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Working Party on State Trading Enterprises

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STATE TRADING

NEW AND FULL NOTIFICATION PURSUANT TO ARTICLE XVII:4(A) OF THE GATT 1994 AND PARAGRAPH 1 OF THE UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XVII

CABO VERDE

The following communication, dated 6 January 2014, is being circulated at the request of the delegation of Cabo Verde.

QUESTIONNAIRE ON STATE TRADING

SOCIEDADE CABOVERDIANA DE TABACOS, S.A.

1 ENUMERATION OF STATE TRADING ENTERPRISES

1.1 Identification of state trading enterprises

- *Sociedade Caboverdiana de Tabacos, S.A.*

1.2 Description of products affected (including tariff item number(s) encompassed in product description)

- 2401.20.00.00 - Tobacco, partly or wholly stemmed/stripped
- 2402.20.00.00 - Cigarettes containing tobacco
- 2403.10.00.00 - Smoking tobacco, whether or not containing tobacco substitutes in any proportion

2 REASON AND PURPOSE

2.1 Reason or purpose for establishing and/or maintaining state trading enterprise

The *Sociedade Caboverdiana de Tabacos, S.A.*, a former government enterprise, was privatized in 2007 within the framework of the Government's economic policy on restructuring state enterprises.

The exclusive import and wholesale marketing rights for tobacco and tobacco derivatives enjoyed by the *Sociedade Caboverdiana de Tabacos, S.A.* have been maintained for the following reasons: firstly, to enable the Government, in the context of market opening, to regulate the tobacco industry in Cabo Verde, particularly in the areas of competition and prices, infant industry protection and public health protection; and secondly, to support the company's efforts to consolidate existing investments and make new investments, with a view to enhancing its competitiveness, protecting jobs and ensuring compliance with standards, particularly those relating to the environment.

2.2 Summary of legal basis for granting the relevant exclusive or special rights or privileges, including legal provisions and summary of statutory or constitutional powers

The legal basis for granting exclusivity is as follows:

- The "CONTRACT" between the Government of Cabo Verde (former Ministry of Economic Coordination) and the *Sociedade Caboverdiana de Tabacos, S.A.*, signed on 2 May 1997, valid for a renewable period of 15 years. The contract regulates the terms and conditions of production and importation, on an exclusive basis, by the *Sociedade Caboverdiana de Tabacos, S.A.* It also governs the company's obligations as regards the social welfare of employees, compliance with national and international rules and regulations, most notably in the area of environmental protection, and the safeguarding of public health, as well as the Government's obligations in terms of monitoring and the adoption of measures to ensure the non-violation of exclusivity.
- The "CONTRACT ON THE PURCHASING AND SALE OF SHARES". Following an invitation to tender, this contract was signed on 8 May 2007 by the Government of Cabo Verde and a group of four national enterprises. It most notably governs mechanisms for transferring government shares, the safeguarding of workers' rights, dispute settlement mechanisms, and the maintaining of the exclusivity arrangement until 31 December 2012.
- Law No. 42/IV/92 of 6 July 1992, as amended by Law No. 41/V/97 of 17 November 1997, on the institutional and conceptual aspects to be respected during the preparation and implementation of the privatization process in Cabo Verde.
- Decree Law No. 76/2005 of 7 November 2005 authorizing the Government to sell state-owned shares in the *Sociedade Caboverdiana de Tabacos, S.A.*

3 DESCRIPTION OF THE FUNCTIONING OF THE STATE TRADING ENTERPRISE

3.1 Summary statement providing overview of operations of the state trading enterprise

The *Sociedade Caboverdiana de Tabacos, S.A.* is involved in the production, importation and marketing of tobacco and tobacco derivatives, namely:

- The production and marketing of three cigarette brands, one of these under licence;
- The importation and wholesale marketing of one cigarette brand.

Tobacco cultivation in Cabo Verde is negligible and not for industrial purposes.

3.2 Specification of exclusive or special rights or privileges enjoyed by the state trading enterprise

The *Sociedade Caboverdiana de Tabacos, S.A.* enjoys the following rights and privileges:

- Exclusivity as regards the importation and wholesale marketing of tobacco and tobacco derivatives in national territory;
- Tax concessions on the importation of equipment used to manufacture cigarettes.¹

The company does not enjoy any other benefits, such as state subsidies, subsidies from state institutions or special funding.

The state, through the General Inspectorate of Economic Activities (IGAE), is responsible for monitoring the company's activities.

¹ This benefit is enjoyed by all industrial enterprises.

3.3 Type of entities other than the state trading enterprise that are allowed to engage in importation/exportation and conditions for participation

Duty-free companies are allowed to import tobacco and tobacco derivatives and may sell them only in duty-free shops at international airports.

3.4 How import/export levels are established by the state trading enterprise

The volume of products imported is determined according to a yearly plan, which is prepared and approved in advance by the company's Board of Directors on the basis of commercial considerations, in particular market consumption forecasts.

The Government has no involvement in the determination of the company's level of imports.

3.5 How export prices are determined

The *Sociedade Caboverdiana de Tabacos, S.A.* does not export.

3.6 How the resale prices of imported products are determined

The resale price of products of the *Sociedade Caboverdiana de Tabacos, S.A.* is determined as follows:

- Own production: on the basis of CIF import costs and internal charges (customs duties, clearance fees and other associated costs, banking charges, etc.) according to a price-targeting strategy.
- Marketing of the one cigarette brand imported by the company: on the basis of a contract with the exporter.

The selling price is fixed in both wholesale and retail trade.

Revenue is used for company management and modernization purposes and to support the Government in taking steps to safeguard public health and protect the environment. It is also used to support institutions that work to combat tax fraud and tax evasion.

3.7 Whether long-term contracts are negotiated by the state trading enterprise. Whether and how the state trading enterprise is used to fulfil contractual obligations entered into by the government

The *Sociedade Caboverdiana de Tabacos S.A.* has negotiated, with an international enterprise, the following three long-term contracts (four years, renewable) for technical assistance and input supply:

- Two contracts in respect of the domestic production of a brand of cigarettes by the *Sociedade Caboverdiana de Tabacos S.A.*: one for the supply of inputs and technical assistance, and the other relating to the use of a brand name for the manufactured product;
- One contract for the exclusive importation and marketing within Cabo Verde of a brand of cigarettes.

The above-mentioned contracts were renewed as of 1 July 2013.

The company also negotiated an exclusivity contract with the Government, valid until 31 December 2012, within the context of the company's privatization.

3.8 Brief description of market structure

The domestic tobacco market is made up of the following: the *Sociedade Caboverdiana de Tabacos, S.A.* which, as explained above, has the exclusive right to import and wholesale

market tobacco products; wholesale middlemen and retailers; and duty-free sales companies. Retailers distribute the products to the end consumer.

4 STATISTICAL INFORMATION (SEE ATTACHED TABLES I-III)

5 REASON WHY NO FOREIGN TRADE HAS TAKEN PLACE (AS APPROPRIATE)

The activities of the *Sociedade Caboverdiana de Tabacos, S.A.* are aimed exclusively at supplying the domestic market, most notably due to supply constraints.

6 ADDITIONAL INFORMATION (AS APPROPRIATE)

The *Sociedade Caboverdiana de Tabacos, S.A.* was privatized in 2007. The company was acquired, following a public call to tender, by a consortium of four domestic firms. The company is listed on the Cabo Verde stock exchange.

The privatization of the company forms part of the Government's economic policy on restructuring and reorganizing former state enterprises, which seeks to promote a private sector-based market economy, strengthen company competitiveness, promote supply quality and employment, and diversify exports (the latter does not apply to the *Sociedade Caboverdiana de Tabacos, S.A.*).

Tobacco is the only product manufactured in Cabo Verde that is subject to international trade restrictions. Tobacco production is, however, negligible and has no industrial purpose. All the raw materials used to produce cigarettes are imported.

Discussions between the Government and the World Trade Organization within the framework of the Cabo Verde accession process established that the importation of tobacco products would be subject to "non-automatic licensing from 2012", which coincided with the end of the continuous exclusivity period enjoyed by the *Sociedade Caboverdiana de Tabacos, S.A.*

However, despite efforts made by the Government and certain improvements, particularly as regards the general business climate and private sector promotion, notably for infant industries, the Government has been unable to follow through on certain commitments made at the time of privatization, in particular in the areas of market and competition regulation (standardization, quality, effective measures to combat counterfeiting and tax fraud) and public health protection.

In light of the international economic and financial crisis and its impact on the various sectors of the domestic economy, and beyond the need for more time to consolidate existing investments, further investment has been necessary with a view to enhancing and promoting the company's competitiveness, ensuring its expansion and relocation to an industrial zone² and, above all, safeguarding jobs.³

In this context, and given the unfavourable national and international situation, the Government considers it necessary to maintain the *Sociedade Caboverdiana de Tabacos, S.A.* as a state trading enterprise, and to extend, for a period of eight years, the exclusivity contract enjoyed by the *Sociedade Caboverdiana de Tabacos, S.A.*, with a view to preparing the country and the company for the subsequent opening up of the market.

² The company is located in the city centre.

³ The company directly employs 47 people and provides 34 indirect jobs, thereby benefiting some 79 families.

TABLE I

STATE TRADING: *SOCIEDADE CABOVERDIANA DE TABACOS, S.A.*

STATISTICAL INFORMATION, IMPORTS

YEAR 2008

Description of product(s) (including HS number(s))	Total quantity imported ¹ (net weight - kg)	Quantity imported by state trading enterprise ¹ (net weight - kg)	Average import price (CVE)	Average representative domestic sales price (CVE)	Mark-up ²	National production (cigarette units)
1	2	3	4	5	6	7
2401.20.00.00- Tobacco, partly or wholly stemmed/stripped	41,994	41,994 ³	1,585.68	-	-	-
2402.20.00.00- Cigarettes containing tobacco	-	-	-	26,736.86 ⁴	-	49,954,000 ⁵
2402.20.00.00- Cigarettes containing tobacco	57,663	57,663 ⁶	1,905.54	74,096.68 ⁷	-	-
Total	99,657	99,657	-	-	-	49,954,000

Source: Imports: National Statistics Institute (INE); Production and sales: *Sociedade Caboverdiana de Tabacos, S.A.*
Exchange rate: 1 USD = 78.082 CVE

¹ In cases where no imports have taken place under columns 2 or 3, provide an explanation under Section V of this questionnaire.

² Members may report either under columns 4 and 5 or under column 6.

³ Inputs for cigarette production.

⁴ Average national production price (three cigarette brands). Box of 5,000 cigarettes.

⁵ 1,457,000 units of one brand; 1,905,000 units of another; 46,592,000 units of the third brand.

⁶ Cigarettes.

⁷ Average import price. Box of 10,000 cigarettes.

TABLE I

STATE TRADING: *SOCIEDADE CABOVERDIANA DE TABACOS, S.A.*

STATISTICAL INFORMATION, IMPORTS

YEAR 2009

Description of product(s) (including HS number(s))	Total quantity imported ¹ (net weight - kg)	Quantity imported by state trading enterprise ¹ (net weight - kg)	Average import price (CVE)	Average representative domestic sales price (CVE)	Mark-up ²	National production (cigarette units)
1	2	3	4	5	6	7
2401.20.00.00- Tobacco, partly or wholly stemmed/stripped	41,136	36,648 ³	1,513.84	-	-	-
2402.20.00.00 - Cigarettes containing tobacco	-	-	-	24,234.50 ⁴	-	53,142,000 ⁵
2402.20.00.00 - Cigarettes containing tobacco	46,483	46,476 ⁶	4,082.21	74,490.32 ⁷	-	-
2403.10.00.00 - Smoking tobacco, whether or not containing tobacco substitutes in any proportion	230	-	-	-	-	-
Total	87,849	83,124	-	-	-	53,142,000

Source: Imports: National Statistics Institute (INE); Production and sales: *Sociedade Caboverdiana de Tabacos, S.A.*

Exchange rate: 1 USD = 76.951 CVE

¹ In cases where no imports have taken place under columns 2 or 3, provide an explanation under Section V of this questionnaire.² Members may report either under columns 4 and 5 or under column 6.³ Inputs for cigarette production.⁴ Average national production price (three brands). Box of 5,000 cigarettes.⁵ 988,000 units of one brand; 3,491,000 units of another; 48,663,000 units of the third brand.⁶ Cigarettes.⁷ Average import price. Box of 10,000 cigarettes.

TABLE I

STATE TRADING: *SOCIEDADE CABOVERDIANA DE TABACOS, S.A.*

STATISTICAL INFORMATION, IMPORTS

YEAR 2010

Description of product(s) (including HS number(s))	Total quantity imported ¹ (net weight - kg)	Quantity imported by state trading enterprise ¹ (net weight - kg)	Average import price	Average representative domestic sales price	Mark-up ²	National production (cigarette units)
1	2	3	4	5	6	7
2401.20.00.00- Tobacco, partly or wholly stemmed/stripped	34,056	34,056 ³	1,699.25	-	-	-
2402.20.00.00- Cigarettes containing tobacco	-	-	-	22,798.74 ⁴	-	55,304,000 ⁵
2402.20.00.00- Cigarettes containing tobacco	50,964	50,964 ⁶	4,130.67	74,347.87 ⁷	-	-
2403.99.00.00- Other manufactured tobacco products and manufactured tobacco substitutes	12	-	-	-	-	-
Total	85,032	85,020	-	-	-	55,304,000

Source: Imports: National Statistics Institute (INE); Production and sales: *Sociedade Caboverdiana de Tabacos, S.A.*

Exchange rate used: 1 USD = 83.078 CVE

¹ In cases where no imports have taken place under columns 2 or 3, provide an explanation under Section V of this questionnaire.² Members may report either under columns 4 and 5 or under column 6.³ Inputs for cigarette production.⁴ Average national production price (three cigarette brands). Box of 5,000 cigarettes.⁵ 564,000 units of one brand; 5,742,000 units of another; 48,998,000 units of the third brand.⁶ Cigarettes.⁷ Average import price. Box of 10,000 cigarettes.

TABLE II

STATE TRADING: *SOCIEDADE CABOVERDIANA DE TABACOS, S. A.*

STATISTICAL INFORMATION, EXPORTS (Cabo Verde does not export tobacco products)

Description of product(s) (including HS number(s))	Total quantity exported ¹	Quantity exported by state trading enterprise ¹	Average procurement price ²	Average representative domestic sales price	Average export price	National production
1	2	3	4	5	6	7
n/a	n/a	n/a	n/a	n/a	n/a	

¹ In cases where no exports have taken place under columns 2 or 3, provide an explanation under Section V of this questionnaire.

² In cases where the initial procurement price is augmented by other payments, additional payments should also be reported.

TABLE III

STATE TRADING: *SOCIEDADE CABOVERDIANA DE TABACOS, S.A.*

STATISTICAL INFORMATION, DOMESTIC ACTIVITIES

YEAR 2008

Description of product(s) (including HS number(s))	Domestic purchases by state trading enterprise	National production (units)	Domestic sales by state trading enterprise (units)	National consumption
1	2	3	4	5
2401.20.00.00- Tobacco, partly or wholly stemmed/stripped	-	-	-	-
2402.20.00.00- Cigarettes containing tobacco	-	49,954,000	49,245,000	Not available
2402.20.00.00- Cigarettes containing tobacco	-	-	53,350,000	Not available
2403.99.00.00- Other manufactured tobacco products and manufactured tobacco substitutes	-	-	-	-
Total	-	49,954,000	102,595,000	

Source: *Sociedade Caboverdiana de Tabacos, S.A.*

TABLE III

STATE TRADING: *SOCIEDADE CABOVERDIANA DE TABACOS, S.A.*

STATISTICAL INFORMATION, DOMESTIC ACTIVITIES

YEAR 2009

Description of product(s) (including HS number(s))	Domestic purchases by state trading enterprise	National production (units)	Domestic sales by state trading enterprise (units)	National consumption
1	2	3	4	5
2401.20.00.00- Tobacco, partly or wholly stemmed/stripped	-	-	-	-
2402.20.00.00- Cigarettes containing tobacco	-	53,142,000	52,180,000	Not available
2402.20.00.00- Cigarettes containing tobacco	-	-	52,180,000	Not available
2403.99.00.00- Other manufactured tobacco products and manufactured tobacco substitutes	-	-	-	-
Total	-	53,142,000	104,360,000	-

Source: *Sociedade Caboverdiana de Tabacos, S.A.*

TABLE III

STATE TRADING: *SOCIEDADE CABOVERDIANA DE TABACOS, S.A.*

STATISTICAL INFORMATION, DOMESTIC ACTIVITIES

YEAR 2010

Description of product(s) (including HS number(s))	Domestic purchases by state trading enterprise	National production (Units)	Domestic sales by state trading enterprise (Units)	National consumption
1	2	3	4	5
2401.20.00.00- Tobacco, partly or wholly stemmed/stripped	-	-	-	-
2402.20.00.00- Cigarettes containing tobacco	-	55,304,000	54,535,000	Not available
2402.20.00.00- Cigarettes containing tobacco	-	-	55,740,000	Not available
2403.99.00.00- Other manufactured tobacco products and manufactured tobacco substitutes	-	-	-	-
Total	-	55,304,000	110,275,000	-

Source: *Sociedade Caboverdiana de Tabacos, S.A.*

Annexes:

1. Import/export statistics 2008 - 2010, National Statistics Institute (INE)
2. Production/sales statistics, *Sociedade Caboverdiana de Tabacos, S.A.*