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SUMMARY OF THE DELIBERATIONS OF THE INVESTMENT POLICY REVIEWS

I. Investment Policy Review of Botswana

II. Investment Policy Review of Ghana

Executive summary

This document contains a summary of the deliberations on the Investment Policy Reviews completed since the sixth session of the Commission on Investment, Technology and Related Financial Issues. The Investment Policy Review of Botswana was presented back to back with the Expert Meeting on Experiences with Bilateral and Regional Approaches to Multilateral Cooperation in the Area of Long-term Cross-border Investment, Particularly Foreign Direct Investment, held from 12 to 14 June 2002. The Chairperson of the sixth session of the Commission chaired the deliberations.

The Investment Policy Review of Ghana was presented back to back with the Expert Meeting on The Development Dimension of FDI: Polices to Enhance the Role of FDI in Support of the Competitiveness of the Enterprise Sector and the Economic Performance of Host Economies, Taking into Account the Trade/Investment Interface, in the National and International Context, held from 6 to 8 November 2002. The President of the Trade and Development Board chaired the deliberations.

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SUMMARY OF THE DELIBERATIONS OF THE INVESTMENT POLICY REVIEWS

I. Investment Policy Review of Botswana

1. The Investment Policy Review of Botswana was presented on 11 June 2002. Introducing it, the representative of the UNCTAD secretariat outlined the various measures adopted by the Government of Botswana to attract foreign direct investment (FDI). A long history of political stability, demonstrated commitment to market reforms and rich natural resource endowments were some of the country's strong points for becoming an important FDI destination in the region. Botswana graduated from least developed country (LDC) status to middle-income country status within a relatively short period of time. FDI played a key role in this impressive and rapid transformation. The macroeconomic policies and management strategy adopted by the Government in its handling of the fiscal, social and economic pressures of this change could be a model for other natural-resources-based economies. While the Government wants to diversify the economy and encourage domestic businesses the role of FDI will remain critical to all sectors of the economy. FDI will be important, most notably for improving managerial, professional and technical skills and for transferring technology and know-how.

2. Botswana provides an excellent investment climate, which permits FDI in all sectors. However, higher and sustained levels of FDI inflows into all sectors will be needed in order to help achieve the country's long-term development plan set out in Vision 2016. This will require a coherent FDI strategy, which embraces a more proactive policy, in particular by taking full advantage of market access arrangements, encouraging local private business and the development of human resources, and ensuring consistency of policies, including investment promotion efforts.

3. Thanks to the country's welcoming FDI regime, with few restrictions on entry and establishment and high standards of treatment and protection for foreign investors, Botswana's FDI performance surpassed that of other countries belonging to the Southern African Development Community in the 1980s and up to early 1990. Subsequently, however, Botswana lost ground as one of the most important destinations of FDI in the region. It is now well positioned to make a comeback as an attractive FDI location, especially if some of the challenges are adequately addressed. Botswana's strengths and weaknesses were highlighted in the Review. FDI entry policy is regressing. There is no coherent FDI strategy to guide the formulation of wider policy measures to attract and benefit from FDI. Furthermore, FDI promotion is not pursued systematically across the board.

4. The main recommendations highlighted in the Review call for the Government to adopt a new FDI law, which recognizes the reality of the good treatment that has historically been accorded to foreign investors, but also offers appropriate protection to national investors in acutely sensitive sectors. The Review also calls for the setting up of a comprehensive FDI strategy for the next National Development Plan, scheduled to begin in March 2003. The strategy should contain performance targets. Meanwhile, improvements in the climate for business and FDI are needed, including an improved work and residence permit system and

better land allocation. Some administrative functions and industrial licensing should be carried out more rapidly. Privatization should be a strategic objective for improving competitiveness and attracting and retaining FDI. There is a need to pursue a sector-based investment strategy, and to promote local business development and increase linkages. More emphasis should be placed on education and training for the needs of the private sector and local business development.

5. The head of the Botswana delegation, the Permanent Secretary of the Ministry of Trade, Industry, Wildlife and Tourism, expressed her Government's gratitude to the United Nations Development Programme (UNDP) and the UNCTAD/UNDP Programme on Globalization, Liberalization and Sustainable Development for financing the Investment Policy Review. She endorsed its recommendations and indicated that the Government fully supported the major thrust of the recommendations. She added that the Review was extremely timely in guiding the formulation of an FDI strategy for the forthcoming ninth National Development Plan. Despite the conducive investment environment, it was emphasized that the Government was concerned with declining FDI inflows and the concentration of FDI in a few sectors. The Government acknowledged weaknesses in the investment environment identified in the Review (e.g. slow implementation of privatization, lack of a systematic approach to benchmarking and monitoring competitiveness with competing countries, absence of competition policies, poor linkages between FDI and the local enterprise sector, and lack of a comprehensive FDI strategy).

6. The Permanent Secretary affirmed her Government's belief that FDI was a complement to national development goals and called for assistance to help Botswana, in particular, to develop strategies and mechanisms that would foster better linkages between foreign investors and local enterprise; provide technical assistance on capacity building in negotiating investment treaties; and assist in designing a coherent and comprehensive strategy on FDI. The representative from the Botswana Confederation of Commerce extended an invitation to UNCTAD to make a presentation on a critical review of investment policies and the new Code at a forthcoming National Business Conference in Botswana, convened by the President.

7. Representatives of France, Norway, South Africa, Uganda, Zambia and the United States, as well as representatives of the Asian Group and the Latin America Group, expressed their appreciation for the high-level participation by the Government of Botswana and unanimously welcomed the review process and its contribution to enhancing policy dialogue among stakeholders at the national and intergovernmental levels. The representative of Norway added that high-level participation by Governments was crucial for follow-up. They all commended Botswana's remarkable achievements over the past three decades, its exemplary success in graduating from LDC status within one generation, and the role which FDI had played in this process, noting in particular the welcoming investment climate characterized by good macroeconomic policies and sound governance practices.

8. The Commission also benefited from the viewpoints of the international private sector, all of whose representatives commended Botswana for its excellent investment climate. The Diamond Trading Company, part of the De Beers Group, had had a long

partnership with the Government of Botswana, beginning in 1969. It had made substantial contribution to the economy. The company's representative provided feedback on two areas of concern to foreign investors, including the issuance of work permits for expatriate managers, which took too long, and was bureaucratic and inconsistent, and indicated the need for regulation in this area. He raised another issue, namely the lack of specific legislation on diamond mining, the fiscal regime for diamond mining currently being based on case-by-case negotiation. The company's view was that legislation would help create certainty in the diamond mining sector, whereas an unclear fiscal regime would heighten the risk for new diamond companies' investment in exploration.

9. The representative of Aureos Capital Ltd (CDC_NORFUND) commended Botswana for having in place a number of important factors conducive to attracting FDI inflows, such as a stable economic and political environment, an absence of exchange controls, and growth potential within sectors/industries. However, she pointed out that Botswana's manufacturing base was small, which made it difficult to provide expansion capital, and that its corporate tax rate was not as competitive as that of neighbouring countries which had export processing zone incentives. It had limited managerial skills and a high cost base for doing business. Also, Botswana's withholding tax on interest payments for non-residents, royalties and fees were a major disincentive for such operations. She provided perspectives and suggestions on some key issues for attracting FDI, cautioning that restricting capital on the basis of size was not a way forward. She proposed that all institutions that currently had local enterprise development programmes be rationalized.

10. The representative of Merck & Co. Inc., an international pharmaceutical company and a leader in AIDS research, was managing a $100 million African Comprehensive HIV/AIDS Partnership (ACHAP) programme in Botswana together with the Bill & Melinda Gates Foundation. The programme was important for Botswana's long-term development, which could impact on FDI. He provided information about how the AIDS issue in Botswana was being addressed in a concerted way through education, and preventive and curative measures, involving non-governmental organizations and local hospitals. The anti-viral programme would initially target 19,000 cases, with a planned increase to 20,000 cases per annum. Achieving those targets would mean that Botswana would have the highest rate of treatment in sub-Saharan Africa.

II. Investment Policy Review of Ghana

11. The Investment Policy Review of Ghana – the tenth in the series – was presented in Geneva on 5 November 2002. Introducing it, the representative of the UNCTAD secretariat said that after several years of relative prosperity and economic growth, Ghana had slipped into economic crisis in 1998. However, the country had recently begun to recover and was now making a comeback in terms of attracting FDI. To a large extent, this comeback was attributed to a renewed sense of business confidence and optimism following the country's peaceful transfer of power and the first change in political leadership in 20 years. The new Government is committed to creating a better environment for private sector participation and good governance. This commitment has been well received by investors, and FDI inflows

have returned to their pre-crisis levels. The challenge now is to broaden and sustain FDI inflows as well as to revitalize domestic enterprise activities. This will require a sustained and stable macroeconomic environment.

12. Although good progress has been made thanks to recent policy efforts, there is a need for measures to revitalize domestic enterprise activity in the main sectors. The Review recommends a booster programme to regenerate domestic and existing investor initiatives. Reinvestments will in turn stimulate new foreign investors to enter Ghana. In addition, the Investment Code, which in 1994 was considered to be the best of its kind in Africa, needs updating. Other bottlenecks – in company incorporation, labour laws, access to land, tax regime and administration – need to be addressed. Policies in key sectors – mining, tourism and agriculture – should be fine-tuned and brought into line with investors' requirements. Furthermore, there is a need to promote business start-ups and small and medium-sized enterprises, to encourage the formation of linkages between local firms and foreign affiliates, and to build enterprise capabilities generally, including education and science and technology policies responsive to the needs of the private sector.

13. The main FDI strategy in the short term is to encourage existing investors to expand their activities and reinvest in the country's economy, particularly in mining, agribusiness, telecommunications and financial services. In the longer term, however, new elements will be required. These include an improved and sustained investment climate and regulatory framework that will enhance the competitiveness of business and the economy as a whole; a revamped privatization programme; better participation by the private sector in infrastructure development; and a reinvigorated gateway strategy to remove supply constraints on export-oriented manufacturing sectors. Also, the Government should strengthen private–public sector dialogue and institutional links to enable the Ghana Investment Promotion Centre to act as a "one-stop-shop".

14. The head of the delegation of Ghana, the Senior Minister in the Office of the President, thanked the UNCTAD secretariat for opening up a dialogue in the area of investment, which was an important priority for the new Government with regard to generating economic growth and reducing poverty. The new Government has pledged to create "a golden age" for business through private sector development, regional integration and good governance. It has also announced zero tolerance for corruption. A special cabinet briefing, attended by all the Ministers on the Governmental Economic Committee, reviewed the key findings of the Investment Policy Review. There was also a national workshop, which brought together key stakeholders from the private sector, government and civil society. The Economic Ministerial Committee and the Board of the Ghana Investment Promotion Centre endorsed the main recommendations of the Review and a technical assistance programme is being prepared by UNCTAD in collaboration with key stakeholders. The Government's priorities have been identified in order to create the conditions for improving the economic recovery and strengthening the country's supply capacity. These include sustaining the macroeconomic stabilization programme, strengthen institutions, mobilizing financial resources for infrastructure development, increasing the benefits of FDI and minimizing any negative effects, and implementing the reforms.

15. The Ambassador of India, as a commentator from the developing countries, welcomed the Investment Policy Review as an important mechanism for engaging Governments in a dialogue on their investment policies. He commended UNCTAD for presenting a comprehensive overview of the report. It was observed that Ghana had made efforts over the years to create an investment-friendly climate, which included adopting an economic recovery programme in 1983, drawing up an investment code in 1986, revised in 1994, opening up its trade regimes and granting incentives. Furthermore, there were no performance requirements for investors. However, these efforts had not been matched by results in terms of larger inflows of FDI. FDI issues, it was suggested, had to be addressed in parallel with those relating to trade, market access and networking for marketing. The Ghanaian Government was commended for its willingness to seek a refinement of this policy mix in order to promote economic growth. It was noted that the international community could assist Ghana in achieving its objectives.

16. Statements were also made by participants from developed countries, including embassy officials in Accra, the German investment promotion office in Accra, and government officials from capitals. Ghana's efforts to establish market-oriented policies and its success in turning around its macroeconomic policies, which had led to a reduction in inflation, were noted. The bold measures taken after Ghana had qualified for assistance under the Heavily Indebted Poor Countries Initiative (HIPC) have made possible access to additional financial resources to enable the country to pursue its poverty reduction programme. Ghana is considered a priority country for Germany, and 90 German affiliates are now established there. Among the obstacles that could impact adversely on Ghana's investment climate are the gaps between proclaimed policies and implementation, particularly with respect to public administration. Other obstacles include corruption, accountability, increased taxes and levies, and failure to honour contracts concluded under the previous Government. It was noted that the six elements listed in UNCTAD's report on measures to improve the investment climate – namely, the investment framework, transport infrastructure, a booster programme, privatization, human resource development and investment promotion – are critical for attracting increased FDI flows.

17. The UNCTAD recommendations on private sector development were commended, and delegations expressed the view that encouraging small and medium-sized enterprises and training of the labour force were important for sustainable development policies. Other critical areas where further efforts are needed include good governance, removal of bottlenecks affecting business, access to land and improvement of infrastructure. Concern was expressed by some delegations and by the private sector about the lack of progress in Ghana and in other developing countries, as well as developed countries, in the area of good governance and identification of sound anti-corruption policy measures.

18. On behalf of the Group of Least Developed Countries, the representative of Benin stressed the importance of the Investment Policy Reviews not only for Ghana but also for the African countries, especially the least developed ones among them. He recognized the opportunities that the review process had already provided for the participatory approach by enhancing policy dialogue among stakeholders both at the national level (Government–

private sector) and at the intergovernmental level. The Review provided the Government of Ghana with a tool to develop a long-term strategy for attracting FDI and developing linkages between transnational corporations and the local private sector. The assistance of UNCTAD and the support by donor agencies were considered critical in supporting the necessary follow-up to the recommendations.

19. Other representatives of Governments called for greater participation by the donor countries, which would allow LDCs to benefit from the UNCTAD technical assistance programme on investment policies. Discussants viewed Ghana's investment regime as relatively open. Against this positive assessment, discussants raised some concerns. The lack of policy consistency particularly with respect to the fiscal regime was noted. The unpredictability regarding judicial matters was noted, as well as the need to create a truly level playing field for the private sectors, both domestic and international.

20. Private sector representatives emphasized the need to overhaul the telecommunications sector in order to improve the climate for foreign investment. Among the policy measures suggested were promulgation of regulations for the regulatory body (the National Communication Authority), enforcement of the rights and obligations of all operators, establishing a level playing field for all operators, supplying the regulatory body with the requisite equipment and manpower to perform its duties, and issuance of operating licences to all operators. A commercial interconnection agreement needs to be negotiated whereby all parties – wire-line or wireless operators and State-owned or private companies – receive their fair share of income.

21. In the area of energy and water, the Government of Ghana was encouraged to find win-win solutions in infrastructure development involving the private sector and all stakeholders in project design and implementation. In addition, it was called on to encourage women to take a more prominent role in society and in business development. The business community was called on to encourage reinvestment both for exporters and for domestically oriented firms. It was noted that the recent removal of incentives and unpredictable changes in the fiscal regime were perceived as deterring investment. The Swiss–African Chamber of Commerce pointed out that although the laws in Ghana welcomed FDI, implementation and institutional weaknesses hampered business establishment. It could take up to two years to establish a company in Ghana. Also, the view was expressed that public procurement regulations should be strengthened.

22. The Senior Minister in the Office of the President expressed his appreciation for the very open and constructive discussion that had taken place. He reiterated the importance of continuing the dialogue on the issues discussed and acknowledged the constructive contribution of the private sector – both international and local – to policy-making. He called upon UNCTAD to initiate follow-up activities to implement the policy recommendations.