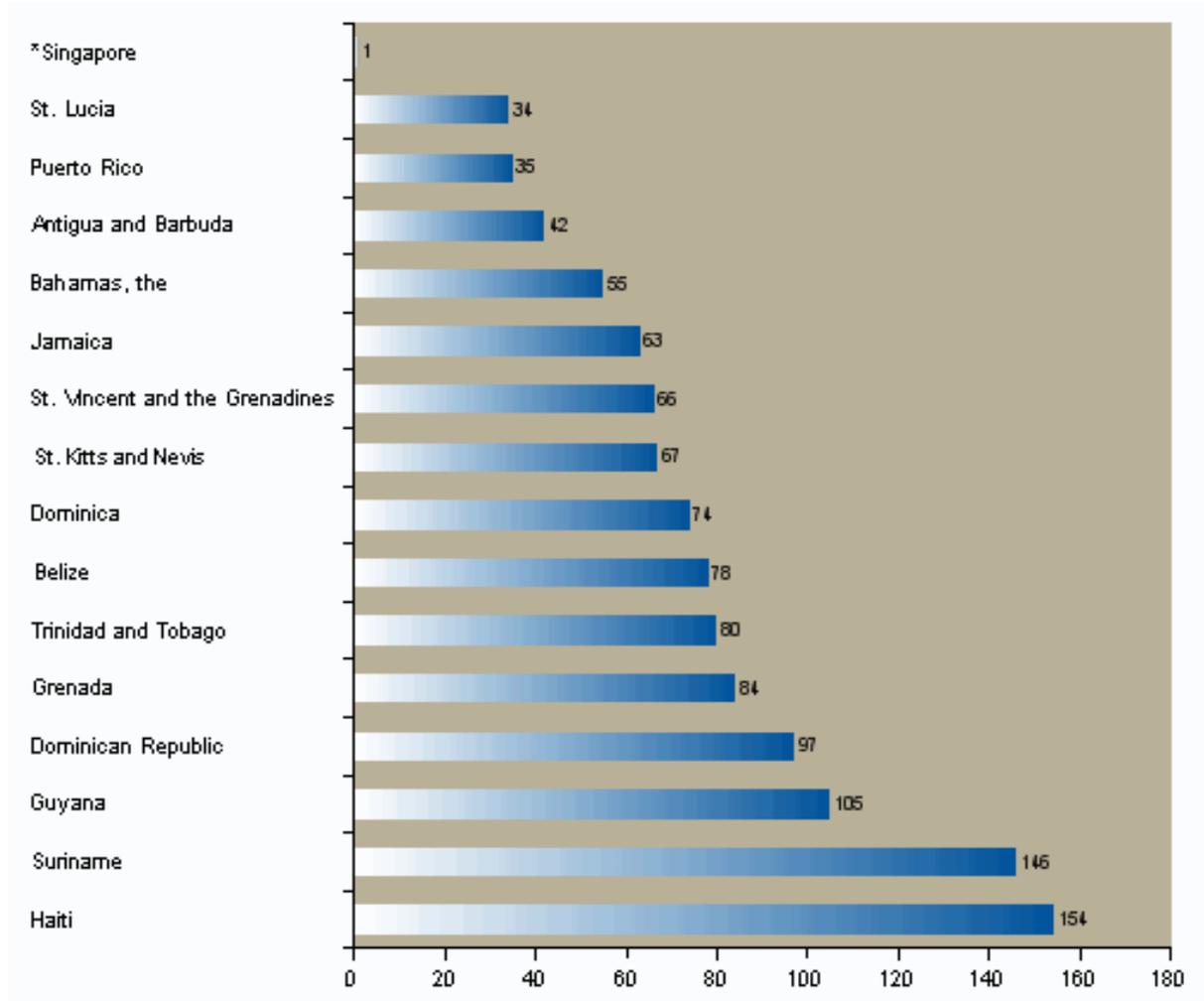
The following Tables is based on the just released Doing Business 2009 and provide an oversight of Haiti’s position vis-à-vis the Dominican Republic and other countries in the Caribbean region where Haiti ranks in last place.

DOING BUSINESS 2009: Haiti – Dominican Republic Comparison

HAITI	Dominican Republic
Ranking 2009 : 154	Ranking 2009 : 97
Ranking 2008 : 148	Ranking 2008 : 99
Ranking 2007 : 154	Ranking 2007 : 97
<p>Areas of Reform in 2007 - 2008:</p> <p>Trading across Borders: Haiti reduced the time to export by a day, by implementing risk-based inspections in customs.</p>	<p>Areas of Reform in 2007 - 2008:</p> <p>Starting a Business, The Dominican Republic, a top global and regional reformer, sped up formalities in several areas by making them electronic. An online system for filing and paying taxes, piloted in 2006, is now fully operational. And entrepreneurs can complete several start-up formalities online, including name verification, and commercial and tax registration.</p> <p>Registering Property, The cost of property registration fell, thanks to a reduction in the transfer tax from 4.3% to 3%. Transferring property now costs 3.8% of the property value, down from 5.1%.</p> <p>Paying Taxes, The Dominican Republic also reduced the corporate income tax rate from 29% to 25%, and abolished several taxes, including the stamp duty.</p> <p>Trading across Borders In addition, authorities reduced the time to</p>

export by three days by improving the online portal for customs documentation and payment.

Caribbean Region - Aggregate Regional Rankings in the International Context⁹:



The new “Doing Business” infrastructure indicators

What a reformer can do is adopt regulation that facilitates expansion in infrastructure services. A reformer can also simplify the process of hooking up to these services for new businesses. These are the two aspects of infrastructure services on which the Doing Business team is constructing new indicators.

⁹ “Doing Business, 2009”

The first set of indicators builds on a specific case: an unexpected rise in electricity demand in the country has created opportunities for expansion. The case study documents the process that a private or public utility goes through to procure the components needed to extend the electricity distribution grid.

The second set looks at the process of obtaining a power connection, a water connection and a telephone line for a newly constructed building. The number of procedures for getting these services, and the associated time and cost, are recorded. The study does not compare prices of these services after the building is connected. That would involve detailed knowledge of subsidy policies, which is beyond the scope of Doing Business.

Measures of Policies on Foreign Direct Investment And the “Doing Business” Indicators

The World Bank is currently developing a further extension of “Doing Business”. The FDI indicators project measures the ease of establishing and operating a foreign-owned business in countries worldwide, and is designed to supplement the Doing Business. The FDI indicators capture selected aspects of the investment climate targeted at foreign direct investment, as well as some aspects of the domestic business environment important to foreign investors, but not currently covered by other Doing Business topics. The combination of existing indicators and the proposed FDI indicators will then provide a profile of the investment climate in a country for foreign investors. The FDI indicators capture not only legal provisions and policies, but also their implementation and enforcement in practice. They aim to identify, stimulate, and advise investment policy reforms.

The new FDI Doing Business FDI indicators will focus on the following aspects of investment climates:

- foreign ownership restrictions
- investment promotion
- pre-establishment procedures
- access to land
- currency convertibility and repatriation
- expropriation and investment arbitration

The focus of the FDI indicators is strictly on those policies that disproportionately affect cross-border investment. The indicators encompass measures of the quality

of laws and regulations, as well as the administrative efficiency and transparency of their application and implementation. Most of the indicators will be measured through a case study approach of a hypothetical investment project representative of a typical investment. It has been designed to allow comparability of responses across respondents and countries. All data will be collected through a questionnaire administered by local agents. As with all other “Doing Business” indicators, the questionnaire will be filled out by private sector intermediaries, i.e. consulting or law firms with practical experience in advising foreign investors on the legal and regulatory frameworks.

The following is a brief outline of the approach foreseen in the Infrastructure sector:

- Infrastructure services matter for private businesses and their absence can represent a significant brake on companies’ growth potential. According to data from the World Bank Enterprise Surveys, private businesses in lower and middle income countries worldwide estimate that they lose on average 7.5 percent of their sales due to electricity and telephone outages and insufficient water supply. Including in high income countries, the average is still 3.8 percent.
- A variety of indicators on infrastructure services are currently available. But these typically measure outcomes: kilometers of paved roads, number of telephone lines, and percentage of households connected to running water. Indicators like these have two limits. First, since building infrastructure is expensive, the cross-country comparisons show an obvious pattern: rich countries have good infrastructure, and poor countries don’t. Second, if a reformist government wants to make its mark by improving infrastructure services, it can do little to change these indicators in a short time. Heavy investment is needed.

Going Forward - Getting Ready for “Doing Business 2010”

The Methodology utilized by the IFC/World bank Team are known and clearly understood. It relies on a specific survey instrument and uses a limited sample of lawyers, accountants and private sector individuals to gather specific, concrete data. This methodology has been widely criticized by a number of agencies and countries for a variety of reasons. There is no need to restate these criticisms here. The Methodology however also creates a valuable guideline in terms of how to address the ranking of Haiti in the “Doing Business” and indeed other Indexes and Surveys, including Freedom House and Transparency International. These include:

- Governments and stakeholders should “drill down” on the data forming the

basis for the ranking, understand them and identify areas where “quick wins” can be achieved.

- Immediate and definitive steps need to be taken to implement these changes and care has to be taken that all stakeholders are made clearly aware of the changes made, the reason why and how these changes set the stage for future improvements. If identified, the “opinion leaders”, likely to be consulted by those doing surveys and studies should be individually addressed and informed.
- Document the changes and forward them directly to international agencies – specifically the Teams working on Haiti and the index/survey instruments.
- Gather empirical evidence documenting that the change is actually being implemented and the impact on specific areas of concern. Provide comparative data over time.
- Appoint a “Vocal Point” for Agencies to address the Government regarding these issues. It is suggested that CFI is ideally located to perform this service. CFI is (we understand) the only Government Agency to have an institutional Management Team that combines the Public and Private Sectors through its’ Board of Directors and Advisory Board. A specific Committee, including senior Government and Private Sector representatives should be established to spearhead this effort.
- Do not be afraid to aggressively point out ‘errors’ and put the Teams on their toes to “get it right” the next time.

In Summary - the Evolution of “Doing Business” and other Survey’s and Indexes – Opportunities for CFI/Haiti:

The sets of indicators for each instrument are readdressed and expanded over time. The teams continue to develop new indicators that help or hinder businesses to invest, create jobs, and grow. Infrastructure is one of two new topics being developed. For some time the “Doing Business” Team has been working at developing a new set of indicators looking closely at the legal, legislative and implementation measures as it relates to investment. This area of measurement is currently being tested in a limited number of countries but is expected to form part of the overall instrument in the next 2 years. Such additional criteria related to infrastructure and foreign direct investment cannot help but hurt Haiti’s ranking further and underlines the need to score some early “easy wins” in addressing such issues.

The Work Plan for CFI virtually addresses each of the measures currently under consideration. This ups the importance of adequately funding CFI to implement the Work Plans already approved and in place. CFI should carefully review the criteria for the new FDI and infrastructure “Doing Business” indicators and immediately take steps to address these issues in its outreach and training programs – especially for Haitian professionals who may be consulted regarding these matters.

In Conclusion

The CFI has a unique and important mandate. The establishment of the CFI with its joint Public/Private management team is unique and presents a major opportunity. Previous experience however has demonstrated that when the going gets tough, a new agency is created. The Consultant heard a number of comments in this regard – highlighting the failures of CFI, not addressing the issues but rather suggesting that yet another Agency be created. The Management and staff appears committed and is working hard. The hard work however does not necessarily promote investment nor create employment. More than 600 “clients” have sought facilitation from CFI, most are small local investors, and many do not understand the functions of CFI and expect concrete assistance – including funding – for the establishment of small and medium enterprises. Dealing with this many cases is time consuming, expensive and ultimately not very productive. The Consultant did meet with some larger Korean Investors who spoke extremely positively about the CFI and its’ Director General. “If it had not been for CFI facilitation and help, we would probably never have invested in Haiti”. These enterprises have so far promote more than 1000 jobs and have the potential to double that number if manufacturing space can be found.

The amazing, ironic aspect of these major clients is that both are located in SONAPI – the Port-au-Prince Industrial Zone! Those firms obtained incentives, similar to those under the Investment Code without ever going to the Inter-Ministerial Committee. The role of CFI was simply assisting frustrated investors to deal with red tape, incompetent professional services and a public administration incapable of assisting these foreign investors.

The CFI Board appears to be dysfunctional. A number of comments were heard about having the Board Chaired by the Minister of Commerce personally. Because of other duties, the Minister was frequently (very) late for meetings, could not attend or otherwise contributed to a sense on the part of the Private Sector Members that being involved with the CFI was a waste of time. Provisions need to be made to have a Deputy-Chairman who may call the meeting to order in case it was properly called. In addition, meetings suffer from frequent lack of Quorum issues – further frustrating those who do show up. That matter must also be addressed.

The Conseil Consultatif has never been called into session. The body is significantly more senior than the Board of Directors. Should the Consultant’s Report result in the need to engage the CFI /Private sector and Government in a discussion about the future of CFI, the calling of the Advisory Council appears a logical body to consider such recommendations.

The Work Plan assigned to CFI is important and critical to the creation of employment and reduction of poverty. The FINAL REPORT demonstrates good

intentions, a minimal start of this important agenda. The CFI mandate needs to be achieved. The Government of Haiti should be encouraged to assume the responsibility of making CFI achieve its stated objectives. Multi-Lateral and Bi-Lateral donors as well should engage the Government in identifying manners by which the CFI can be used to achieve the objectives of promoting the creation of jobs through domestic and foreign investment. A clear recognition must be achieved that the CFI is failing – not because of its small staff, not because of its creative public/private governance structure but rather because of lack of resources and a lack of commitment at the most senior governance levels.

When a clear commitment is made by the Government, the remaining objectives of the SOW for this consultancy should be aggressively pursued. The Minister of Commerce must take a clear decision of leadership, if the Minister is unable or unwilling to commit sufficient time and effort, a Vice-Chairman needs to be appointed to make sure that the Board can achieve its objectives and not be perceived by the private sector as simply another waste of time.

The Consultative Council needs to be put to work and needs to be structured so as to create understanding and the political support and will to achieve the critical CFI objectives. The Council should be a forum for leadership but also a forum for learning – Government at its most senior level needs ideas, knowledge and understanding of best practice and the positive results achieved in countries facing similar challenges to Haiti. The USAID/Haiti I-Trade Program is ideally suited to provide assistance and leadership in this regard.

ANNEX 1

Haiti I-TRADE Technical Assistance to the Investment Facilitation Center and Investor's Roadmap Scope of Work

A. Background

The purpose of the Haiti Investment-Trade and Association Development project (Haiti I-TRADE) is to address the underlying public and private sector enabling environment which will allow Haitian enterprises to invest and trade efficiently and effectively by: 1) giving the Government of Haiti the capacity to negotiate effectively in the competitive global market; 2) building public sector institutional and ministerial capacity in areas related to investment and trade policy; 3) addressing weaknesses at the level of private sector institutions; 4) promoting legal and regulatory reforms to improve the business environment; and 5) ensuring that goods are able to flow freely, safely, and securely in and out of Haiti. As a result of these activities, I-TRADE expects to see increased incomes and wage employment, increased trade and investment, and increased sustainable livelihood options.

The Investment Facilitation Center (CFI) was established by decree in January 2006 as an entity under the authority of the Minister of Commerce and Industry (MCI), with four principal responsibilities: investment promotion, investment facilitation, commercial information, and studies. The CFI should also play the role of technical secretariat to the Inter-ministerial Commission for Investments (IMCI) as well as to the Free Zone Commission (in each instance a role that has not yet been fully attributed to CFI). The CFI is headed by a director general who leads three technical and one administrative unit. At present, only the investor services and administrative units are functional. The CFI has a Board of nine members, including representatives of the ministries and Business Associations. The CFI also has a Consultative Council of 10 members, equally divided among the public and private sectors, but this structure, as well, has not yet been implemented.

The investment code that sets forth the rules for private investment in Haiti was passed as law in 2002 and represents a full revision of the previous code. It comprises a set of general provisions applicable to all investment, whether domestic or foreign, and a much more extensive set of provisions for investments qualifying for special incentives. The apparent freedom to invest in any sector of the economy is at first glance a welcome and unusual opportunity. But this freedom is not explicitly given; it is inferred by silence on the matter. The Commercial code of Haiti is also silent on this matter. The Code allows too much discretion in its interpretation to provide for transparent and consistent application. Administrative aspects of the code's implementation may be the reason why having obtained a relatively high grade for its new and modern investment code, Haiti nevertheless ends up with a low 30% rating by the Heritage Foundations' Investment Freedom Index. The entire process should be clear in definition and responsibility and

consistent in practice. Customs and income tax breaks, prime benefits under the investment code, should be quickly approved if they meet transparent, stated and hopefully centralized criteria, in the context of an overall system that is effectively managed.

B. Objectives

The main objectives of this assignment are to 1) strengthen the capacity of the CFI by providing appropriate technical assistance and training through a series of short term consultancies implemented by a team of international experts working closely with the CFI staff, the MCI and other relevant public and private entities. The present scope of work covers the first consultancy and will aim at the following specific objectives:

- Perform an assessment of CFI's resources
- Perform management assistance activities within the CFI organization: a) Improve the policy and procedural manuals, which will imply defining more accurately the role and priorities of the CFI, and setting up modern administrative processes that will take into account international good practices, especially from regional countries that compete with Haiti. This key intervention will also include a) reviewing job descriptions for all staff; b) ensuring a better functioning of Board of Directors; c) helping strengthen the investor services function; and d) establishing performance measurement criteria for the CFI.
- Perform management assistance activities outside the CFI: Clarify and rationalize work relationships between the CFI, the MCI, the Ministry of Finance and its subordinate agencies, the CII and other relevant institutions. This point is very important, because of the ambivalent status of the CFI which is under the hierarchical supervision of the MCI, but also reports to the Minister of Finance as president of the CII.
- Provide a list of obstacles to enhancing CFI's performance and identify *quick wins* to rapidly improve CFI effectiveness.
- Conduct a modified Investor's Roadmap, focusing on the Investment Code and its application
- Develop an investment handbook, including a series of *How To Guides* on particular aspects of investment, that will help both potential investors and CFI staff.
- Assist the Center in marketing itself, by developing a basic marketing plan that will help improve the web site, create user-friendly communication materials, propose events, and, more generally, will lead to more recognition and a better image of CFI among domestic and foreign investors.

C. Specific Duties and Responsibilities:

The consultant will carry out the following tasks:

1. Building the Capacity of the CFI (28 days)

- Perform a **detailed assessment of CFI**'s current (expected) resources (financial, HR, organizational structure and else resources), key operating dimensions, and key performance indicators (4 days)
- Work inside the CFI organization to:
 - a. Review and improve the policy and procedural manuals (4 days):
 - Make an assessment of the existing policies and regulations, including the role of the *Conseil Consultatif*
 - Update and improve existing manuals, with job descriptions for all staff and templates for key documents, so that the CFI increase its productivity
 - Design and implement training programs to brief CFI staff on new policy and procedure manuals, where relevant;
 - b. Ensure better working of Board of Directors (2 days)
 - Focus on mechanical/Management aspects (minutes)
 - Draft Code of Ethics so as to provide professional/systematic answers to proper development of otherwise sensitive situations)
 - Identify ways of remobilizing Board (discuss with COP)
 - c. Help strengthen investor services (5 days)
 - Based upon results from Private Investor Survey, draft an "Investor Service Guide" for CFI staff that will explain the roles and responsibilities of employees towards potential and confirmed investors, with idea of meeting international criteria of customer satisfaction.
 - Organize a training program for CFI staff on Investor Services.
 - d. Establish performance criteria for the CFI – Set up a PMP for CFI (6 days)
 - Review I-TRADE PMP and reach a consensus with MSI and the I-TRADE team on the framework for the CFI M&E Plan.
 - Work with the CFI staff to develop, through a participatory process, a proposed PMP for CFI with a few precise indicators.
 - Discuss the proposed PMP with USAID/Haiti, MSI and the I-TRADE team, before adopting the final PMP
 - Organize a training program on the PMP for CFI staff and the main partner institutions.
 - Implement production of *Exception Reports* (Reports that track issues that need correction)
 - Investigate/measure/Report CFI's performance to-date
- Work outside the CFI Organization to:
 - a. Clarify and rationalize work relationships with relevant institutions (7 days):
 - b. Analyze the interaction between the CFI and the MCI, the Ministry of Finance, the CII, the 'Direction Générale des Impôts (DGI), the Administration Portuaire Nationale (APN) , the Administration Générale des Douanes (AGD), the Electricité d'Haïti (EDH), Teleco, and the

Centrale Autonome Métropolitaine d'Eau Potable (CAMEP).

- c. Negotiate with above institutions improved ways of doing business and draft partnership document(s) that will be approved by all parties concerned;
- d. Design and implement training programs to share new procedures with CFI and all relevant institutions.

2. The Investment Code (2 days)

- Analyze, simplify, and render coherent the incentives package (Article 19).

3. Application of the Investment Code (16 days)

- Follow “submitted files” through the investment process, including attending review/approval meetings associated with the file(s) in at least two sector ministries that are not the MCI.
- Identify two past “submitted files” that have been approved or rejected, preferably a “standard” case and a “sub par” case, at the level of each of the five sector ministries, and trace their evolution through the process/system. The cases should be randomly chosen.
- Work with the CFI/Investment Commission to find a way to code relevant information in a way that will protect confidentiality of the “submitted files.” This will allow the consultant to have better access to the information and better collaboration with the employees in the various departments.
- Address the procedural and administrative constraints and inconsistencies that hamper the investment process. Work with the Investment Facilitation Center, the Ministry of Commerce and Industry, the Ministry of Finance, the Investment Commission, the Sector Ministries (Public Works, Tourism, Agriculture, Finance, and Commerce) and other relevant institutions, with the objective of harmonizing, simplifying and streamlining procedures, aiming for a centralized and homogeneous process for approving “transactions/submitted files” and eliminating unnecessary steps.
- Define/propose a model for a fluid and transparent approval process throughout the system (including establishment of performance standards) and the architecture for centralized management for the investment process. This model will allow for differentiating between how acceptable and non-acceptable files are treated, and will serve as the basis for the potential establishment of an internal audit process.
- Discuss resources — HR quality/quantity, accountability, motivation, training, spatial and technological issues.

- Define/design a basic PMP for the investment process.
- Investigate gaps between the Investment Code and its application.
- Create a list of “quick wins” (small changes that can be made with little effort and can be used to show results and motivate further action).
- Identify ways to build a common vision amongst selected employees of various ministries to facilitate the implementation of an amended process and code.
- Develop a handbook, including “how to” guidance on the various aspects of the investment process. This should be useful for CFI staff as well as external investors.
- Define and implement a training program that will focus on the changes in the investment process and code and the development of a unified vision.

4. *Doing Business Index Analysis (4 days)*

Building on the work of the FIAS team, undertake the following activities:

- An analysis of the World Bank’s “Doing Business “ Index for Haiti with particular focus on *Starting a Business, Dealing with Licenses and Trading Across Borders* and a baseline assessment of the three categories (a detailed, step by step, baseline analysis of the underlying processes (flowchart-like) is required. Establish clear definitions and set the standard/framework for next coming analyses, i.e. what information should be systematically sought, from whom, how, etc. Sources of information should be documented, as well as the problems noted and relevant opinions/comments received.
- Based upon experience with CFI, the Code of Investment, meetings/reports and contacts/findings from the recent WB/FIAS mission in Haiti, establish/document what has changed and/or improved since the “Doing Business” Index was last completed. Analyze those elements that may not have been taken into account under the *Doing Business* methodology that are pertinent to improving Haiti’s ranking in these categories as well as overall. Highlight those actions the I-TRADE project can realistically take that have the potential for greatest impact in elevating Haiti’s overall ranking and its ranking in the three targeted categories.

5. *Debriefing and Discussion of Findings (1 day)*

Before departure from Haiti, the consultant will work with the I-TRADE team to organize a session attended by key staff from the CFI, the Ministry of Finance, the Ministry of Commerce, all partner institutions, business associations and others as relevant, as concerted with COP, to present the draft report and documents, and obtain feedback on the findings resulting from the assignment. The consultant will provide a summary of the ensuing discussion.

D. Related Requirements:

- At least 5 year experience of working for an investment promotion agencies (IPA) in developing countries, on a short or long term basis.
- Good knowledge and understanding of investment promotion and facilitation in a difficult environment, with security concerns and possible social unrests
- Solid economic and/or business development background in developing countries, including marketing skills.
- Good training and institutional capacity building skills, and talent to reach consensus with different groups at many levels
- Ability to work in a professional and cordial manner with fellow Haiti I-TRADE staff, implementing and cooperating partners, the private sector and relevant NGOs and government agencies.
- Ability to work independently with minimal supervision, to be able to accept and discharge substantial responsibilities, to prioritize tasks, to meet deadlines, and to exercise professional judgment.
- Knowledge of USAID rules, regulations, and procedures is preferable.
- Language ability in English, French required.

E. Deliverables

Upon completion of this assignment, the consultant will provide the following deliverables in a draft version before leaving Haiti, and in a final form within 12 days after departure:

- A trip report outlining, at a minimum, the work performed, people met with, successes, issues/delays/problems encountered, and recommended next steps.
- 1. Building the Capacity of the CFI**
 - A new or updated policy and procedural manual for the CFI
 - A simplified marketing plan for the CFI
 - A partnership agreement with relevant institutions working with the CFI
 - A basic PMP for the CFI
 - Training curricula and materials for building capacity of the CFI
 - 2. The Investment Code**
 - Analysis and revision of the incentives package.
 - 3. Application of the Investment Code**
 - Analysis of the procedural and administrative constraints and inconsistencies
 - Observations and conclusions from the following of files through the investment process
 - Proposed model for integrated/auditable process
 - Analysis of resources
 - PMP for investment process

- Analysis of gaps between written code and its application
- List of “quick wins”
- Training curricula and materials for those involved in the investment process.

4. Debriefing and Discussion of Findings

- PowerPoint presentation summarizing findings
- Summary of discussion following presentation

F. Reporting Responsibility:

The consultant will work under the direction of, and report to, the designated Chief of Party who will be responsible for monitoring the specialist’s performance. Day to day work in the field will be conducted in consultation and coordination with the Chief of Party and other team members as appropriate.

G. Level of Effort

The total LOE for this assignment is estimated at 60 days total — 51 days for the assignment in Haiti and 7-9 days for travel, preparation and reporting. The assignment will be broken into 2-3 trips by the consultant. Travel to Haiti will take place around early to mid-August 2008. This will entail 6-day work weeks (Monday through Saturday) to ensure optimal use of the consultant’s time while in country.