

## Justification Note

This revision fits into the need to update the current Foreign Trade Juridical Regime approved by Decree-Law No. 51/2003, of 24 November, (rectified in O.B. No. 9, I Series of 22/03/2004), seeking its conformity with the “Agreement on the Procedures for the Matter of Importation Licensing” from the World Trade Organization – WTO, in the framework of our Country’s accession to the World Trade Organization – WTO.

It fits, likewise, in the need to update this legislation into other WTO agreements, in the matter of Foreign Trade Procedures, specifically pertaining to administrative authorization procedures, licensing and registration of foreign trade operations, as well as other aspects connected to the terminologies and norms in effect internationally, by the multilateral trade system to which we are connected.

In this particular, it proposes the amplification of the importation and exportation licensing process, adapting an *a posteriori* system of control of the commercial administration, with the requests presented directly to the General Directorate of Customs.

It proposes, likewise, the elimination of the TCE, with the procedures for the registration of the foreign trade operation and their control being regulated by Ordinance from the members of the Government responsible for Commerce and for Finance.

**DRAFT LEGISLATION**  
**JURIDICAL REGIME OF FOREIGN TRADE**

**DECREE-LAW No.... /2005**

**of ..... of...../2005**

In as much as, in the framework of Cape Verde accession to the World Trade Organization there is a need to update the current Juridical Regime of Foreign Trade approved by Decree/Law 51/2003, of 24 November, rectified in O.B. No.9, I Series of 22/03/2004), seeking its conformity with the “Agreement on Procedures on the Matter of Importation Licensing” of the World Trade Organization – WTO.

Considering likewise the need to update this legislation to other WTO agreements on the matter of foreign trade procedures, specifically on the matter of administrative authorization procedures, licensing and registration of foreign trade operations, as well as of the norms internationally applied by the multilateral trade systems, to which we are associated,

In the use of the faculty conferred by subparagraph a), No. 2 of Article 203 of the Constitution, the Government decrees the following:

**CHAPTER I**  
**General Provisions**

**Article 1**  
**Ambit and Definitions**

The exportation, importation, reexportation and reimportation operations, whether definitive or temporary, are subject to regime established in this decree-law and its regulatory legislation, save if by force of special legislation a more favorable regime is applied to them.

For the purpose of this diploma the following definitions apply:

- a) **Definitive Exportation** – the customs regime applicable to the goods in free circulation that leave the customs territory and are destined to remain definitively outside the referred territory or for assimilated destinations.
- b) **Importation** – the introduction of a good in the national customs territory.

- c) **Importation for Consumption** – the customs regime that permits the goods to be placed in free circulation in the customs territory on the occasion of the payment of the duties and fees eventually payable on the importation and the compliance with all the necessary formalities;
- d) **Temporary Importation** – the economic customs regime that permits, under certain conditions, to import with total or partial exemption of duties, goods destined to remain temporarily in the customs territory and to be re-exported after a specific period;
- e) **Reexportation** – the operation of exit from a customs territory, of goods that entered under the regime of temporary or definitive importation or that were kept therein, from their arrival to their departure, under customs supervision, in warehouses and customs clearing areas or in storage stations under customs regime;
- f) **Reimportation in the state** – the customs regime that permits introduction into consumption, with the exemption of duties or fees on importation, goods that were exported, on the condition that they did not suffer, outside the country, any transformation, elaboration or repair and on the condition that all the sums payable by reason of a reimbursement, of a shipment or of a suspension of duties and fees or of the entire subvention or other amount agreed to on occasion of the exportation, be paid;
- g) **Active Improvement** – the customs regimes that permits receiving in a customs territory, with suspension of duties and fees on the importation, certain goods destined to suffer transformation, an elaboration, a manufacturing complement or a repair, and to be subsequently exported in the form of compensating products.
- h) **Compensating Products** – the products resulting from transformation, elaboration, manufacturing complement or repair of goods for which the utilization of the active improvement regime was authorized;
- i) **Passive Improvement** – the customs regime that permits temporary exportation of goods that are in free circulation in the customs territory for the purpose of undergoing, outside the country, a transformation, an elaboration or a repair, for them to be imported next, with total or partial exemption of duties on the importation;
- j) **Franc Zones** – a part of the national territory in which goods that are introduced therein are generally considered as not being in the customs territory for the purpose of paying duties and fees on the importation;

- k) **Restrictive Regimes** – the regimes that impose restrictions on foreign trade freedom, obligatorily defined as such by law, that are submitted to prior licensing for the realization of operations otherwise prohibited, conditioned and subjected to contingencies.
  - l) **Technical Control** – verification of the technical specifications and of the “standard” qualities of the goods, in accordance with legal and contractual criteria, national or international, and the usual trade practices;
  - m) **Importation License** – administrative procedures utilized for the application of importation licensing regimes that require as prior condition for importation in Cape Verde’s customs territory the presentation to a competent administrative organ of a request or other distinct documents of those required for customs purposes.
3. The following operations are considered assimilated destinations to an exportation:
- a) Supplying goods for the provisionment of ships for maritime navigation and aircrafts that provide service in the international lines;
  - b) Supplying of goods to the international organizations established in Cape Verde;
  - c) Any other operation considered as such, by law.

## **Article 2**

### **General Principles**

1. The importation and exportation operations are unencumbered for the importers and exporters, credentialed as such under the terms of the law, for the exercise of the commercial activity.
2. The physical persons may import goods in quantities that do not reveal trade practices, as long as it does not become habitual.
3. The juridical persons that do not have in their business object a commercial purpose can import only with prior authorization from the commerce administration.

## **CHAPTER II**

### **Of the Licensing of the Importations**

#### **Article 3**

##### **Administrative System**

1. The administrative system of the importations includes the following modalities:

- a) Importations subject to automatic licensing;
- b) Operations subject to non-automatic licensing;
- c) Importations exempt from licensing:
  - i) **Automatic importation license**- importation licenses granted in all cases, following the presentation of a request and administered in conformity with the following requisites:
    - Equality of rights to all persons, companies and institutions, that meet the legal conditions imposed to execute the importation operation, to solicit and obtain importation license;
    - Possibility of presenting the license request in any workday prior to clearing the goods from customs;
    - The requests presented adequately and completely are deferred immediately after they are received, and it is administratively possible and in any case, within a maximum of 10 workdays.
  - ii) **Non-automatic importation license**- importation licenses not covered by the provisions of the preceding subparagraph, and the requests that are presented in an adequate and complete form should be deferred in a maximum of 22 workdays.

#### **Article 4**

##### **Licensing Exemptions**

1. The following are exempt from licensing:

- a) The importation of goods without commercial value, whose value does not exceed an amount to be defined by ordinance of the government member responsible for the area of trade
- b) The active and passive improvement operations, of temporary importation, reimportation in the state, reexportation and in transit;

- c) The importations of goods subject to the following special customs regimes in the modalities of franc stores, cautioned storage, franc deposit and special customs storage;
- d) The industrialized goods, destined for consumption in the area of congresses, fairs and international expositions and assimilated events;
- e) The importation of goods destined for the provisionment of ships and aircrafts, under the terms of the applicable legislation;
- f) The goods apprehended, abandoned, found at sea or stranded by it or salvaged from shipwreck and sold at auction;
- g) The importation of goods without expenditure of currency, property of air and maritime navigation companies and destined for their exclusive use.

2. The member of the Government responsible for trade may, by notifying the World Trade Organization, submit to licensing the importation referred to in this Article.

### **Article 5** **Exportation Licensing**

The exportations in Cape Verde are exempt from licensing, under the terms of Article 9 of law No. 92/IV/93, of 31 December.

### **Article 6** **Automatic Licensing**

The following goods are subject to automatic licensing:

- a) The importation of goods that do not require sanitary, environmental or safety certificates;
- b) The importation of the goods without commercial value, whose value does not exceed the amount defined by Ordinance from the member of the Government responsible for the area of trade;
- c) Others considered defined by law.

### **Article 7** **Non-automatic Licensing**

1. The following are subject to non-automatic licensing:

- a) The products are subject to sanitary, environmental or safety certificates;
  - b) The products subject to mandatory restrictions, defined by law;
  - c) The products subject to prior authorization.
2. The importations referred to in the preceding No. 1 should be accompanied by the respective authorizations from the competent entities.

### **Article 8** **Becoming Effective**

1. The automatic licensing shall become effective in the act of presentation of the request to the General Directorate of Customs, should the same be presented in an adequate and complete manner.
2. The non-automatic license shall become effective within a maximum of 22 days, counting from the requests are presented to the General Directorate of Customs, should the same be presented in an adequate and complete manner.
3. The period referred to in the preceding number can be exceeded only when it is impossible to comply with it for reasons beyond the control of the competent organs intervening in the licensing.

## **CHAPTER III** **Of the Importation and Exportation Procedures**

### **Article 9** **Declaration**

1. The declarations of the importation and exportation operations are made by the importers and exporters or by their official dispatchers, directly in the Customs.
2. Ordinances of the ministers responsible for Finance and Trade shall define the procedures to be adopted in the registration of the foreign trade operations and in the circulation of information between the various intervening entities.

### **Article 10** **Competence**

1. The licensing of the importation and exportation operations is the competence of the General Directorate of Commerce.

2. In the case of non-automatic importation, the respective competent entities should grant their prior authorization.

### **Article 11**

#### **Exemption of Emoluments**

The documents and acts necessary for the execution of the provisions of this Chapter are exempt from payment of any emoluments.

## **CHAPTER IV**

### **Technical Control of the Importation and Exportation**

#### **Article 12**

##### **Technical Controls**

1. The products to be imported or exported may be submitted to a control of compliance with the technical international norms and regulations accepted in the Cape-Verdian juridical order, in the case of exportation, with the technical specifications applicable in the importation country, or yet, if such is the case, with the particular conditions agreed to between the exporter and importer, if they are not contrary to the respective national norms, the international norms and the interest of the consumer.

2. The modalities of technical control, the products subject to them as well as the organizations qualified to execute them, are determined by Ordinance from the member of the Government responsible for Trade.

#### **Article 13**

##### **Other Controls**

The technical controls on importation and exportation are performed, without prejudice to the regulations relative to specific controls, namely veterinarian, phytosanitary and others, executed by the competent services of the Administration.

## **CHAPTER V**

### **Exchange Liquidation of the Foreign Trade Operations**

#### **Article 14**

##### **Banking Intermediation**

The foreign trade operations shall be liquidated under the terms of the currency exchange law.



## **CHAPTER VI**

### **Foreign Trade Customs Regime**

#### **Article 15**

##### **Customs Clearing**

Without prejudice to the general and special legislation in effect on customs practices and procedures, the goods can clear customs only after the formalities foreseen in this legislation are complied with.

#### **Article 16**

##### **Validity of the Authorizations**

1. The validity period for the authorization is one (1) year, counting from the date of the declaration.
2. In special cases, the General Directorate of Commerce may fix validity periods different from those in the preceding number.
3. In duly justified situations, the General Directorate of Commerce may, likewise, authorize the prorogation of the period fixed under the terms of nos. 1 and 2 above, for a period not greater than one (1) year.

## **CHAPTER VII**

### **Final and Transitory Dispositions**

#### **Article 17**

##### **Foreign Trade Title - TCE**

The Foreign Trade Titles, emitted under the provisions of Decree-Law No. 51/2003, of 24 November, continue in effect until the end of their validity period.

#### **Article 18**

##### **Infractions and Penalties**

2. Save if the fact is foreseen in a legally defined crime or contravention, the violations to the provisions of Articles 2 and 4 of this legislation constitutes a contra-ordination punished under the terms of Legislative Decree No. 9/95, of 27 October.
3. It behooves, especially, the government department responsible for Trade, to sanction the contra-ordinations foreseen in this legislation.

4. Without prejudice to the application of other sanctions indicated in the Law, the violations to the provisions of this Chapter V constitute infraction punishable under the terms of the currency exchange law.

**Article 19**  
**Revoked Legislation**

All legislation contrary to the provisions of this legislation, in particular, Decree-Law 51/2003, of 24 November and the Ordinances No. 3 and 13/2004, of 26 January and 14 June, respectively, are hereby revoked.

**Article 20**  
**Effective Date**

This legislation goes into effect on 1 January 2006.

Viewed and approved by the Council of Ministers

Promulgated ...../.../2005

Publish it.

The President of the Republic- PEDRO VERONA RODRIGUES PIRES

Referended on ...../...../2003

The Prime Minister- *José Maria Pereira Neves*