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**Working Party on the
Accession of Cape Verde**

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Additional Questions and Replies

The following submission, dated 24 August 2007, is being circulated at the request of the Delegation of the Republic of Cape Verde.

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II. ECONOMIC POLICIES

- Foreign Exchange and Payments

Question 1

Paragraph 18 of SPEC/CPV/5 and Question 4/ CPV 24:

We welcome the information that CPV is revising its legislation to remove the current authorisation requirements (BCV authorization for 1) obtaining currency to import merchandise above CVEsc 5,000,000; 2) invisible operations falling under "private unilateral transfers" for amounts exceeding CVEsc 1,000,000 and for transfers exceeding CVEsc 5,000,000 as payment for goods and services).

Could CPV indicate a timing for completing the revision and eliminating these requirements?

Answer:

Cape Verde expects the revision to be enacted by December 2007 no later than July 2008.

- Investment Regime

Question 2

Paragraph 18: Concerning the need to obtain prior authorization for certain transfers and the acquisition of foreign exchange to import merchandise worth more than CVEsc 5 million, the Working Party Report states that the Government is revising existing legislation to eliminate the prior authorization requirement.

When does Cape Verde expect the revision to be enacted?

Answer:

Cape Verde expects the revision to be enacted by December 2007 no later than July 2008.

Question 3

Paragraphs 29-33 discuss investment incentives that appear to constitute prohibited export subsidies.

What are the results of that study?

Answer:

WT/ACC/CPV/22 is a 2005 Action Plan, it was overtaken by events:

- Cape Verde submitted a Subsidies Notification WT/ACC/CPV/27 of 26 June 2007; and
- Cape Verde will incorporate a commitment paragraph in the Draft Report of the Working Party setting forth a time table for elimination of the prohibited subsidies.

Question 4

Cape Verde should provide a draft notification of its industrial subsidies to the Working Party, identifying the programs currently providing incentives and those allowed for in law, their purpose, the value of the benefits provided, etc.

Answer:

Please see answer to Question No. 2.

Question 5

A timetable for the elimination of measures that meet the definition of prohibited subsidies according to the ASCM should be included in the Working Party Report text. A cross reference to the sections that contain that commitment should be added to this section.

Answer:

Cape Verde will incorporate a commitment paragraph in the Draft Report of the Working Party setting forth a time table for the progressive elimination of the prohibited subsidies.

Question 6

Question 10/CPV 24:

We welcome CPV comment that the Investment law will be modified and that it will include an exhaustive list of all prohibited sectors, and that this list will apply to both domestic and foreign investment.

Could CPV indicate when the new investment law will be available?

Answer:

Cape Verde is in the process of revising the Investment Law. Also, Cape Verde provided a subsidies notification to the WTO and the Working Party.

Cape Verde is prepared to agree to a commitment (along the lines of paragraph 160) dealing with prohibited subsidies.

As part of the plan to rationalize the Investment law and legislation dealing with incentives, the Government of Cape Verde is working on a strategy to align its incentives for investors with the Agreement on Subsidies and Countervailing Measures. As soon as that strategy and draft legislation is available, Cape Verde will provide notification to the WTO.

Question 7

Paragraph 25 of SPEC/CPV 5 and Questions 7 and 11/ CPV 24:

As to investment incentives, we note that CPV is currently granting prohibited export subsidies. We welcome the statement of CPV that it is considering elimination of export subsidies in the future.

CPV Verde has indicated that it is examining its investment incentives. We would be happy to know whether CPV has completed this examination, and when could CPV submit to the WP an

updated list of its investment incentives, together with a plan for the future indicating which incentives CPV wants to maintain after WTO accession.

Answer:

See answer to Question No. 3 above.

The formulation of the strategy, drafting of laws and implementation regulations and approval by the Council of Ministries and Parliament will take some time. That is precisely the reason for the transaction period requested by Government of Cape Verde.

Question 8

Paragraph 33 of SPEC/CPV/5 and Question 12/CPV 24:

Could CPV give an indication when the new Foreign Investment Law could be available for the WP?

Answer:

See answers Questions No. 3 and No. 4 above.

- **State Ownership and Privatization**

Question 9

Paragraphs 40-42: We would like additional information on the operations of each of the identified STEs, including what criteria they use in making decisions to buy quantities of imports, and, where relevant, how they ensure that they distribute domestic and imported products in an even-handed manner.

Answer:

Of the remaining State-owned enterprises, only EMPROFAC imports regularly. The company imports 65 per cent of Cape Verde's needs in pharmaceuticals and sources the remaining 35 per cent from the local pharmaceutical industry (INPHARMA LABORATORY). EMPROFAC holds 40 per cent of shares from INPHARMA LABORATORY. There are no quotas on imports of pharmaceuticals. Thus, domestic and imported products are treated fairly. Imported products are made through a bid process.

Question 10

We also have specific Questions on these STEs:

Paragraph 40: Although Shell and ENACOL are private enterprises, Cape Verde will be obliged to ensure that they comply with GATT Article XVII because they have been endowed with special or exclusive privileges. In this respect, how does Cape Verde ensure that they do not discriminate in their importation and distribution, for example, by purchasing fuels only from refineries to which they are affiliated?

Answer:

Cape Verde appreciates that Shell and ENACOL are recognized as private enterprises. However their exclusively privileges both for importation and distribution expired in December 2006. At the present moment the importation of oil products is made through international bids and supervised by independent Regulatory Agency.

Question 11

Paragraph 42: Does EMPROFAC have the exclusive right to distribute pharmaceuticals in Cape Verde? How does Cape Verde ensure that EMPROFAC complies with the obligations of GATT Article XVII?

Answer:

Yes, presently, EMPROFAC does have the exclusive right to distribute pharmaceuticals in Cape Verde.

However, this right is soon to expire, as the company's privatization will certainly result in the liberalization of the pharmaceuticals market, either in 2008, when the privatization is planned to take place, or soon thereafter. A short transition period to full liberalization of the market is under consideration but will only be allowed if absolutely necessary to help prepare the national pharmaceutical industry to a fully liberalized market.

Question 12

Paragraph 45: We support the commitment with the following edits.

The representative of Cape Verde confirmed that Cape Verde would ensure that all State-owned, State-invested, and other enterprises with special or exclusive privileges would make purchases of goods and services, which were not intended for governmental use, and sales in international trade, based solely on commercial considerations, e.g. price, quality, marketability and availability, and that the enterprises of other WTO Members would have an adequate opportunity in accordance with customary practice to compete for such purchases or sales. In addition, Cape Verde would not influence, directly or indirectly, commercial decisions on the part of State-owned, State-invested, and other enterprises with special or exclusive privileges, including on the quantity, value or country of origin of any goods purchased or sold, except in a manner consistent with the WTO Agreement. The representative of Cape Verde confirmed that upon accession Cape Verde would notify and provide information on the activities of Shell Oil, ENACOL, EMPROFAC, and the Cape Verdean Tobacco Company in accordance with Article XVII of the GATT and the Understanding on that Article. The Working Party took note of these commitments.

Answer:

Cape Verde accepts this commitment language.

However we make it clear that the State of Cape Verde has no shares in the Cape Verdean Tobacco Company.

Concerning SHELL and ENACOL, see answer to Question No. 6.

- **Pricing Policies**

Question 13

Paragraph 50: We support the commitment.

Answer:

Cape Verde thanks the Member for its support.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

Question 14

Paragraph 60:

We support the commitment. We can agree to the elimination of the text in the internal brackets.

Answer:

Cape Verde agrees to eliminate the text in the internal brackets.

Question 15

Paragraph 66:

We support the commitment.

Answer:

Cape Verde thanks the Member for its support.

IV. POLICIES AFFECTING TRADE IN GOODS

- **Trading Rights**

Question 16

We request that Cape Verde agree to the bracketed commitment language contained in paragraph 79, with the edit noted below, which confirms that Cape Verde will grant any natural or legal person, whether or not located in Cape Verde, the right to be the importer of record of any product allowed to be imported into Cape Verde, by the date of accession.

The representative of Cape Verde confirmed that from [the date of accession] Cape Verde would grant any natural or legal person, regardless of physical presence or investment in Cape Verde, the right to be the importer of record of any product allowed to be imported into Cape Verde, and that its laws and regulations relating to the right to trade in goods and all fees, charges or taxes levied on such rights would conform fully with its WTO obligations, including Articles VIII:1(a), XI:1, and III:2 and 4 of the GATT 1994, Article III of the General Agreement on Trade in Services, and Article 63 of the Agreement on Trade-Related Aspects of Intellectual Property Rights. He also confirmed that full rights to import and to export would be granted in a non-discriminatory and non-discretionary manner from the date of accession, and any requirements for commercial registration or application for trading rights would be for

customs and fiscal purposes only, would not require investment in Cape Verde nor confer the right to distribute there, and would not constitute a barrier to trade. The Working Party took note of these commitments.

Answer:

The commitment language of paragraph 79 is satisfactory provided that date in the bracket should be December 2010.

Question 17

Taking note of Cape Verde's request for a transitional period to implement the legislation and regulations relating to the right to trade in goods, we request that text be added to the Working Party Report that reflects this commitment will be fulfilled within one to two years from Cape Verde's date of accession.

Answer:

Cape Verde will incorporate a commitment paragraph in the Draft Report of the Working Party that reflects this commitment to be fulfilled by December 2010.

Question 18

Cape Verde states that it will implement legislation and regulations that provide for the right of all importers, including "industrial enterprises", to be importers of record, and that the only requirement to become an importer of record will be a simple registration as a firm doing business. We request information on the development of that legislation.

Answer:

When a draft of the legislation is completed it will be forwarded to WTO Secretariat.

Please note the answer to Question No. 13.

Question 19

Paragraph 68: Please explain the distinction between the requirement of registration in order to engage in commercial activities, and the requirement of a permit in order to be a "commercial operator". Why are both required in order to perform commercial activities? Also, how does Cape Verde ensure that, having delegated the governmental function of permitting to Chambers of Commerce, those Chambers grant permits and licenses in a fair, transparent, and non-arbitrary manner? Please explain the rationale for having existing firms (presumably members of a Chamber of Commerce) make decisions as to the admissibility of new entrants (i.e., potential competitors) into the market.

Answer:

The requirements for registration at the firm registration services are general requirements for every enterprise pretending to do a commercial activity. The requirements for specific commercial activity are specific for each branch of the commercial activity and aim mainly wants toward a better organization of this sector.

The procedures for registration and engagement in commercial activity are stipulated by the Government and published in the Official Bulletin. The Government has delegated its power in the hands of the Chamber of Commerce which has to follow the established rules. Once all the conditions are met by the new entrant, the Chamber cannot refuse his/her admission. In case this happens, the new entrant can always appeal under the general terms.

The system works normally since 2001 and there are no complains from the operators or the new entrants.

Cape Verde will review its commercial legislation by December 2010 (see Legislative Action Plan).

Question 20

Paragraph 70: Cape Verde notes that an importer as a general rule has the right to import and distribute goods at the wholesale level.

Does this mean that generally an importer could not import to other channels of distribution?

Given that trading rights protect, *inter alia*, the right of foreign traders to import their products up to the same channels of distribution to which domestic producers have access, please explain this limitation at the wholesale level.

Answer:

No, he can not.

There is no limitation between domestic producers and foreign traders.

Question 21

Paragraph 74: Can Cape Verde confirm that a Chamber of Commerce does not have discretion to reject an application for obtaining a commercial licence that met the requirements stipulated in the provisions cited in this paragraph?

We also note that paragraph 74 explains that the fees for importation and exportation will be harmonized, reflecting the cost of the services rendered, in a new Ordinance.

We request that text be added to the Working Party Report that reflects that this commitment will be fulfilled by a date certain, not to exceed the same period of time, e.g., one to two years from the date of accession.

Answer:

Yes. Cape Verde has no discretion to reject an application for obtaining a commercial licence that met the requirement.

Text will be added to the Working Party Report that reflects this commitment by December 2010.

Question 22

Paragraph 78 states that "Cape Verde's legislation still sets out basic commercial presence requirements with respect to capital, warehousing".

Could the specific requirements be included in the report, either in the text or in a Table at the back of the report?

Answer:

Yes. It will be included in the Working Party Report.

Question 23

Commerce Legislation Action Plan (CPV 21/Rev):

It is noted that the completion of legislation regarding the Decree Law 68/2005 on foreign trade regime is only foreseen for December 2008.

As trading rights are fundamental rights under the WTO system, these rights should be granted to WTO upon WTO accession. It is not considered appropriate to have a transition period for trading rights. Therefore we would urge Cape Verde to adopt the necessary legislation/implementing regulation in this area before accession.

Legislative Action Plan (CPV/12/Rev.2):

The same comments then above apply to part 4. of the plan:"Commerce". Those implementing regulations that are necessary fro granting full trading rights would need to be adopted before accession (equalisation of fees, implementing regulations for non-automatic licence etc.).

Answer:

Cape Verde thanks the Member for its comments and reaffirms the need for a transition (December 2010), period to rationalize the laws and the regulations dealing with the commercial regime, both domestic and foreign into WTO rules.

This period is necessary for adjustment with the social partners of the government including the private sector and civil society aiming the implementation of internal reforms.

Question 24

Paragraph 74 of SPEC/CPV/5 and Question 32/CPV 24:

- 1. As regards the Decree Law 3/2006, it is noted that there is no restriction/qualification as its applicability to foreigners. Can Cape Verde confirm that the procedures of this law are equally applied to both domestic and foreign operators?**
- 2. As regards Article 6 of Decree Law 3/2006, what is the reason for consulting business associations before granting the authorisation? Why is this considered necessary?**
- 3. As to Decree Law 68/2005, it is noted that Article 5.2 b) states that the following goods are subject to non-automatic licensing:**

"goods subject to restrictions, obligatorily, defined by law."

We would urge Cape Verde to define exhaustively the products that are subject to non-automatic licensing, as this provision is not clear. Can Cape Verde confirm that Table 8 of the draft WPR is an exhaustive list of all goods subject to on-automatic licensing?

4. **Article 7 of the Decree Law 68/2005 states that an implementing decree will define the procedures linked with imports and exports to be followed by the government and private entities.**

We would urge Cape Verde to adopt this decree as a matter of urgency, as the trading rights of the operators will need to be guaranteed as from the date of accession. We consider it very important that the procedures for achieving import licence or being able to trade are clear from the date of accession.

5. **Could CPV indicate when the Ordinance that harmonises the registration fees for importers and exporters would be available for the WP?**

Answer:

1. Cape Verde confirms that the procedures for Law 3/2006 apply to both domestic and foreign operators.
2. The reason why the commercial associations are consulted is to hear their opinion about the private sector, while Government partner in the definition and implementation of commercial policies.
3. Cape Verde confirms that Table 8 is an exhaustive list of Goods Subject to Non automatic licensing.
4. As stated in previous answers, Cape Verde needs a transition period to bring its commercial regime into conformity with WTO principles.
5. Cape Verde will provide notification to the WTO Secretariat as soon as the Ordinance harmonizing the registration fees for importers and exports has been published.

Question 25

Paragraph 77 of SPEC/CPV/5 and Question 27/CPV 24:

We welcome the information that CPV is willing to revise its legislation to eliminate the requirements for commercial presence for companies that wanted to import or export. As right to export and import are fundamental rights under the WTO, we are of the opinion that the necessary legislative changes should be done before accession. We do not consider that transition period would be appropriate in this context.

Answer:

Paragraphs 77, 78 and 79 deal with the commercial presence issue.

Simply stated, Cape Verde needs a transition period to revise laws and regulations in this complex and difficult area. It is for this reason the Government of Cape Verde requested a transition period until 2010 to align its laws and regulations with WTO requirements.

Cape Verde is prepared to make a specific commitment in paragraph 79 to this effect.

A. IMPORT REGULATIONS

- Customs tariff

Question 26

We appreciate the information provided in Cape Verde's Action Plan on Preparation, Adoption and Application of a Customs Code, WT/ACC/CPV/14/Rev.2, and that Cape Verde is on track to promulgate a new Customs Code in December 2007.

Is that date still current? The status of this legislation is also addressed in paragraph 80 of the Working Party Report.

Answer:

Concerning the Customs Code, Cape Verde confirms that the draft Customs Code is on track for approval no later than December 2008.

Question 27

We request that text be added to the Working Party Report that also identifies the timeframe for implementation of the implementing regulations (that will address the more detailed valuation rules, such as those contained in the Interpretive Notes to the Customs Valuation Agreement).

Answer:

Cape Verde agrees that text to the Working Party Report should be added that identifies the timeframe for implementing regulations (that will address the more detailed valuation rules, such as those contained in the Interpretive Notes to the Customs Valuation Agreement).

A new Table 9 (Action Plan for Implementation of the Agreement on Customs Valuation) is being prepared and will be submitted to the WTO shortly. A line item in the Action Plan "for preparing and implementing detailed valuation rules and regulations will be inserted. The implementing regulations will contain the Interpretative Notes to the Customs Valuation Agreement.

Question 28

Paragraph 81: Please confirm that the dates in this paragraph are still current.

Answer:

The Law n° 11/VII/2007 of June 2007 approved by Parliament, updated the Customs Tariffs based upon the Harmonized System - HS 2007 which had been in force since 1 July 2007.

Question 29

Paragraph 81 SPEC/CPV/5:

The authorities of Cape Verde have confirmed their intention to adopt the 2002 version of the Harmonised System, but also informed that the implementation of the roadmap to implement this nomenclature has been delayed.

Could Cape Verde indicate when will the HS 2002 be effectively implemented?

Answer:

The HS (Harmonized System) version 2002 it is not implemented. Cape Verde through Law N° 11/VII/07 dated 21 July 2007 approved the new Customs Tariff based on the HS version from 2007 which became effective on 1 July 2007, according to Article 2 of the same law.

The ECOWAS Common External Tariff (CET) has not (as yet) gone into effect.

For the purposes of the Goods Schedule, Cape Verde used the 2002 version of the HS.

- **Other duties and charges**

Question 30

Paragraph 88: We accept the commitment.

Answer:

Cape Verde thanks the Member for its support.

- **Tariff rate quotas, tariff exemptions**

Question 31

Paragraph 92: We accept the commitment.

Answer:

Cape Verde thanks the Member for its support.

- **Fees and charges for services rendered**

Question 32

Paragraph 97 notes that Cape Verde maintains a customs user fee of 1.04 per cent *ad valorem*, which is inconsistent with Article VIII of GATT 1994.

We appreciate that Cape Verde is going to modify custom user fee to bring it into compliance with Article VIII of the GATT 1994. We support Cape Verde's request for technical assistance, and suggest that interested WTO members submit information that Cape Verde may use to revise its current system.

Answer:

Cape Verde thanks the Member for its support for technical assistance and bringing the custom user fee into conformity with Article VIII of GATT 1994.

Question 33

We further request that Cape Verde agree to the bracketed commitment language in paragraph 99, which states that Cape Verde will comply with Article VIII by its date of accession, or that Cape Verde will agree to fulfil these obligations within a transition period.

Answer:

Cape Verde can accept the commitment language of paragraph 99, provided that a 5 year transition period is granted.

Question 34

Paragraph 97 of SPEC/CPV/5 and Question 48/CPV 24:

We note that the customs user fee of 1,04 per cent imposed on the CIF-value is still in the process of being revised. We would urge CV to bring it in compliance with Art. VIII of the GATT 1994 by making it commensurate to the services provided. Ad valorem fees are not in compliance with Art VIII GATT.

Answer:

Cape Verde thanks the observations made by the Member about tax inconsistency of 1.04 per cent "ad valorem" for the payment of services according to Article VIII from 1947 GATT.

For the referred tax to be adequate according to Article VIII from GATT it is necessary a new study and analysis of import declaration and other operations and customs services to set a specific tax which will be compatible with the approximate cost of the services rendered.

Cape Verde does not have specialists on this subject and it is necessary technical assistance for this study, which should be done soonest possible.

- **Application of internal taxes to imports**

Question 35

Paragraph 102: Concerning VAT exemptions:

Please outline the criteria for the exemptions in the text, and confirm that imported goods are eligible for the exemption.

Answer:

Cape Verde confirms that VAT Law (Articles 9 and 12 and Law No. 14/VI/2002 of 9 September 2002, Laws Nos. 21/IV/2003 and 23/IV/2003 of 14 July 2003, and Decree Law No. 48/2004 of 26 July 2004) contains exemptions for domestic products operations. These exemptions include agriculture, forestry, livestock and fishing activities for certain domestic operations and similar imported products are exempt.

Question 36

Paragraphs 104-107 discuss Cape Verde's indirect taxes.

Paragraphs 104 and 107: There is a Special Tax on Consumption (SCT) (for alcoholic beverages) – levied exclusively on imports, and not on domestically-produced goods.

Paragraph 105: There is also an Environmental tax that is applied only to imported goods.

Both taxes are discriminatory and not consistent with Article III. For Cape Verde to meet its national treatment obligations, it must amend them to apply to both domestic production and imports.

We request that Cape Verde agree to the bracketed commitment language in paragraph 108 that Cape Verde will comply with Article III of GATT 1994 by its date of accession, or that Cape Verde agree to fulfil these obligations within a transition period.

Answer:

Special Tax on Consumption applies for alcoholic beverages are levied on import as well as domestically produced goods.

There is proposed legislation to equalize the Environmental tax on imports and domestic products.

Question 37

We request that Cape Verde agree to the bracketed commitment language in paragraph 108 that Cape Verde will comply with Article III of GATT 1994 by its date of accession, or that Cape Verde agree to fulfil these obligations within a transition period.

We reserve on this commitment pending clarification on how Cape Verde intends to bring the SCT and the Environmental Tax into conformity with Article III of the GATT 1994.

Answer:

With conformity of n°1 of Article 2°, Law n° 22/VI/2003 of 14 July 2003, the VAT tax on especial consumption applies to both domestic production and imports.

The new Law proposal about Environmental Tax will be soon presented to the Parliament and gives the same treatment to products (tare weight) which are either empty or filled with imported goods or domestic production.

Question 38

Paragraph 105 of SPEC/CPV/5 and Question 50 CPV/24:

We welcome information that CPV will revise its legislation to extend the environmental tax also to domestic products.

Could CPV indicate when will his law enter into force?

Answer:

The new Law proposal about Environmental Tax will be soon presented to the Parliament and gives the same treatment to products (tare weight) which are either empty or filled with imported goods or domestic production.

The environmental Tax issue is part of Cape Verde's Legislative Action Plan.

Cape Verde is reviewing the draft Working Party Report. Paragraph 105 will be updated as appropriate.

Question 39

Paragraph 107 of SPEC/CPV/5:

We would stress that the Special Tax on Consumption should be levied equally to imported and domestic products, provided CPV had domestic production of the goods concerned, otherwise the system of CPV cannot be considered as WTO compatible.

We would therefore urge CPV to revise its STC to be imposed also on domestic products, in case there is domestic production of the goods concerned either currently, or in the future.

Answer:

Cape Verde confirms that the Special Taxes applies either to imported products as well as local products (internal production), according to the stipulated on N°1 from Article 2 from Law N° 22/VI/03 dated 14 July 2003.

As stated previously, Cape Verde is reviewing the Working Party Report. Paragraphs 104 through 107 will be revised and updated as appropriate.

- **Quantitative import restrictions, including prohibitions, quotas and licensing systems**

Question 40

Paragraph 115 (pg. 33) and Table 8 (pg. 89) discuss items subjects to non-automatic licensing.

We request that precise WTO justifications be provided for these measures, verifying that they are based on SPS, health or security concerns.

We request that text be added to the Working Party Report that identifies how Decree-Law No. 68/2005 of 31 October 2005 is being enforced currently, and when implementing regulations will be issued for this law.

As indicated in the response to Question 63 of WT/ACC/CPV/24, has Cape Verde completed the required modifications to Articles 6, 7, and 8 of the draft Law on Import and Export Licensing to ensure compatibility with WTO?

Please provide the WP members with a copy.

Answer:

Pursuant to Article 6° of the GATT Agreement SPS, URUGUAY ROUND.

Cape Verde accepts to add a text to the Working Party Report by December 2008 (please see action plan).

The implement regulation will be issued by December 2008.

Question 41

Paragraphs 119-120: The text is not clear as to whether it is describing automatic licensing, or the procedures applied to acquisition of non-automatic licenses. In addition, the answer to the question is not responsive to the original question—the granting of automatic licenses should not be discretionary.

What is Cape Verde's justification for requiring automatic licensing for the bulk of trade?

Add commitment text to paragraph 121, noting the Working Party took note of these commitments.

Answer:

The reasons for Cape Verde to require automatic licensing for bulk trade (petrol derivatives and cement) are related to the imports needs of these basic products and also they do not pose any SPS measurements and national security threat.

Cape Verde will add a commitment text regarding this paragraph.

Question 42

WT/ACC/CPV/25: Questionnaire on import licensing Procedures:

Outline of Systems

Cape Verde notes that all goods are subject to automatic licensing except "goods that require sanitary/phytosanitary control, or security control (handguns, explosives and the like), or mandatory restrictions, required by law."

What types of items would fall under "mandatory restrictions"?

Do the items listed in Annex 1 of WT/ACC/CPV/24 represent an exhaustive list of the items that would be subject to non-automatic licensing and thus includes items that fall under "mandatory restrictions"? (Page 2).

We look forward to receiving Cape Verde's definition of "goods without commercial value." (Page 2).

Answer:

There is no definitive list.

Items which fall under the "mandatory restrictions" are the ones in which temporary licenses should be issued for import having in consideration some environmental and property protection.

Yes. It falls under mandatory restriction.

Goods without commercial value are goods which are not sold in Cape Verde and include: samples, goods for consumption in congresses, fairs and international expositions, import of goods for the supply of ships and aircrafts, goods apprehended, abandoned, found at sea, import goods without expenditure of currency, property of air and maritime navigation companies and destined for their exclusive use.

Question 43

Procedures

What are the "established legal requisites" importers must meet before being issued an non-automatic licence? (Page 4).

Answer:

The importer must make a demand with a proforma invoice and the certificate of origin.

Question 44

Eligibility of Imports to Apply for Licence

Cape Verde's response under IV. Eligibility of Imports to Apply for Licence is unclear.

Is it true that all persons, firms and institutions can apply for "restrictive" import licenses but that under the non-restrictive system not all persons, firms and institutions are eligible to apply?

Please answer the corresponding follow-up questions:

"If not, is there a system of registration of persons or firms permitted to engage in importation?"

What persons or firms are eligible? Is there a registration fee? Is there a published list of authorized importers?

Answer:

Cape Verde has no restrictive import licence.

There is a system of registration of person or firms- Commercial Registration.

All are eligible except for those with criminal records.

There is no fee to be paid.

There is a list at The Chamber of Commerce, but is not officially published.

Question 45

Additionally Cape Verde notes that no forms are required for the automatic licenses.

This seems to contradict CV's assertion that certain groups may be ineligible under the non-restrictive system. (Page 7).

Answer:

There is no restrictive system of importation in Cape Verde.

See answer No. 44.

Question 46

Paragraph 115 of SPEC/CPV/5 and Questions 59, 63, 64/CPV 24:

We welcome the information from CPV that the draft law on import and export licensing will be modified and that our comments on Articles 6 and 7 will be taken into account in the amendments. Could CPV indicate when the modified law would be available?

When will the implementing Regulations be adopted?

Answer:

Please look at the Action Plan on "Commercial Activities" and answers to Member's Questions Nos. 1, 6, 7 and 13.

Cape Verde reaffirms the need for a transition period to rationalize the Commercial Activities area, as per the Action Plan on Commercial Activities.

- **Customs valuation**

Question 47

Paragraphs 127, 128, and Table 9:

We favour the commitment text, but we seek additional commitment text that Cape Verde will accept:

- a. **Decision 3.1 of the Committee on Customs Valuation on the Treatment of Interest Charges in the Customs Value of Imported Goods; and**
- b. **paragraph 2 of Decision 4.1 of the Committee on Customs Valuation on the Treatment of Interest Charges in the Customs Value of Imported Goods and the Valuation of Carrier Media Bearing Software, for Data Processing Equipment.**

Answer:

The commitment language of paragraph 128 will be amended to include the valuation treatment of interest charges and carrier media bearing software.

Question 48

Question 88 and 90/CPV 24:

We welcome the updated Action plan for Customs Code and CVA, and note that the new target date for enacting the new Customs Code would be December 2007, and December 2008 for most implementing regulations. We take note of the fact that according to the action plan, the full conformity should be achieved by January 2011.

Answer:

The implementation and regulation of Articles 1 to 17 according to the custom evaluation and other GATT orders about the value which are part of the custom planning action, was changed for December 2010 in order to allow Cape Verde to benefit from technical assistance. The new custom action plan will be send to WTO Secretariat.

- **Rules of origin**

Question 49

Paragraphs 133-134:

We seek an explicit assurance that the requirements of Article 2(h) and Annex II, Paragraph 3(d) of the Agreement will be addressed in the new Customs Code.

We request that text be added to the Working Party Report noting that the requirements of Article 2(h) and Annex II, Paragraph 3(d) of the Agreement will be included in the new Customs Code.

With that clarification in paragraph 133, we can accept the commitment in paragraph 134.

Answer:

Cape Verde confirms that the new Customs Code will provide the opportunity for prior assessment of origin upon request, even before trade in goods has began. These provisions will bring Cape Verde's Customs code into conformity with Article 2(h) and Annex II, paragraph 3(d) of the WTO rules of origin agreement.

Question 50

Paragraphs 129-134 SPEC/CPV/5:

It could be requested to the authorities of Cape Verde to communicate their position whether they would consider the European Community as one entity for origin purposes.

Answer:

To apply Origins Rules, Cape Verde considers the EU members states as being a single territory. The origin of a product exported from the EU is analyzed as a EU geographical area and not a specific geographical area of a specific member state.

- **Other customs formalities**

Question 51

We request that Cape Verde provide information on how it has repealed the requirement for import declarations (paragraph 136).

What is the disposition of the issue? The requirement for "approval" is not consistent with the statement in the section on import licensing that all "licenses" not applied to sensitive trade were automatic.

Answer:

See action plan for law making (CPV 12/Rev.2).

Question 52

Paragraph 136 SPEC/CPV/5:

We welcome information that the approval requirements for import declarations are being revised. Could CPV indicate when this revision would be completed and the approval requirements abolished?

Answer:

As stated previously, Cape Verde is reviewing the entire paragraph of the Draft Working Party Report. Paragraphs 135, 136 and 137 will be closely looked at, and revised as appropriate. Also Cape Verde informs that Decree-Law 51/2003, November 2003 was revoked by Decree-Law 68/2005, October 2005 (find a copy at WTO Secretariat).

- **Preshipment inspection**

Question 53

Paragraph 139: We support the commitment.

Answer:

Cape Verde thanks the Member for its support.

- **Anti-dumping, countervailing duties, safeguard regimes**

Question 54

Paragraphs 141-142:

Please describe the measures applied in Cape Verde's safeguard against poultry imports.

We support the commitment, but we wonder if the current measures are consistent with it.

Answer:

Cape Verde confirms that safeguard action against poultry imports ended in 2004.

B. EXPORT REGULATIONS

- **Export subsidies**

Question 55

Paragraphs 151, 158 SPEC/CPV/5, Question 99, 105/CPV 24 and the subsidy notification CPV/27:

It is noted that two of the notified programmes, Free Zone Enterprise statute (IV) and Incentives for Exportation (V), provide prohibited export subsidies.

We would urge Cape Verde to abolish the export subsidies upon accession, and would be happy to know what steps and what kind of timetable Cape Verde is envisaging in order to abolish the export subsidies provided by these programmes.

As regards the subsidy programme VI, Duty Drawback, how Cape Verde is controlling that the inputs for which duty drawback is claimed have indeed used in the production of the exported items? In other words, how does Cape Verde check that the claimed amount of the duty drawback is correct and not in excess of the duties originally paid for the inputs in question.

Answer:

Please see answers to Member's Questions 3, 4 and 5 above.

The Investment, trade zones and incentives areas are under study by the Government of Cape Verde.

Cape Verde will agree to an appropriate paragraph similar to paragraph 160 of CPV5/Rev.1.

Concerning duty drawback, the Government of Cape Verde confirms that although the duty drawback provisions are "on the books," in fact duty drawback has not been used for many years because other incentives were more attractive.

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- Industrial policy, including subsidies

Question 56

Cape Verde has a number of subsidies contingent upon export performance and import substitution, and Cape Verde is reviewing all of them with a view to bringing its subsidy policies into conformity with WTO provisions.

We suggest that the Sections on Export Subsidies and on Industrial Policy be unified, so that all of Cape Verde's subsidies can be addressed together.

Answer:

Cape Verde accepts the suggestion.

Question 57

In paragraphs 150, 159 and 160, Members encourage Cape Verde to accept all aspects of Article 3 of the ASCM. We strongly support these statements.

Answer:

Cape Verde will accept all aspects of Article 3 of the ASCM.

Question 58

Paragraph 150 notes trade promotion programs operated by Cape Verde Investments where the benefits distributed are contingent on the use of domestic over imported goods. Such programs should also be cross referenced in the TRIMs section of the WP Report.

Answer:

Cape Verde will accept all aspects of Article 3 of the ASCM.

Question 59

Paragraph 159 notes Cape Verde is working on a subsidy notification and timetable for rationalization of existing measures.

We request that Cape Verde agree to the bracketed commitment language contained in paragraph 160, which states that Cape Verde will comply with ASCM upon entry into force, or that Cape Verde agree to fulfil these obligations within a transition period.

We also reserve on this part of the text, pending review of Cape Verde's draft notification on subsidies.

Answer:

Cape Verde agrees to fulfil these obligations within the transition period.

- **Technical barriers to trade, standards and certification**

Question 60

Paragraph 168: We support the commitment. We understand, however, that Cape Verde may prefer to establish a timeline for implementation of the Agreement on Technical Barriers to Trade.

If so, we seek confirmation in the text of Cape Verde's commitment (as noted in the response to Question 73 of WT/ACC/CPV/24) that it will not enforce voluntary standards contained in private sector or other commercial contracts.

Answer:

We agree with the Paragraph 168, provided that we have a transition period of 8 years and technical assistance to implement all the requirements of the TBT Agreement.

- **Sanitary and phytosanitary measures**

Question 61

Paragraphs 169 and 179:

Are the dates in these paragraphs still accurate? We need up to date information on how legislation is developing.

Answer:

According to the revised Action Plan the new date for development and enactment of basic legislation for SPS regime is 2008.

Question 62

Does Cape Verde still envisage an Enquiry point will be established by the end of the year? What Ministry will be responsible for the enquiry point? Does it still remain the Office of the Minister of Economy, Growth and Compositeness as was noted in WT/ACC/SPEC/CPV5/Rev.1?

Answer:

Enquiry Point was established in June 2007 and the responsible is Minister of Environment and Agriculture (Ordinance No. 13/2007 of 11 June 2007).

Question 63

Two years ago we suggested that prior to accession, Cape Verde commit to provisionally adopt international standards, guideline and recommendations where possible. If no standards exist for some specific items Cape Verde could provisionally adopt WTO-compliant sanitary or phytosanitary measures from other countries. We felt that these commitments would put Cape Verde in a better position to adopt the SPS Agreement expeditiously. We provided technical assistance to help Cape Verde in this regard.

Has Cape Verde been able to adopt international standards?

Answer:

Yes. Cape Verde has already adopted international standards. Cape Verde is a member of Alimentary Codex and IPPC, also is in the process of accession to OIE (presently has a status as observer and has annually declared his sanitary situation). IPPC is informed of phytosanitary measures applied and approved legislations.

Question 64

Cape Verde had stated that in the context of establishing a WTO-consistent regime in the area of sanitary and phytosanitary measures, the GOCV intended to introduce new science-based legal requirements on food safety, animal and plant health, which would replace existing decrees by 1 January 2007.

Has Cape Verde done that? If so, we would like a copy of the new requirements.

Has Cape Verde adopted standards of the International Office of Epizootics (OIE)?

Answer:

Not yet. Accordingly to update Action Plan, this activity will be completed by 1 December 2008. As we confirm in Question No. 47, Cape Verde has adopted the rules of OIE even though we not member yet of this organization.

Question 65

We appreciate the new information provided in Table 10: Action Plan for implementation of the SPS Agreement. Paragraphs 173-174 and Table 10:

Will Cape Verde further update the Action Plan in Table 10? Are the current completion dates an accurate statement of the status of the components of the action plan?

Is Cape Verde still requesting a transitional period from the date of its accession until 1 January 2010 for implementation of the WTO Agreement on Sanitary and Phytosanitary measures?

We accept the commitment.

We request that the information and the dates reflected in this Table be reviewed and updated to reflect Cape Verde's current status of implementing the WTO SPS Agreement.

Answer:

Cape Verde updated the SPS Action Plan in Table 10. Inadvertently the revised Action Plan was not received nor circulated by the WTO in time for the June Working Party Meeting. The revised Action Plan will be given to the WTO to circulation.

Cape Verde is still requesting a transition period until 1 January 2010 for implementation of the SPS agreement.

- **Trade-related investment measures**

Question 66

Reference should be made to the programs contingent upon the use of domestic over imported goods, which are mentioned above in the "export subsidy" section.

Answer:

Cape Verde has no TRIMs measures.

Cape Verde does not require the use of domestic over imported goods.

Question 67

Paragraph 176: We accept the commitment.

Answer:

Cape Verde thanks the Member for its support.

- **Free zones, special economic areas**

Question 68

Paragraph 181 discusses that Cape Verde's criteria for free enterprises may not be consistent with ASCM.

We request that Cape Verde accept the bracketed commitment language in paragraphs 182-183, ensuring enforcement of WTO obligations from date of accession, or that Cape Verde agree to fulfil these obligations within a transition period.

We have the following additional highlighted text for paragraph 183(a) to include specific zones utilized in Cape Verde; and (b) to deal with transshipment:

Concerning the free trade zones, including Commercial Franc (Free) Zones, and "free enterprises" or "franc enterprises designated by the government, the representative of Cape Verde confirmed that Cape Verde would ensure enforcement of its WTO obligations in its free trade zones from date of accession, including the provisions of the WTO Agreement and Cape Verde's commitments in its Protocol of Accession. In this regard, imports and goods produced in the free trade zones or areas under tax and tariff provisions that exempt imports and imported inputs from tariffs and certain taxes would be subject to normal customs

formalities when entering the rest of Cape Verde, including the application of exempted tariffs and taxes. The Working Party took note of these commitments.]

With the addition of this added text, we can accept the commitment.

Answer:

As for subsidies, the government submitted a Notification pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures, with the request that it be circulated to the Members of the Working Party. This notification may be supplemented, in due time, to incorporate further elements or clarifications.

An appropriate paragraph summarizing Cape Verde's incentives and subsidies, which includes Free Zones, will be prepared for inclusion in the Working Party Report.

Question 69

Question 122/CPV 24

We welcome the information from CPV that it is revising its laws concerning Free Zones. We would like to stress that it will be essential to ensure in this revision that goods produced in the FZ and imported into the territory of CPV will be subject to normal customs duties applicable to imports.

Could CPV indicate when the revised laws would be available?

Answer:

See answers to Questions 3, 4, and 5 above.

Cape Verde confirms that it will accept all aspects of Article 3 of the ASCM.

Also, Cape Verde will review the commitment paragraphs (152 through 160) and make the necessary and appropriate changes.

- **Agricultural policies**

Question 70

We reserve on this section pending approval of the Tables on agricultural subsidies.

Answer:

Cape Verde noted the comment.

- **Trade in civil aircraft**

Question 71

Paragraph 197: Are the exemptions referred to available to foreign-owned airlines that stop over in Cape Verde for refuelling and repairs?

Answer:

Yes, the exemptions are available to foreign-owned airlines.

V. TRADE RELATED INTELLECTUAL PROPERTY REGIME

Question 72

We appreciate Cape Verde's revised TRIPS Action Plan, WT/ACC/CPV/9/Rev.2.

The text of the Working Party Report needs to be updated to reflect the new timelines identified in this action plan, including the full implementation of the WTO Trade Related Intellectual Property Agreement identified in this action plan.

Answer:

Cape Verde agrees that the text needs to be updated to reflect the new timelines identified in the revised action plan.

Question 73

Paragraphs 199, 204, 212 and 213 discuss that a new Industrial Property Code, modelled on the Industrial Property Law promulgated by Portugal in 2003 on international developments, was scheduled to be adopted by the National Assembly.

What is the status of this legislation?

If the legislation has been adopted, could we receive a copy of the law?

How would the new law preserve the rights of trademark owners in compliance with Articles 16.1 and 24.5 of the TRIPS Agreement by ensuring the protection of trademarks against confusingly similar and later-in-time geographical indications?

Answer:

The Parliament authorized the Government to approve the Draft of the new Industrial Property Law. The legislation has not yet been adopted.

Regarding the rights of trademark owners the comments were noted and Cape Verde will respond in writing.

- **Fees and taxes**

Question 74

Paragraph 206 notes that minimal fees and charges set in the outdated 1959 Industrial Property Code were to be revised in the new draft Industrial Property Code (Title IV – "Fees").

Has this revision been made?

Answer:

Yes, the revision has been made and published and it was submitted to the WTO in June 2007, WT/ACC/CPV/26.

VI. POLICIES AFFECTING TRADE IN SERVICES

Question 75

We reserve on this section pending approval of Cape Verde's GATS Schedule. We want to avoid conflicts between the Working Party Report text and the Schedule.

Answer:

Cape Verde when reviewing the Working Party Report, will take into consideration the conflict between Working Party Report and the Schedule.

VII. TRANSPARENCY

- **Publication of information on trade**

Question 76

Paragraph 258: In line with Cape Verde's intent, stated in paragraph 257, we suggest additional text and a commitment.

258.....by the particular measure. He stated further that Cape Verde intended to establish or designate an official journal or web-site, published or updated on a regular basis and readily available to WTO Members, individuals and enterprises, dedicated to the publication of all regulations and other measures pertaining to or affecting trade in goods, services, and TRIPS prior to implementation, and that Cape Verde intended to provide a reasonable period, e.g. no less than 30 days, for comment to the appropriate authorities of Cape Verde before such measures are implemented, except for those regulations and other measures of general application involving national emergency or security, or for which the publication would impede law enforcement or be otherwise contrary to the public interest or prejudice the commercial interests of particular enterprises, public or private. Cape Verde intended to implement this facility as soon as possible, and within the timeframe of its other WTO commitments. The Working Party took note of these commitments.

Answer:

Cape Verde commits and accepts the language paragraph.

- **Notifications**

Question 77

Paragraph 259: We support the commitment.

Answer:

Cape Verde thanks the Member for its support.

VIII. TRADE AGREEMENTS

Question 78

This section needs a commitment. We suggest the following:

263bis. The representative of Cape Verde confirmed that Cape Verde would observe the provisions of the WTO Agreement, and the 1979 GATT Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries" (Enabling Clause), including Article XXIV of the GATT 1994 and Article V of the GATS in trade agreements to which it belongs, and would ensure that the provisions of these WTO Agreements for notification, consultation, and other requirements concerning free trade areas and customs unions of which Cape Verde was, or may become a member were met from the date of accession. The Working Party took note of these commitments.

Answer:

Cape Verde accepts the suggested commitment language.
