

FRAMEWORK FOR PRIVATE SECTOR DEVELOPMENT IN SURINAME

**DEVELOPMENT OF AN ACTION PLAN FOR BUSINESS CLIMATE REFORM
PRIORITIES**

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INTRODUCTION

The objective of this consultancy was to develop an action plan that prioritizes activities to foster private sector development, improve the business climate and enhance the competitiveness in Suriname, including legislative and related activities. This report focuses on the scale and scope of activities to strengthen Private Sector Development in Suriname, including priorities and main issues to be addressed.

The time frame for this assignment was 50 working days, and included three (3) trips to Suriname. The work plan was prepared in accordance with the focus areas previously identified by the Bank and the Technical counterpart team of the Government of Suriname:

- (i) *Investment Framework.*
- (ii) *Costs of doing Business.*
- (iii) *Incentives for Entrepreneurship and Innovation.*

Over the course of this consultancy the following deliverables were submitted:

- a) a diagnostic of the existing legal and regulatory framework regarding investment and business climate;
- b) a legislative strategy to promote investments and improve the business climate in Suriname;
- c) a draft policy paper with recommendations on the main aspects to be included in the legislation,
- d) an action plan with the timelines, responsibilities, and activities for the process of legal reform.

In addition, the consultant made a presentation to the government officials and stakeholders, and conducted a three-day workshop with government officials and stakeholders.

The sources for this report are: a) the international rankings on competitiveness and the most recent assessments on competitiveness in Suriname, including the Private Sector Assessment Report (PSAR); b) a process of interviews and consultations with government officials and stakeholders in Suriname; c) research on competitiveness trends and issues and comparative law carried out by the consultant.

Finally, I would like to express my sincere thanks to the Competitiveness Unit of Suriname and the Inter-American Development Bank for their support over the duration of this assignment. I also like to thank the private and public sector institutions whom I consulted and interviewed over the course of this consultancy.

1. BACKGROUND¹

Suriname's economy has grown by an average of 4.4% over the past decade. This growth was supported by strong activity in the oil and mining sectors, as well as in services and public investment.² Indeed, in 2012 Suriname's bauxite mining sector received US\$ 70 million and a significant investment in gold mining, including the expansion of the Gross Rosebel gold mine (95% owned by IAMGOLD of Canada) and the development of the Merian gold mine, the latter in a joint venture between two mining companies based in the United States.³ Furthermore, 90% of Suriname's export income is based on alumina, gold, and oil. Services constitute also a main economic sector in Suriname, accounting for over 60% of GDP; wholesale and retail trades are the dominant services activities.⁴

Even though economic growth seems to continue, the high dependence on the natural resource sector makes Suriname's economy extremely vulnerable to external shocks, mainly to global commodity price fluctuations. This situation compels a pressing need to diversify the economic base of country strengthening the non-natural resource based private sector.

Regardless of Suriname's apparent success, different assessments and rankings coincide in showing that Suriname's investment climate should improve to support sustainable development. For example, although the facility to start a business is one of the most important factors in promoting entrepreneurship, in Suriname procedures to register a firm are costly, complex and time consuming. Despite many local interventions over the last three years, the World Bank Doing Business Report 2014 still indicates that it requires 208 days to commence operation of a business in the country at a cost equivalent to 107.7 % of the income per capita.

As a result of legislative lags and reluctance to enact new legislation, existing business legislation has become a bottleneck and a grave impediment to Suriname's economic progress. Although the Government of Suriname has started to implement some measures to improve the business climate, there is a need for a single comprehensive strategy for fostering investment, innovation and entrepreneurship.

¹ The recommendations are based on "The Policy Framework for Investment (PFI)". The PFI is an OECD tool developed by a task force representing some 60 economies, as well as business, labor, civil society and international organizations. The PFI was conceived as a flexible instrument that governments can adapt to their specific objectives and serves to assist governments engaged in domestic reform on investment (both domestic and foreign). For more information and to obtain the full instrument: <http://www.oecd.org/investment/pfi.htm>. Commentaries on Suriname's legal framework and implementation are based on interviews with government officials conducted in August 2013 and some relevant literature.

² IMF, Article IV Consultation with Suriname- Concluding Statement, , May, 2012

³ ECLAC, Foreign Direct Investment in Latin America and the Caribbean, 2012

⁴ WTO, Trade Policy Review, 2013.

This paper focuses on the basic requirements for a comprehensive strategy to improve business climate in Suriname. First section analyses the role of institutions in determining competitiveness. Second section defines the basic requirements for competitiveness in Suriname. Sections third to sixth analyze in detail actions to implement business facilitation, investment promotion, trade policy and competition law in Suriname. This is followed by an action plan.

2. COMPETITIVENESS AND THE ROLE OF INSTITUTIONS

Suriname's Development Plan (2012-2016) lays down the development blueprint for the medium term. It gives special consideration to: good governance; social development; economic diversification; competitiveness and innovation; education for competitive skills and building a knowledge society; protecting natural resources and managing the impact of climate change.

Concerning business climate in particular, the development plan focuses on good governance and competitiveness. These issues include the strengthening of the rule of law, and law enforcement and legal protection; the modernization and harmonization of the financial and economic legislation and the promotion of private, foreign and domestic investments.

Following this approach and based on the World Forum Guidelines, the Competitiveness Unit adopted 12 pillars of Competitiveness (Box 1).⁵

BOX 1 12 PILLARS OF COMPETITIVENES	
Pillars	Importance
Institutions Infrastructure Macroeconomic environment Health and primary education	Basic Requirements <i>Key for factor-driven economies</i>
Higher education and training. Goods market efficiency Labor market efficiency Financial market development Technological readiness Market size	Efficiency enhancers <i>Key for efficiency-driven economies</i>

⁵ These pillars were defined by the World Economic Forum. See: Porter & Schwab (2008), The Global Competitiveness Report 2008-2009, World Economic Forum, 2008. p.7.

Business sophistication Innovation	Innovation and sophistication factors <i>Key for innovation-driven economies</i>
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Source: World Economic Forum - CUS

These pillars include a set of variables that are regarded as determinants of competitiveness. Although the 12 pillars of competitiveness are described separately, this should not obscure the fact that they are not independent: not only are they related to each other, but they tend to reinforce each other. For example, innovation is not possible in a world without institutions that guarantee intellectual property rights, cannot be performed in countries with a poorly educated and poorly trained labor force, and is more difficult in economies with inefficient markets or without extensive and efficient infrastructure.

Institutions –both public and private-, however, are a basic requirement. Since 1990⁶ economic literature has mentioned systematically the role of institutions for economic growth and development. According to the World Development Report 2002⁷, published by the World Bank, weak institutions – tangled laws, corrupt courts, deeply biased credit systems, and elaborate business registration requirements – hurt poor people and hinder development. These institutions range from unwritten customs and traditions to complex legal codes that regulate international commerce. The report the report argues that all market-supporting institutions perform one or more of three functions: they ease or restrict the flow of information; define and enforce property rights and contracts; and increase or decrease competition. It finds that reforms and innovations have been most effective when they meet these needs in ways that are compatible with country conditions and increase access for the poor.

Most recently, even though conventional economic factors have not been ignored, the literature has also focused on institutions and has highlighted significant conditions for economic growth such as: property rights and good governance. Rodrik, for example, considers that “*Markets are most developed and most effective in generating wealth when they are backed by solid government institutions. Markets and states are complements, not substitutes, as simplistic economic accounts would often have it.*”⁸ Under this approach institutions and business climate are two sides of the same coin. As Acemoglu and Robinson⁹ assert in their historical overview of economic growth and development, they are essential to building investor confidence “(...) *These entrepreneurs were confident from the beginning that their dream projects could be*

⁶ See: NORTH, Douglas. Institutions, Institutional Change and Economic Performance, Cambridge University Press, 1990.

⁷ THE WORLD BANK GROUP, (2001) World Development Report 2002: Building Institutions for Markets. Washington, DC.

⁸ RODRIK, Dani. The Globalization Paradox. Democracy and the Future of the World Economy. New York London: W.W. Norton & Company, 2011. P. 16 Kindle Edition

⁹ ACEMOGLU, Daron y ROBINSON, James A. Why Nations Fail. The Origins of Power, Prosperity, and Poverty. New York: Crown Publishers, 2012. p.43-42

implemented: they trusted the institutions and the rule of law that these generated and they did not worried about the security of their property rights.”

The quality of institutions has a strong bearing on competitiveness and growth. It influences investment decisions and the organization of production and plays a central role in the ways in which societies distribute the benefits, bear the costs of development strategies and policies and it goes beyond the legal framework. In the case of Suriname, for example, even though no laws or policies are purposely used to impede investments, this does not mean that they do not form obstacles to investments. Tax laws, for instance, are criticized as overburdening the formal business sector while there is a large informal sector, estimated to be roughly twice the size of the formal economy, which goes untaxed. The lack of financial and accounting standards and poor government enforcement of existing regulations permits unscrupulous companies to avoid paying legitimate taxes and tariffs, thereby gaining competitive advantage over law-abiding firms, through measures such as under-invoicing and presenting fraudulent accounting records.

Government attitudes toward markets and freedoms, and the efficiency of its operations, are also very important: excessive bureaucracy, overregulation, corruption, dishonesty in public contracts, lack of transparency and trustworthiness are key elements in the success or failure of any development strategy. In Suriname, for example, the large number of civil servants involved in the process of granting licenses makes it a lengthy process that invites corruption. Although in 2011 the government liberalized the licensing system and reduced the time and required steps necessary to establish a business the system continues to be overburdened and lacks sufficient transparency.

Proper management of the private business is also critical to ensuring trust in the national business environment. An economy is well served by businesses that are run honestly, where managers have strong ethical practices in their dealings with the government, other firms and the public. Private sector transparency is indispensable to business, and can be achieved through the use of standards as well as auditing and accounting practices that ensure access to information in a timely manner.

The Development Plan in Suriname recognizes the importance of institutions, however, evidence shows that in Suriname complex and inefficient institutions are a common problem. Indeed, according to the Global competitiveness Report 2013-2014, institutions as one of the basic requirements for competitiveness, is the main weakness (See Box 2 and 3 - detailed description)

BOX 2
THE GLOBAL COMPETITIVENESS INDEX – SURINAME
BASIC REQUIREMENTS

	Rank (out of 148)	Score (1–7)
Basic requirements (40.0%)	82	4.4
Institutions.	99	3.5
Infrastructure	81	3.7
Macroeconomic environment	66	4.9
Health and primary education	78	5.6

Source: World Economic Forum. The Global Competitiveness Report 2013–2014

BOX 3
THE GLOBAL COMPETITIVENESS INDEX – SURINAME
1ST PILLAR: INSTITUTIONS

	Value+	Rank/148
1.01 Property rights	3.6	109
1.02 Intellectual property protection	2.9	118
1.03 Diversion of public funds	3.1	80
1.04 Public trust in politicians	2.1	119
1.05 Irregular payments and bribes	3.4	96
1.06 Judicial independence.	4.0	58
1.07 Favoritism in decisions of government officials	2.5	115
1.08 Wastefulness of government spending	2.9	94
1.09 Burden of government regulation	3.2	99
1.10 Efficiency of legal framework in settling disputes	3.2	108
1.11 Efficiency of legal framework in challenging regulations	3.0	102
1.12 Transparency of government policymaking	3.5	128
1.13 Business costs of terrorism	6.1	37
1.14 Business costs of crime and violence	4.3	90
1.15 Organized crime	5.2	66
1.16 Reliability of police services	4.7	48
1.17 Ethical behavior of firms	3.7	93
1.18 Strength of auditing and reporting standards	3.8	120
1.19 Efficacy of corporate boards	4.1	115
1.20 Protection of minority shareholders' interests	3.2	134
1.21 Strength of investor protection, 0–10 (best)*	2.0	145

Source: World Economic Forum. The Global Competitiveness Report 2013–2014

+ Values are on a 1-to-7 scale unless otherwise annotated with an asterisk (*).

Other rankings and recent assessments point out also the existence of a worrisome gap between policies and practice (Box 4).

BOX 4 RANKINGS AND ASSESMENTS	
AUTHOR	MAIN FINDINGS
WB Ease Doing Business Report 2014	<p>Reveals:</p> <ul style="list-style-type: none"> • Bottlenecks reflected in large numbers of procedures • Weaknesses in some areas of business regulation
Private Sector Assessment Report (PSAR)	<p>The challenges of the business climate:</p> <ul style="list-style-type: none"> • The time required to start a business • The impact of rules on foreign direct investment on businesses • The burden of customs procedures
Suriname Business Forum – Legislative Priorities	<p>Short-term:</p> <ul style="list-style-type: none"> • Investment Law • Licenses and permits • Tax incentives • Small-Medium Enterprises • Customs Procedures
IDA International – Ease of Doing Business – Diagnostics Study Report for CUS – 2013	<p>A lack of a strong, overall stakeholder or champion for each of the sectors that could drive the development of the sector entirely</p> <p>A lack of an overall integrated process in most of the sectors</p> <p>A lack of integration and often communication among different stakeholders in the sub-processes</p>
National Competitiveness Strategy for Suriname, Michael V. Julien - 2013	<p><u>Suriname’s No.1 priority</u> should be to improve Government’s “turnaround efficiency” of high transaction activities – registering a business, getting permits, and reducing importing and exporting time frames.</p>

These rankings and assessments are pointing out problems that arise when different paradigms overlap. While the Development Plan and the competitiveness policy are based on an open economy model, existing laws and regulations were enacted under the economic paradigm of a closed economy, where state intervention through subsidies and protection, played a central role (see Box 5).

BOX 5 ECONOMIC MODEL	
CLOSED ECONOMY	OPEN ECONOMY
<ul style="list-style-type: none"> • Economic Intervention <ul style="list-style-type: none"> – Public enterprises – State promotion through incentives • Trade protection <ul style="list-style-type: none"> – Tariffs – Non-tariffs barriers • Foreign investments Control <ul style="list-style-type: none"> – Screening – Capital controls 	<ul style="list-style-type: none"> • Economic intervention <ul style="list-style-type: none"> – Competition law – Consumer protection – Rules-based promotion • Trade promotion <ul style="list-style-type: none"> – Integration agreements – Lower Tariffs • Foreign Investment Promotion <ul style="list-style-type: none"> – National treatment – Protection of property – Free movement of capital

This overlapping of policies and laws coming from opposite economic models affects negatively Suriname’s business climate. The tension between the policy and the existing legislation results in the failure to achieve government goals. Since the government cannot guarantee an institutional framework, the necessary confident ties between government and entrepreneurs – both local and foreigners – cannot be established. This suggests the need for substantial legislative reforms in order to accomplish the policy goals.

3. LEGAL FRAMEWORK FOR PRIVATE SECTOR DEVELOPMENT: FOUR PRIORITY AXES (4PA)

Since pillars of competitiveness are not independent, the design of any strategy to improve competitiveness requires to take a holistic approach that realizes every interaction; every touch-point among pillars.

However, it is also important to point out that, among those pillars, institutions are basic requirements to ensuring confidence and to provide a suitable business environment where businesses can flourish. Since institutions are determined by the legal and administrative framework within which individuals, firms and governments interact to generate income and wealth in the economy, a sound legal framework is fundamental.

Laws concerning business regulate two different types of relations: those between government and individuals and those among individuals. The first one encompasses those areas where state

intervention is necessary to correct market failures, such as competition law, and to guarantee property rights. The second one relates to those areas where the individuals regulate themselves through contracts. While in the first case relations are regulated through administrative law; in the second case, they are regulated through civil and commercial laws.

Consequently, without neglecting the importance of the relations among individuals, the definition of basic requirements for competitiveness should focus primarily on those legal issues concerning the relations between government and individuals: business facilitation and promotion, competition law and trade policy. Those issues can be arranged in four priority axes that encompass a set of necessary actions to improve competitiveness in Suriname.

FIGURE 1 FOUR PRIORITY AXES	
BUSINESS FACILITATION	TRADE POLICY
INVESTMENT PROMOTION	COMPETITION AND CONSUMER PROTECTION

4. BUSINESS FACILITATION

Business facilitation refers to actions taken by governments designed to maximize the effectiveness and efficiency of its administration through all stages of the business cycle. It covers a wide range of areas, all with the ultimate focus on allowing business to flow efficiently and for the greatest benefit.

Business facilitation requires creating and maintaining sound administrative procedures that apply to the lifetime of the entrepreneurial activity, including effective deterrents to corrupt practices. Transparency, non-discrimination and predictability are among its most important principles. Entrepreneurs also look for a business environment that is stable, and that offers international best practice standards of protection, including the sound protection of property rights and the swift and equitable resolution of disputes.

4.1 THE ROLE OF ADMINISTRATIVE PROCEDURES

Policy uncertainty is one of the greatest obstacles to competitiveness. Entrepreneurs need to know what the rules of the game are and require some assurance that those rules will not change

once they have started a business. Going beyond the rules and regulations themselves, their implementation and enforcement should be clear and transparent. Entrepreneurs need to understand the practical implications of rules governing their activity, in terms of the conditions to fulfill, the procedures for a public review and the appeals process in the event of a dispute.

This process can help to institutionalize procedural transparency by systematically ensuring that changes in implementing regulations and administrative decisions are subject to public review and appeals. Rules and procedures should be designed in a way which achieves stated policy goals while imposing the least cost on investors in terms of red tape.

Unnecessary administrative burdens can be a significant cost for potential entrepreneurs, especially for small and medium-sized enterprises (SMEs), and can help account for both a low level of investment and a high share of SMEs in the informal sector where rules can more easily be circumvented.

Consequently, transparency, predictability and non-discrimination are especially important for small and medium sized enterprises (SMEs) that tend to face particular challenges to enter the formal economy. They are also important for foreign investors who may have to function with very different regulatory systems, cultures and administrative frameworks from their own.

4.1.1. Transparency and predictability.

A transparent and predictable regulatory framework helps businesses to assess potential investment opportunities on a more informed and timely basis, shortening the period before investment becomes productive.

The lack of a general administrative law in Suriname affects transparency and predictability. Paperwork and procedures are regulated in different and outdated laws and decrees. In most of the cases they are not clear and are very difficult to apply. For example, business registration in Suriname is mainly regulated through the Commercial Code of Suriname, which dates back to 1936, as amended; and the Trade Register Law, promulgated in 1936. Even though since June 2011, business licensing is required for only 26 businesses and professions, and all others are subject merely to registration in the Chamber of Commerce and Industry's Trade Register, the Minister of Trade and Industry may determine that, for certain businesses and professions, licenses should be granted only if the applicant can furnish satisfactory proof of commercial practice and professional skill. The Minister may issue detailed rules on the manner in which such proof should be provided. In general, the business licensing process remains lengthy and

cumbersome. Officially, it takes 30 working days for the issue of licenses, but in practice it can take months.

Government could improve transparency and predictability by: consulting with interested parties; simplifying and codifying legislation; using plain language drafting; developing registers of existing and proposed regulation; expanding the use of electronic dissemination of regulatory material; and by publishing and reviewing administrative decisions.

4.1.2 Non-discriminatory treatment.

The non-discrimination principle provides that all investors, both foreign and domestic, are treated equally. The concept of "national treatment" provides that a government treat enterprises controlled by the nationals or residents of another country, no less favorably than domestic enterprises in like situations. Non-discrimination also means that an investor or investment from one country is treated by the host country "no less favorably" with respect to a given subject matter as an investor or investment from any third country (referred to as Most Favored Nation or MFN in international agreements) in like situations.

In Suriname, unless requesting special investment incentives, foreign investments are not subject to more screening processes than local companies. There is no formal discrimination specifically targeted at foreign investors at the time of the initial investment or after the investment is made, such as through special tax treatment, access to licenses, approvals or procurement.

However, major investments, particularly in the mining sector, go through extensive negotiation processes to determine the terms of investment. In practice, different investors (both foreign and local) are offered different deals at the discretion of the government, represented by the Ministry negotiating the deal. Furthermore, in major investments, investment benefits are usually obtained through negotiations with the government and can change depending on sector and the company's negotiating strength. Local business owners claim that the government gives preference to foreign companies over local companies in the same sectors. There have been particularly objections in cases involving Chinese companies. For example, the government signed contracts with Chinese companies for construction and infrastructure projects which, through negotiations, included a stipulation that Chinese nationals may enter Suriname to work in jobs that host country nationals could have performed, including construction and engineering.

Policies that favor some firms over others (i.e. any policies that derogate from national treatment or MFN) involve a cost. They can, for instance, result in less competition and efficiency losses, thereby damaging the investment environment. For this reason, exceptions to non-discrimination need to be evaluated with a view to determining whether the original motivation behind an

exception (e.g. protection based on the infant industry argument) remains valid, supported by an evaluation of the costs and benefits. A broad consideration of the costs and benefits is especially important in service sectors that support a wide range of economic activities across the economy (e.g. telecommunications).

4.2 PROPERTY RIGHTS

Investors need to be confident that their ownership of, or right to use, property is legally recognized and protected. Secure, verifiable and transferable rights to agricultural and other types of land and forms of property, including intellectual property rights, give an incentive for entrepreneurs to shift into the formal economy, entitle the investor to participate in the eventual profits that derive from an investment and reduce the risk of fraud in transactions.

Property rights carry an intrinsic economic value and entrepreneurs need to be confident that their entitlement to these rights are properly recognized and protected, for example, in case of expropriation or nationalization. Well defined and secure ownership, including effective register of what constitute property improves access to credit, encourages new investment and the upkeep of existing investments. Land titles, for example, give an incentive to owners to promote productivity enhancing investments.

4.2.1 Registry of property ownership and secured transactions

An essential part of any system designed to protect property rights is the creation and maintenance of a registry of property ownership. As mentioned above, a secure and verifiable system of property ownership rights carries an intrinsic economic value by encouraging new investment and the upkeep of existing investments. Reliable land titling and property registrars offer a form of collateral that investors can use to improve access to credit. Improved access to credit lowers one of the main obstacles to new investment, especially among small and medium-sized enterprises.

In Suriname secured interest in property, both movable and real, is recognized and enforced. However, while mortgages are common and they are registered by the Mortgage Office, in the case of movable properties the lack of an effective registration system for movable collaterals restricts the use of this type of assets as a guarantee.

Creating a Secured Transactions Registry not only would increase the availability of credit but also reduce the cost of it, and would allow businesses—particularly SMEs—to leverage their assets into capital for investment and growth.

4.2.2 Protection of property: Expropriation and compensation.

A natural corollary of the protection of property rights is the need for compensation when a government expropriates property. This need is uncontested and, indeed, is reflected in most of the modern constitutions and all international agreements dealing with investment.

Notwithstanding the widespread acceptance of the need for timely, adequate and effective compensation, the power of government to expropriate raises policy issues that usually involve a careful balancing of interests and judgment on the part of policy makers, in addition to the inherent negative impact of expropriation on the investment climate.

In this regard, Article 34 of Suriname’s Constitution states that expropriation will take place only for reasons of public utility, according to the rules to be laid down by the law and against previously assured compensation. Compensation need not be previously assured if, in case of emergency, immediate compensation is required. There is a right to compensation if the competent authority destroys or renders property unserviceable or restricts the exercise of property rights. No single sector is at a greater risk of expropriation than others; although Article 41 of the Constitution specifically refers to all natural resources as being the property of the nation, and states that the nation has inalienable rights to take complete possession of all natural resources in order to utilize them for the needs of the economic, social, and cultural development of Suriname.

To avoid negative effects on the investment climate, government is encouraged to consider whether similar results can be achieved through other public policy means. If government decides to expropriate land or other property, this decision ought to be motivated by a public purpose, observe due process of law, be nondiscriminatory and guided by transparent rules that define the situations in which expropriations are justified and the process by which compensation is to be determined.

4.2.3 Free Movement of Capital

For a firm to be able to make, operate, and maintain investments in another country, the ability to transfer investment-related capital, including repatriating earnings and liquidated capital, is important. Many governments allow such free transfers, albeit without prejudice to their ability to take measures to prevent evasion of tax and other applicable laws and regulations and policy measures aimed at addressing serious balance of payment difficulties. Measures that restrict transfers can adversely affect investor confidence and, concomitantly, inflows of international investment.

In Suriname there are no restrictions on converting or transferring funds associated with an investment (including remittances of investment capital, earnings, loan repayments, lease payments) into a freely usable currency at a legal market clearing rate. Investors can remit through the legal parallel market. Transfers through the banking system can range from same-day transfers to one week. A source of origin must be declared in cases where the incoming or outgoing amount exceeds US\$5,000 or €5,000. There is no limitation on the inflow or outflow of funds.

However, since permission is required from the Foreign Exchange Commission to transfer any funds associated with a business or investment out of Suriname, it has become a bottleneck. Delays and excessive requirements without clear rules are the main problem. The delay period varies for remitting investment returns such as dividends, return of capital, interest and principal on private foreign debt, lease payments, royalties and management fees. The time needed to process the request depends on the sector and the amount to be transferred and could vary from 1 day to 1 year or more.

Currently, the Central Bank is working to update the Exchange Law to ensure that foreign exchange takes place through the Central Bank in order to increase transparency.

4.2.4 Intellectual Property Rights – IPRs-

Intellectual property rights give businesses an incentive to invest in research and development, and ultimately lead to the creation of innovative products and processes. They also give the holders of such rights the confidence to share new technologies (transfer of technology), such as in the context of joint ventures. Successful innovations are in time diffused within and across economies, bringing higher productivity and growth. Investment is thus, both a pre-condition for the creation and diffusion of innovation activity.

Even though Suriname is a member of the World Trade Organization (WTO) and, since 1975, a member of the World Intellectual Property Organization (WIPO), it has not ratified the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement.¹⁰

While Suriname is officially party to the following international agreements on intellectual property rights, which came into force while it was still a colony of the Netherlands, there is little or no adherence to these agreements, as they are not incorporated into the country's domestic legislation (See Box 6).

BOX 6 INTELLECTUAL PROPERTY RIGHTS AGREEMENTS
The Paris Convention for the Protection of Industrial Property (1883)
The Berne Convention for the Protection of Literary and Artistic Work (1886)
The Hague Convention concerning the International Deposit of Industrial Designs (1925)
The Nice Agreement concerning the International Classification of Goods and Services for the Purpose of Registration of Marks (1957)
The Strasbourg Agreement concerning the International Patent Classification (1971)

The current legal framework for discussing copyrights, patents, and trademarks dates back to 1912 and 1913, and is an amendment to a previously written law. Neighboring rights (related rights) in copyrights, geographical indications, industrial designs, and utility models, layout designs of integrated circuits, undisclosed information, or new plant varieties remain unprotected. Suriname signed the WIPO Internet Treaties, but has not ratified them.

The Ministry of Justice and Police, who presides over the Bureau for Intellectual Property Rights, publicly stated its intention to improve the country's IPR legislation. The Bureau for Intellectual Property Rights drafted three pieces of IPR legislation, including an updated copyrights law, which is being evaluated by the legal department of the Ministry of Justice and Police. More advanced and specialized legislation (e.g., brand and music piracy, industrial property and associated rights) is slated to be added to the basic legislation once it is approved.

The intellectual property rights regime is not only a matter of concern to large firms and multinational enterprises with significant research and development programs, but also to small- and medium-sized enterprises. SMEs are a driving force behind innovation, yet their potential to

¹⁰ In 2003, the authorities indicated that Suriname had not yet ratified the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). They indicated that, to remedy this situation, new legislation pertaining to IPRs was being drafted with the assistance of the International Bureau of WIPO. See: WTO, Trade Policy Review, 2013.

invest in innovation activities is not always fully exploited. SMEs tend to underutilize the intellectual property system, partly due to their lack of awareness.

The intellectual property right protection instruments used by governments to encourage investment in research and development include patent and copyright laws, which give the owner, for a pre-determined period of time exclusive right to exploit the innovation. How effective these instruments are in terms of encouraging investment in innovation activity also depends on how well the rights are enforced. Efforts to curb non-compliance, for instance counterfeiting, are therefore an important feature of any intellectual property regime. At the same time, intellectual property right regimes need to strike a balance between society's interests in fostering innovation and in keeping markets competitive and, especially in the case of essential medicines, in sufficient supply.

Measures that extend access to the intellectual property regime system may thus help to attract investment in research and development and to transmit the positive spillovers to society that such investment embodies. Government can help by, for example: promoting a greater use of the intellectual property system; developing specific strategies, policies and programs to meet the intellectual property needs of SMEs; improving the capacity of relevant public, private and civil society institutions, such as business and industry associations, to provide intellectual property-related services to SMEs; and by providing information and advice on intellectual property issues to SME support organizations.

4.3 ENFORCEMENT OF CONTRACTS AND SETTLEMENT OF DISPUTES

It is important that investors have trust in the integrity of the markets. As a central pillar of any system, this requires a legal framework, capable of ensuring the enforcement of contracts.

When two parties strike a bargain, there must be some mechanism to ensure that each party will stick to the terms. However, having a law that establishes a disputes settlement mechanism is not sufficient. What matters equally are the role and practices of the legal institutions that support their effective implementation. The legal institutions relate to the organization of courts, an independent and competent judiciary, the legal profession, the enforcement services and the process of law making itself. Their design is a crucial factor influencing equality of treatment between actors (e.g. small- and large-sized enterprises) and also bears on the cost of enforcement and thus the reliance and confidence that investors have in the system of contract enforcement.

In many cases, however, recourse to the judiciary system can be slow and expensive, discouraging potential investors. From an economy-wide perspective, the issue is not whether a contract can be enforced but rather the cost of the various enforcement mechanisms and their

efficacy in improving confidence between contracting parties. To be effective, the costs of enforcement must not outweigh the gains achieved from increased contractual commitment.

When procedures for enforcing commercial transactions are bureaucratic and cumbersome or when contractual disputes cannot be resolved in a timely and cost effective manner, economies rely on less efficient commercial practices. Traders depend more heavily on personal and family contacts; banks reduce the amount of lending because they cannot be assured of the ability to collect on debts or obtain control of property pledged as collateral to secure loans; and transactions tend to be conducted on a cash-only basis. This limits the funding available for business expansion and slows down trade, investment, economic growth and development.

4.3.1 Local Courts and Judgments of Foreign Courts

The ability to make and enforce contracts and resolve disputes is fundamental if markets are to function properly. Good enforcement procedures enhance predictability in commercial relationships and reduce uncertainty by assuring entrepreneurs that their contractual rights will be upheld promptly by local courts.

Suriname's legal system is based on the Civil Law System. Laws are laid down in criminal, civil, and commercial codes and verdicts are based on the judge's interpretation of these codes. The judicial system is largely independent. Article 131 of the Constitution prohibits interference with active court cases and this is generally followed in practice.

Judges uphold the sanctity of contracts, and enforces them in accordance with their terms. When an individual or a company disputes a signed contract they have the right to take the case to court. The judiciary consistently upholds local law, applies it, and enforces it for local and international businesses. Companies have also a right to file for bankruptcy with the courts. All records of debts are subsequently filed with a trustee as appointed by the court. The judge may declare bankruptcy in cases where there are a minimum of two creditors. In cases where there is a loan from a commercial bank, payment on this loan takes precedence. Monetary judgments are made in local currency, unless the contract or agreement stipulates otherwise.

Judgments of foreign courts are accepted and enforced by the local courts only if Suriname has a legal treaty of jurisprudence with the foreign country involved. If not, the foreign judgment can be brought before the Surinamese court for consideration as long as the court determines it has jurisdiction and doing so does not otherwise violate any Surinamese laws. Additionally, with Suriname's participation and membership in the Caribbean Court of Justice, judgments from this court are also binding for local courts. Plaintiffs have successfully filed suit against Suriname in

the Inter-American Court of Justice of the Organization of American States. The Surinamese legal system upheld these verdicts.

Local dispute resolution proceedings typically last between one month and three years, depending on the complexity of the case and the willingness of parties to cooperate. However, processing of cases is slow, bureaucratic, and inefficient, hampered by a high caseload, corruption, and not enough judges to address the judiciary's workload effectively.

4.3.2 Alternative Dispute Resolution - ADR

Confidence in the integrity of markets can be favored through the development of alternative dispute settlement procedures, such as arbitration, mediation and conciliation hearings organized by industry bodies or specialized agencies. These are particularly useful options for settling disagreements, at least at the first instance level, between transacting parties at a reasonable cost.

According to the World Bank Group, ADR can be an integral part of business-support initiatives in a wide range of ways and contexts. It contributes significantly to any agenda focused on enhancing the effectiveness of a given business sector, reducing costs, improving business and contractual relationships, and establishing corporate and commercial best practice.¹¹ Following this approach a key feature of international agreements concerns the channels through which disputes are heard and resolved. Most international investment agreements contain provisions by which governments consent to permit investors to seek the settlement of investment disputes with the host country government through binding international arbitration (in limited instances contingent upon provisions on the exhaustion of local remedies). These commitments, giving recourse to impartial channels of dispute settlement, provide an additional layer of protection to investors and, most importantly, signal a government's commitment to the rule of law, bolstering the confidence of investors that their property rights are secure.

There are many different types of ADRs processes. The most common types of ADR for civil and commercial cases are mediation, settlement conferences, neutral evaluation, and arbitration.

- In **mediation**, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

¹¹ The World Bank Group, Alternative Dispute Resolution Guidelines, 2011.

- In **arbitration**, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." Binding arbitration means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. Generally, there is no right to appeal an arbitrator's decision. Nonbinding arbitration means that the parties are free to request a trial if they do not accept the arbitrator's decision.
- In **neutral evaluation**, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.
- **Settlement conferences** may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

Some of them, such as mediation, can be (and often are) fully independent of any court system or underlying legislation. Many take place pursuant to contracts between the parties and without reference to or connection with the state court system. In some cases, there may need to be a minimum legal framework governing the process in the country in question (for example to protect the confidentiality of the discussions in mediation). In the case of arbitration, which is a more formal ADR mechanism, a minimum enabling legal framework as well as enforcement mechanisms should be in place.¹²

The World Bank Group had identified certain general indicators that make disputes more likely to benefit from ADR as opposed to formal litigation through the courts, see Box 7.

¹² The World Bank Group, *Alternative Dispute Resolution Guidelines*, 2011.

BOX 7
GENERAL INDICATIONS FOR ADR VS. FORMAL LITIGATION IN COURT

<p>ADR is generally indicated/suitable when:</p> <ul style="list-style-type: none"> • The parties are willing to negotiate and share a mutual future interest. • The legal framework does not provide a final solution or a commercially tailored, resilient resolution of the conflict. • A relationship must be preserved or a long-term relationship (involving family, neighbors, business associates, a partnership, a lengthy contract) needs to be carefully terminated. • Multiple proceedings or conflicts exist between the same parties. • The case requires confidentiality or a need for separate discussion. • More parties are stakeholders to the conflict than process parties alone. • There is a need to limit costs. • There is a desire for a less formal process. • Quick resolution to the dispute is desired. 	<p>ADR is generally not indicated/suitable when:</p> <ul style="list-style-type: none"> • There is a need for a precedent or public ruling (for example, matters of legal status). • There is an excessive power imbalance, or at least one party cannot defend itself. • Health problems of one party inhibit participation in mediation. • A party exhibits interest in delaying tactics or pure “fishing expeditions.” • Negotiation is seen as a sign of weakness, or is used to please the referring organization or party. • One or more parties cannot trust the other to abide by any agreed settlement.
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Source: The World Bank Group, 2011

Suriname accepts binding international arbitration¹³ only if it is stipulated in the contract or agreement and if it does not contradict any local laws. International arbitration is an accepted mean for settling disputes between private parties, but only if local alternatives are exhausted. Most agreements involving foreign companies have clauses that clearly stipulate the laws applicable to the agreement.

¹³ Suriname has been a member of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 1964, when the country was still a Dutch territory. At independence in 1975, Suriname automatically continued its membership in international conventions and treaties.

Even though other mechanisms such as mediation and conciliation are available in Suriname, they are not widely extended. The Bureau Rechtszorg, an office under the Ministry of Justice and Police, provides legal support and, in some cases, operates as mediation office. However, since the objective of the office is to offer all citizens equal access to justice, it focused mainly on disadvantaged groups in society, but not in business issues. The most common issues in this office are divorces, problems with birth certificates, rent problems and labor issues.

Extending the scope of ADR to commercial issues would contribute to create a better environment for business. ADR not only reinforces negotiation-based methods of doing business, but also lowers the direct and indirect costs that businesses incur in enforcing contracts and resolving disputes, including transactional costs that could otherwise divert company resources. ADR is viewed as a business based solution, operated in and by the private sector, for its own benefit. It is rooted in the desire of businesses to find more commercially focused, tailor-made dispute resolution mechanisms that do not suffer the excesses and failings of the courts.¹⁴

5. INVESTMENT PROMOTION: INCENTIVES AND SUBSIDIES

Specific measures to promote and facilitate business can be successful if they take place within the context of, and not substitute for, broader policies for improving the business environment. However, in some circumstances, incentives may complement an already attractive enabling environment for investment or serve as a partial rectification for market imperfections that cannot be addressed by direct policy reforms.

As a country establishes a sound business environment, investment promotion and facilitation measures can be useful instruments to attract new investors, especially in smaller, more remote markets or in those countries with a recent history of macroeconomic and political instability. Effective investment promotion also serves to highlight profitable investment opportunities, by identifying local partners and by raising the positive image of the economy.

Incentives can be further subdivided into positive and negative incentives according to the direct impact they have on the investment to which they legally apply¹⁵. Positive incentives, on one hand, are any measurable economic advantage afforded to specific enterprises or categories of enterprise commonly used by governments to promote economic growth and employment by

¹⁴ The World Bank Group, *Alternative Dispute Resolution Guidelines*, 2011.

¹⁵ This taxonomy of national investments incentives is not uniformly applied in the literature. Sometimes, TRIMs are said to include negative as well positive incentives, see for example the taxonomy proposed by Guisinger (1985). A taxonomy that is useful for economic analysis has been proposed by Greenaway (1991), pp 146-150.

stimulating investment and the upgrading of skills.¹⁶ The incentives concern, for example, the compensation of disadvantages a foreign investor may face by the only fact that his activities are of a transboundary character. They may be used to attract investment funds from abroad, to encourage the transfer of technology, or to influence investment decisions in favor of specific industries or locations, and can include fiscal, financial, and non-financial incentives.

Negative incentives, on the other hand, correspond to what the literature refers to as trade related investment measures. Whereas incentives try to elicit desirable market behavior by carrots, mandatory performance requirements are measures that mandate certain operational undertakings.¹⁷ Some countries, for example, require a minimum proportion of investment project inputs to be sourced locally, regardless of their cost competitiveness.

Such policies may be inconsistent with WTO obligations arising from the Agreement on Trade-Related Investment Measures (TRIMs). Policy makers should consider evaluating their potential dampening effects on investment. Performance requirements, such as local content, export performance, and other trade related investment measures, tend to discourage and distort investment by imposing additional costs on firms, which in fact is why they often go hand in hand with incentives to invest.¹⁸

However, positive and negative incentives are closely bound together. Indeed, export performance requirements in export processing zones, for example, are often linked to special incentives that are not available elsewhere in the host country, such as tax holidays and duty exemptions. Or vice versa, incentives are often linked to various operational margins or undertakings. Some authors use the terminology "performance incentives" to characterize incentives that are conditioned upon performance.¹⁹

Positive incentives, again, may take various forms. They may be provided to firms through grants and subsidies (See Box 8). They may involve tax advantages or tax reductions, the availability of infrastructure facilities or R&D capability. They may be associated with the allocation of government contracts, government concessions or other regulatory advantages.

¹⁶ UNCTAD (1996b) defines investment incentives as "... any measurable economic advantage afforded to specific enterprises or categories of enterprise by (or at the direction of) a government , in order to encourage them to behave in a certain manner.

¹⁷ For example, the host government may require the investing firm to use a certain technology (mandatory technology transfer); to source a certain percentage of inputs domestically (domestic content rules); to export a certain fraction of output (export performance requirements); or to balance the import with exports (trade-balancing requirements).

¹⁸ Suriname does not impose performance requirements as a condition for establishing, maintaining, or expanding investments, or for access to tax and investment incentives. There are no requirements that investors purchase from local sources or export a certain percentage of output.

¹⁹ WTO (1998). The Impact of Investment Incentives and Performance Requirements on International Trade. Working Group on the Relationship between Trade and Investment, WT/WGTI/W/56, 30 September, Geneva.

BOX 8

WTO DEFINITION OF SUBSIDIES

The definition of term “subsidy” (Part. I) in the “Agreement on subsidies and Countervailing Measures” –SCM Agreement- contains three basic elements: (i) a financial contribution (ii) by a government or any public body within the territory of a Member (iii) which confers a benefit. All three of these elements must be satisfied in order for a subsidy to exist. Under the SCM Agreement, only measures that take the form of a "financial contribution", or where there is any form of income or price support in the sense of Article XVI of GATT 1994, can constitute a subsidy, and a financial contribution by a government is not a subsidy unless it confers a "benefit". The Agreement contains an exhaustive list of the type of measures that represent a financial contribution.

The agreement, on the other hand, applies only to subsidies that are specifically provided to an enterprise or industry, or group of enterprises or industries. Thus, it applies not only to measures of national governments, but also to measures by sub-national governments and to such public bodies as State-owned companies.

Source: WTO

According with UNCTAD²⁰, they include measures specifically designed either to increase the rate of return of a particular investment undertaking, or to reduce (or redistribute) its costs or risks.

Governments sometimes use trade policy instruments, such as import tariffs, to promote investment in targeted industries. Overall, however, the impact of such practices is likely to harm the investment environment. Favored industries compete for resources with other enterprises, crowding out investment in activities that are more productive. Moreover, to the extent the output of the targeted industry is an input to others, external competitiveness is crimped, and reducing profitability and the attractiveness of additional investment in these export oriented sectors. These costs are often long-lived, since they are not transparent and usually are spread among many producers and consumers, giving a limited incentive to pressure governments for reform. If the government seeks to promote investment in a specific industry through trade policies, this should be done in a transparent manner and consistent with existing international obligations, such as the WTO Agreement on Subsidies and Countervailing Measures. The first best approach, however, is to maintain a trade regime that allows competitive industries to develop and flourish, rather than try to develop competitiveness behind trade policies that seek to

²⁰ UNCTAD, (1996). "Incentives and Foreign Direct Investment," Division of Transnational Corporations and Investment, UNCTAD/DTCI/28, New York and Geneva.

somehow favor some industries over others. This does not necessarily imply removing all import protection.

Incentives can be also classified as direct or indirect, general or particular, conditional or unconditional, and incremental or non-incremental²¹, as follows:

- **Direct or Indirect.** A direct incentive is an advantage, which is received by the firm undertaking the investment while an indirect incentive is received indirectly by the firm undertaking the investment e.g., a higher market price for outputs, or a lower market price for inputs.
- **General or Particular.** A general incentive may be available to all firms, while a particular incentive applies only to particular sector, industry or group of firms.
- **Unconditional or Conditional.** An unconditional incentive requires no additional or special undertakings while a conditional incentive includes additional unrelated requirements, such as local content or employment rules or performance requirements regarding exports.

Developing countries mainly use fiscal instruments, such as tax holidays, concessionary tax rates, accelerated depreciation allowances, duty drawbacks and exemptions, whereas developed countries mainly use financial incentives, including cash grants (sometimes exceeding 50 per cent of the investment costs) and interest-free or subsidized loans. This presumably reflects differences in wealth, as the developed countries can afford to use up-front subsidies to pay for some of the investment whereas developing countries can, at best, afford to ease the tax burden *ex post*.²²

Developing countries again, rely more often on negative incentives (TRIMs), while developed countries frequently use positive incentives or a combination of both. The scarce financial resources of developing countries governments are likely to be the main reason why these countries prefer TRIMs to positive incentives. If a country introduces positive incentives to achieve the same effects on investment as through TRIMs, it is likely to create or widen financial imbalances in the public sector with adverse effects on investment and growth²³.

²¹ Daly, M. (1998). "Investment Incentives and the Multilateral Agreement on Investment", *Journal of World Trade*, April, pp. 5-26; UNCTAD (1996c). *World Investment Report 1996: Investment, Trade and International Policy Arrangements* (New York and Geneva: United Nations), United Nations publication, Sales No. E.96.II.A.14.

²² WTO (1998). *The Impact of Investment Incentives and Performance Requirements on International Trade*. Working Group on the Relationship between Trade and Investment, WT/WGTI/W/56, 30 September, Geneva.

²³ International Monetary Fund (IMF) (1997). *Investment Implications of Selected WTO Agreements and the Proposed Multilateral Agreement on Investments*, WP/97/60, May, Geneva.

Even though incentives and subsidies could be an effective tool to promote some sectors, authorities engaging in incentive-based strategies to attract investment must periodically evaluate their relevance, appropriateness and economic benefits against their budgetary and other costs, including long-term impacts on resource allocation. In doing so, authorities also need to consider their commitments under international agreements, since investment incentives can have effects beyond the countries that offer them, including bidding contests leading to a waste of resources.

Under current regulations, investors in Suriname can benefit from both tax- and non-tax-based incentives. The Law authorizes the Minister of Finance to grant discretionally various types of incentives in respect of both new investments and the expansion or replacement of existing investments.

Tax-based incentives include a nine-year tax holiday that can be extended by one year if the investment is at least US\$13 million, accelerated depreciation of assets, and tax consolidation. Under the Raw Minerals Act an exemption of import duties is granted for the import of raw materials from CARICOM member countries. Exemptions are also granted for the food industry, the soft drinks industry, and the fruit juice industry. In 2011 the government eliminated import duties on computers and related items.

The Investment Law 2001 also offers the possibility of granting incentives of a non-fiscal nature. Article 14 stipulates that, if the Minister of Finance grants a fiscal incentive, the investor, subject to the applicable rules on exchange controls, will also be granted a permit for the repatriation of funds for: (i) the repayment of equity and loans obtained abroad; (ii) the payment of profits and/or dividends; (iii) the payment of interest and principal on funds borrowed abroad; and (iv) payments for management, technical assistance, know-how, licenses, and others. Such a permit may be subjected to conditions defined on a case-by-case basis. Furthermore, if the Minister awards an incentive under the Law, the appropriate body will grant a permit, subject to the applicable rules, for the residence and employment of foreign personnel, the establishment of an enterprise, and the import and export of goods.

The law accords special consideration on investments exceeding US\$50 million and investments in the exploration and exploitation of bauxite, hydrocarbons, gold, and radioactive minerals. These investments may benefit from incentives other than those provided for in the Investment Law, provided they are granted by law. Since large investments and investments in the mining sector are the subject of extensive negotiations between the Government and the investors, the Government needs to be able to grant incentives that depart from the provisions of the Investment Law, e.g. incentives relating to the provision of infrastructure.

Survey data and experience suggest that incentives do not rank high among the determinants of investments. In fact, overall the survey evidence suggests that while market characteristics,

production costs and resources availability are among the most important locational determinants of investments, incentives play only a limited role in company decisions.

Impact typically also varies across types of incentives, depending on investors' strategies. Transnational Corporations, for example, may respond differently to different type of incentives depending on their strategies. While fiscal and financial incentives impact seems to be very similar in terms of investment preferences, targeted incentive packages have proven to be the most effective.

Finally, the experience with investment incentives suggests that to be effective, incentives programs should not only involve a careful targeting of the desirable elements, but also policy coordination at various levels of government to avoid possible conflicts and market distortions. Indeed, in many instances, incentives either can be a waste of resources or, when they are successful, can lead to a distorted economy that generates inefficiencies and substantial social and economic costs.²⁴

6. TRADE POLICY

The relationship between international trade, domestic and foreign investment has evolved over time. Today, international investment is more motivated by productivity enhancing opportunities and relatively less linked to accessing local markets, or extracting natural resources. In these circumstances, trade policies and customs procedures not conforming to internationally recognized standards delay cross-border deliveries and increase business costs. This makes it harder to harness efficiency gains from global supply chains, lowering rates of return and discouraging investment. Often trade policy procedures can be simplified through harmonized requirements and regulatory co-operation (e.g. to enable pre-arrival clearance of shipments), with benefits for the overall investment environment.

6.1 Trade in goods

The majority of international trade involves transactions from business to business. Modern business supply chains concern hundreds of domestic and international producers. This specialization of production attracts investment, because it results in productivity gains and

²⁴ UNCTAD (1996b). "Incentives and Foreign Direct Investment," Division of Transnational Corporations and Investment, UNCTAD/DTCI/28, New York and Geneva; UNCTAD (1996c). World Investment Report 1996: Investment, Trade and International Policy Arrangements (New York and Geneva: United Nations), United Nations publication, Sales No. E.96.II.A.14.

lower production costs. Trade policies that hinder reliable access to intermediate goods and services, and which raise their cost can hold back this process.

It is, therefore, important to assess periodically the impact of customs, regulatory and administrative procedures on the investment environment. Investors (domestic and foreign) compensate for greater risk and uncertainty by adjusting upwards the rate of return required to undertake an investment project, leading to less overall investment. In the trade policy domain, uncertainty may be created by spontaneous government decisions that obstruct the smooth functioning of international supply chains and cause less stable pricing structures. Transparency in trade policy making, for instance, via public consultations with businesses and other constituents and better communication of policy decisions helps to provide a more stable environment in which enterprises can plan their investment programs.

Even though Suriname has liberalized trade and implemented procedures to facilitate import and exports, there are still obstacles that impede the growth of commerce.

Non-tariff barriers on both imports and exports include: proof of residency, registration with the Chamber of Commerce (KKF), Customs' import registration numbers, and tax identification numbers from the Tax Office of the Ministry of Finance. Under the 2003 Law on the Movement of Goods, the Ministry of Trade and Industry created "negative lists" for both imports and exports. Anything not on the "negative list" can be imported or exported without a license. Items included on the "negative lists" may only be imported or exported with special permission from the government. Examples of goods on the negative list for imports are: chemicals, pesticides, and animals on the Convention of Endangered Species and Faunas List. Examples of goods on the negative list for exports are: bark wood, explosives, gold, and other precious metals.

Tariff barriers include consent and statistical fees charged in addition to regulatory import duties. Suriname's tariff schedule comprises nine bands between 0 and 50 percent. Import tariffs from CARICOM member states range between 0 and 20 percent. In 2008, the Foreign Exchange Commission, through General Decree 216, began waiving consent fees in cases where the Ministry of Finance already exempted or suspended import duties. Imports from countries outside CARICOM, except the European Union, are subject to increased import duties due to the Common External Tariff (CET) adopted by CARICOM members. Imports are subject to a 7 percent turnover tax as stipulated under the 1997 Law on Turnover Tax. Exports are subject to consent and statistical fees. Companies in the bauxite sector pay a 2 percent statistical fee on both imports and exports. In the gold sector, IAMGOLD pays royalties of 2.25 percent, with an additional 6.25 percent if the price of gold exceeds US\$425 per troy ounce. A statistical fee of 0.5 percent is also applied on timber exports (except to CARICOM countries).

Caribbean Single Market and Economy (CSME) regulations prevent members from importing products from outside of CARICOM if the same quality goods can be produced or delivered by fellow member states by a pre-set deadline, not taking price into account. Violations can lead to legal action at the CARICOM Secretariat.

CARICOM grants suspension of the CET to member states when a commodity is not produced in a Member State or is produced in insufficient quantities to satisfy the requirements of the Common Market. When the CARICOM Secretariat grants a suspension to a member country, the country may then import a product from outside CARICOM at a rate lower than the CET. In 2008 the CARICOM Secretary General, based on a decision by the 19th Inter-Sessional Meeting of the Conference of Heads of Government of the Caribbean Community, gave member countries permission to partially or completely suspend import duties on products from outside the Community for one year. In 2009 the GOS extended this suspension for another year. The Trinidadian cement producer TCL and a Trinidadian grain miller filed cases against Suriname due to Suriname's import of cement and flour from non-CARICOM countries. In both cases the court ordered Suriname to reinstate the CET.

In October 2008, Suriname, as a member of the CARIFORUM, signed an Economic Partnership Agreement (EPA) with the European Union. Under this agreement the CARIFORUM countries agreed that all goods, except rice and sugar, enter their markets duty and quota-free. The agreement was never ratified by Suriname's National Assembly and is not yet in effect.

6.2 Trade in services.

Internationally traded services are a particularly important input for many industries and a strategic component of global value chains. Services can be traded either by modes: (1) cross-border supply; (2) consumption abroad; (3) commercial presence; or (4) temporary movement of natural persons.

The four modes are intrinsically linked. The value of trade-in-services through all four modes has expanded both as proportion of total trade and in magnitude for both developed and developing countries. These service exports often grew from international investment and work outsourced from home multinational enterprises. Their export cannot only benefit the host country from which the service originates, but concurrently make the home's multinational enterprises globally competitive. Reviewing and liberalizing existing regulations of home countries may lead to benefits for host countries. Liberalization in mode 4 can allow entrepreneurial talent to find niches and circulate that entrepreneurial talent to and from host and home countries. If effective policies are in place, mode 4 liberalization may mutually benefit the home and host country.

According to the WTO²⁵, one of Suriname's key trade policy objectives is to increase the production capacity and efficiency of its export-oriented industries, the services sector in particular. The Government is also carrying out a Trade Facilitation Project to improve Suriname's competitive position on the world market. Services in Suriname, however, are characterized by the presence of the government, for example, in telecommunications and financial sector. Without a clear regulatory framework and competition law the risk of market failures and unfair competition is high.

7. COMPETITION POLICY AND CONSUMER PROTECTION

7.1 Competition Policy

Incumbent enterprises can sometimes discourage investment by abusing their market power. For example, if an incumbent maintains exclusive distribution arrangements with its retailers or wholesalers, and the cost of establishing an alternative network is prohibitive, new entry and new investment may be impeded. Likewise, if a producer sells a product below cost (appropriately defined) with a view to recouping losses incurred after rivals have exited the industry, or would-be new entrants have been deterred. A credible threat of predatory pricing behavior discourages prospective investors and can discourage investment in upstream and downstream industries. The demonstrated willingness of competition authorities to prevent, correct and sanction anticompetitive practices can thus have a significant positive bearing on the business climate.

The Government of Suriname does not regulate competition within Suriname. The CARICOM Competition Commission is based in Paramaribo. This Commission monitors potential anti-competitive practices for enterprises operating within the CSME and provides support to member states in promoting and protecting consumer welfare. The Commission also investigates and arbitrates cross-border disputes.

However, one of the main problems experienced by private firms in Suriname is that they compete under the same terms and conditions as public firms²⁶ for access to markets and credit. Public firms are active in the oil sector, airline sector, electricity and gas supply, water, bananas, rice, telecommunication, banking, and transport sectors. Some of these enterprises receive subsidies from the government, which may be in the form of loans, but which (as in the case of

²⁵ WTO, Trade Report, 2013

²⁶ Public sector enterprises in Suriname are established by special laws, or as public limited liability companies or foundations under the Commercial Code. State business and operations tend to be less transparent than private firms. These companies are in most cases managed like a regular company with a Supervisory Board, whose members are appointed by the government. These companies consult with the respective ministry presiding over the sector on business decisions, and major decisions require government approval or consent.

utilities) are unlikely to be repaid. Staatsolie is the only public firm with private capital invested: through bond issuance in 2010, borrowed US\$55 million from private investors.

Currently a competition bill (Mededingingswet) is being drafted under the responsibility of the Ministry of Trade and Industry; the process is at its final stage. The draft bill basically covers mergers, anticompetitive agreements, and abuse of market dominance.

The Suriname Competition Council (Surinaams Mededingingsraad, SMR) will be in charge of its implementation. It will operate under the responsibility of the Ministry in charge of Trade and Industry, and it is expected to be a semi-judicial body.

Once enacted, mergers and acquisitions should be investigated by the SMR, depending on the distortive effects of their market share and the similarities in the business of the parties to the merger. Mergers and acquisitions are flagged as anticompetitive when they control more than 40% of the market.

Under the competition bill, in order to ensure that prices are market-determined and that there are no barriers to new entrants, the SMR will be responsible for regulating anticompetitive behaviors, including abuse of market dominance, i.e. cases where, due to the behavior of a dominant player, unfair purchase or selling prices are directly or indirectly imposed, and/or where production, market access, investment, or distribution are restricted.

Under the bill, exemptions may be granted for some restrictive practices, such as where the actions of the firm are aimed at improving production or distribution of goods or services, or promoting economic and technological development, which will result in advantages for consumers. Exemptions may also be granted for firms that hold an intellectual property right (IPR). The bill also provides for investigative, sanction, and appeal mechanisms.

For competition policy to be effective, businesses and other stakeholders need to understand the “rules of the game.” This requires that competition laws and policies be transparent and their implementation predictable. It also requires that rulings on competition cases be made based on non-discriminatory criteria and consistently. In other words, while no two situations are the same, under reasonably similar circumstances decisions ought to be consistent with each other.

Transparency can be promoted by, for instance, ensuring that businesses and other interested parties have access to all necessary information, by offering guidance on the interpretation of the competition laws and by publishing reasons for judiciary and regulatory agency decisions. Transparency and predictability help to improve the investment environment, because they reduce the risk of inconsistent application of laws and regulations and lower uncertainty faced by investors and others. In addition, transparency reduces firms’ costs of compliance and promotes confidence by reassuring businesses and other stakeholders that they are being treated fairly and that government is exercising its powers responsibly.

The distinction between adopting a new law or policy and effectively implementing it can represent the difference between success and failure. Effective policy implementation requires that the competition authority have the resources and political support to do the job properly. Competition authorities must often challenge vested interests, such as private firms with monopolistic positions in the market or state-owned firms that fall under the regulatory authority of other parts of government. In the absence of a strong political commitment, efforts to promote competition, and hence investment, are in such cases likely to fail. Furthermore, a strong commitment to policy implementation and oversight at the political level can help to protect competition authorities themselves from regulatory capture. Political support for competition policy, which includes supplying sufficient resources for effective enforcement, is an important determinant of the potential contribution of competition policy to an attractive business environment. Institutional settings vary widely, complicating the assessment of the degree of political support for competition policy, or of its vulnerability to special-interest intervention. Criteria that might be considered could include the status of the competition authorities within the government structure and the institutional arrangements for insulating enforcement decision-makers from political direction or influence.

7.2 Consumer Protection

Consumers today operate in increasingly complex markets, challenged by growing amounts of information and an expanding choice of products. Consumer protection is an essential element of any market economy. Not only is it important to protect already existing consumers, but it also helps to instill confidence in the market system for potential future consumers.

Currently Suriname has not a framework consumer protection law, code, statute or regulation. However, it has a set of consumer protection related laws and there are two specialized agencies in charge of Consumer Protection: a) Consumer Affairs Department, a unit of the Ministry of Trade and Industry, and b) the Suriname Standards Bureau, established in 2006 as “National Institute” of Standards in Suriname. The SSB fulfills a facilitating role in the field of standards management, which means establishing rules for promoting, developing, adopting and adjusting standards for goods and accepted operating procedures. (see Box 9). According to government officials the Ministry of Trade and Industry, the Ministry has been intensively working on finishing a consumer protection bill.

BOX 9
CONSUMER PROTECTION– RELATED LAWS AND REGULATIONS

Civil Code, 1868

- Art. 1525 to 1533 Warranty obligations
- Art.1401j to1401l Misleading advertising
- Art.1401a to 1401i Product liability

Standardization Act, 2004

Bureau of Standards Act, 2006

Food Act, 1911

Metrology Decree 1983

Economic Offenses Act 1986 (Amended 2003)

Labeling Act

Prices and Margins Controls Decree, 1980

A clear policy objective should be specified, in terms of what the policy intends to achieve for consumers and the market more generally. Three basic elements offer policymakers a good starting point to do so:

- **Transparency** – Customers must be able to understand costs and key terms of the products they buy and use. Consumer education is critical in this regard; it can be defined as a process of developing and enhancing skills and knowledge to make informed and well-reasoned choices that take societal values and objectives into account.
- **Fair Treatment** – Government intervention against unfair industry practices towards customers, such as misleading sales practices or aggressive collections. Efforts should be made to identify the full range of practical policy options (those that can be realistically implemented). These would include those that focus on consumer empowerment and those that focus on modifying firm behavior, as well as those that have elements of both.
- **Effective Recourse** – The existence of effective channels for resolving consumers’ issues. Effective policy implementation requires that the concerning authority have the resources and political support to do the job properly. Furthermore, a strong commitment to policy implementation, which includes supplying sufficient resources for effective enforcement, is an important determinant of the potential contribution of consumer protection policy to an attractive business environment. Criteria that might be considered could include the status of the authorities within the government structure and the institutional arrangements for insulating enforcement decision-makers from political direction or influence.

8. SUMMARY AND CONCLUSIONS

Regardless of Suriname's apparent success, different assessments and rankings coincide in showing that Suriname's investment climate should improve to support sustainable development.

An overlapping of policies and laws coming from opposite economic models are affecting negatively Suriname's business climate. The tension between the current policy and the existing legislation results in the failure to achieve government goals. As a result of legislative lags and reluctance to enact new legislation, existing business legislation has become a bottleneck and a grave impediment to Suriname's economic progress.

Although the Government of Suriname has started to implement some measures to improve the business climate, there is a need for a single comprehensive strategy for fostering investment, innovation and entrepreneurship. However, the design of any strategy to improve competitiveness requires to take a holistic approach that realizes every interaction; every touch-point among the different elements of competitiveness. It implies also the definition of basic requirements for competitiveness, focused primarily on those legal issues concerning the relations between government and individuals: business facilitation and promotion, competition law and trade policy.

- Business facilitation covers a set of administrative procedures that apply to the lifetime of the entrepreneurial activity. These procedures shall be transparent, non-discriminatory and predictable.
- The simplification of trade procedures through harmonized requirements and regulatory co-operation benefits also the overall investment environment.
- Lastly, the demonstrated willingness of competition authorities to prevent, correct and sanction anticompetitive practices can thus have a significant positive bearing on the business climate. Incumbent enterprises can sometimes discourage investment by abusing their market power.

As a final point, it is also appropriate to identify who would be responsible for implementation and enforcement, the cost of maintaining the policy and how it would be communicated to stakeholders and the public.

9. ACTION PLAN

LINE	ACTIONS	SPECIFIC ACTIVITIES	RESPONSIBLE
BUSINESS FACILITATION AND PROMOTION	Enact laws to guarantee: Legal certainty, Rule of law, Transparency, Property protection, and Non-discrimination treatment	Business administrative code (include principles and procedure)	Ministry of Justice and Police
		Remove obstacles to registry real property and companies : <ul style="list-style-type: none"> • Licenses • Foreign exchange measures • Improve real property appraisal 	Ministry of Trade Foreign Exchange Board and Central Bank Ministry of Finance
		Create Movable goods registry	Ministry of Finance Ministry of Justice and Police
		Update Intellectual property rights legislation	Ministry of Justice and Police
		Law creating alternative dispute resolutions methods	Ministry of Justice and Police
		Investment law	Ministry of Finance
		Define promotion policy Evaluation of the costs and Benefits of investment incentives	ICDS Ministry of Finance

LINE	ACTIONS	SPECIFIC ACTIVITIES	RESPONSIBLE
TRADE POLICY	Reduction of the compliance costs of customs, regulatory and administrative procedures at the border Regulate trade in services	Adopt measures to facilitate trade: e-government	Ministry of Trade
		Identify exporting service sectors and regulate them	Ministry of Trade Cross – sectional support (other Ministries)
LINE	ACTIONS	SPECIFIC ACTIVITIES	RESPONSIBLE
COMPETITION AND CONSUMER PROTECTION	Adopt clear, transparent, and non-discriminatory competition and consumer protection laws	Draft competition law	Ministry of Trade
		Draft of law creating and independent authority	Ministry of Trade

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Annex I - Authorities and stakeholders interviewed – (08-12,2013)

Ministry of Finance

Ministry of Justice and Police

Ministry of Labor

Ministry of Natural Resources

Ministry of Trade

Planningsburo

Central Bank

Bankers Association

Corporate Commercial Investment & Development Corporation Suriname (Idcs Nv)

National Assembly

Chamber of Commerce

Suriname Business Forum

Mr. Lim Apo

Mrs. Dr. Mr. Hoever-Venoaks (CUS)

Ms Anneke **Chin-A-Lin**

Annex II - Omnibus Law on Business Climate and Investment

PART I Investments Protection and Promotion (GoS Draft – 2009)

PART II Intellectual Property Rights

Section 1. Copyrights (GoS Draft 2007)

Section 2. Industrial Property (GoS WIPO Draft 2007)

Section 3. Traditional Knowledge (Pacific Model Law)

PART III Competition Law and Consumer Protection

Section 1. Competition Law (GoS/Competition Commission Draft)

Section 2. Consumer Protection (Caricom Model Law)

PART IV Business Facilitation

Section 1. Secured Transactions (OAS Model Law)

Section 2. Licenses (BFA/Ministry of Trade)

Section 3. Electronic Transactions (CUS)

Section 4. Trade Registry (Chamber of Commerce)

Section 5. Administrative Procedures (Follows Netherland's GALA)

Section 6. Alternative Dispute Resolution (NMI)