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Preparing Cape Verde for the World Trade Organization*

*Marjorie Florestal***

In this discussion, I will provide you with brief information about Cape Verde, and relate my experience as the Senior Legal Advisor on a U.S. Agency for International Development (“USAID”) project designed to prepare Cape Verde for accession to the World Trade Organization (“WTO”). In the course of this presentation, I will address the question of how nations with transition economies create the legal infrastructure necessary to develop and become part of the global economy, from the perspective of a small and poor island.

I. CAPE VERDE: A BRIEF HISTORY¹

Cape Verde is an archipelago of nine inhabited islands off the coast of Senegal in West Africa. It is located on the western extension of the Sahara Desert, which means that it is dry and somewhat barren. Volcanic eruptions created the islands and most of the islands are rocky and mountainous. The climate is arid and tropical, and it only rains during the short rainy season. Despite the rainy season’s torrential downpours, water remains a scarce commodity. There are no permanent streams or fresh water wells, and the landscape is severely eroded through overgrazing and deforestation.

Cape Verde’s population is only about 400,000. It is said that more Cape Verdeans live in New England than in Cape Verde. Surprisingly, the relationship between Cape Verde and the United States is a long one, dating back to the nineteenth century when New England whaling ships sailed in to port and took on Cape Verdean sailors.

The country was a Portuguese colony for over 500 years. The Portuguese used the islands as way-stations for the transshipment of slaves and other “goods” bound for the New World. The only roads on the islands were those leading to the ports so that the Portuguese could ship goods back to Lisbon or abroad. When the Portuguese left in 1975, there was not a single secondary school in Cape Verde. As a result, very few people could read or write, and fewer still had attended high school.

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1. For an excellent account of Cape Verde’s history, see RICHARD A. LOBBAN, *CAPE VERDE: CRIOULO COLONY TO INDEPENDENT NATION* (1995).

II. THE “BIG BANG”—CAPE VERDE TRANSITIONS TO A MARKET ECONOMY

The first government to take office in 1975 looked out over the horizon and saw bleak prospects: an uneducated populace, little infrastructure, no potential for large-scale agriculture, and little opportunity to create an export economy. Faced with those challenges, the government turned to a Soviet-style command economy. The development model it adopted sought to create an internal market—but what kind of an internal market? Given its environmental and infrastructure constraints, there was scarce possibility of Cape Verde developing a self-sustaining economy. The country soon found itself dealing with a massive debt load, an underdeveloped private sector, a bloated public sector, and little assistance from the international community. By 1991, the government acknowledged its economic policy had outlived its usefulness so change was necessary. With incredible courage, and in one fell swoop, the country moved away from a command economy to a free market. This was a “Big Bang” rather than an evolutionary transition. The process actually proved successful. Despite some of the stark figures I have thrown at you, Cape Verde now has some inspiring success stories to share both on the political and economic front.

Politically, Cape Verde is a stable, multiparty democracy, which has been tested. In fact, the country’s last presidential election was reminiscent of our *Bush v. Gore* debacle. The two candidates were separated by about seventeen votes. After the presumed winner, Pedro Piros, took office, the Supreme Court determined that a number of those seventeen votes were fraudulent. It turned out, or at least many people argued, that the “real” president was the presumed loser, Carlos Veiga. Rather than allowing the country to descend into violence and anarchy, Veiga declined to challenge the legitimacy of the elections. For the greater good of the country, he laid aside his claim to the presidency. That type of political sacrifice rarely happens in Africa.

The news on the economic front is also encouraging. Per capita income has risen to about \$1,500, which means that the country still qualifies as “least developed” according to the United Nations’ definition, while at the same time demonstrates real progress for Cape Verde and its people. The literacy rate has risen to nearly eighty percent and the government ensures access to health care, medicines, schooling, and other basic services. At independence, the island nation had no export economy to speak of. However, after the 1991 transition to a market economy, the country developed a fledging export industry with about \$3 million dollars in export revenue, mainly in footwear, textiles, and some fisheries exports. Is that a big deal? Not very, but when you are starting from a base of zero, any progress is dramatic progress and should be encouraged. Now, the downside is that Cape Verde’s imports total nearly \$30 million, so you can see the huge trade imbalance there. They import basically everything and rely heavily on remittances from expatriates living abroad in order to balance their accounts.

But the government does have a plan, and it is an ambitious one. The country simply cannot support large-scale agriculture since it does not have the natural resources or sufficient cultivatable land. Although they do have a nascent fisheries industry, commercial fishing is not possible because they lack a continental shelf. Instead of looking to these traditional sectors, the government promotes its services sector—tourism and banking to be precise. To promote these industries, Cape Verde adopted quite liberal banking and foreign investment laws. The banking law is really focused on emigrants living abroad. The economy relies heavily on remittances, and the government wants to encourage expatriates not just to send money to their families, but to open dollar or Euro accounts in-country and to invest in real estate. Allowing dollar accounts and abolishing currency controls also promotes foreign investment in general. These reform efforts have proved modestly successful. Emigrants are investing heavily in their home country, mainly through the purchase of homes on the beach. Foreign investment in the tourism sector has risen from \$2 million to about \$27 million in 2001.

In 2002, the government decided to become an active member of the international trading community. Cape Verde made the decision to join the World Trade Organization, which is where I came in.

A. David and Goliath Revisited: Cape Verde Seeks to Join the World Trade Organization

I went to Cape Verde in January 2003, as part of a USAID funded project to assist the country in joining the WTO. My job as the senior legal advisor was to assist government officials in drafting the mammoth Foreign Trade Memorandum (“FTM”), which constitutes the first step in a country’s effort to join the WTO. The FTM requires detailed explanations of a country’s legal and economic infrastructure. These explanations include everything from the way its judiciary is structured, to the way the government formulates its trade policy, to its relationship with the International Monetary Fund and the World Bank. The FTM provides a snapshot of a prospective WTO member’s current legal infrastructure. But a country seeking to join the WTO must be prepared to change that infrastructure in order to conform to WTO rules.

Probably the first question most people ask me is, “Why would this tiny little country *want* to join the WTO?” The question they are really asking is whether a poor, tiny, export-challenged island nation in Africa can benefit from joining the world’s preeminent trading institution—an institution responsible for managing over ninety percent of world trade.

Well, let’s look at that. Why would Cape Verde want to join? For one thing, there is a certain amount of rivalry between Cape Verde and other West African nations. Because of its long history of colonial rule, and given the fact that it is an island, Cape Verdeans often do not see themselves as “African.” Their ties to Portugal remain unusually close, and historically Cape Verde has been reluctant

to join African organizations. There is a certain sense among Cape Verdeans that they are better off than many of their West African neighbors. Admittedly, their economic indicators are stronger than a number of other African countries. But Cape Verde remains one of only a small handful of African countries that is not a member of the WTO. It is fair to say that Cape Verde wants to join the WTO in part because it does not want to be left out of the prestigious “club” to which its more impoverished neighbors already belong.

Beyond that political dimension, Cape Verde seeks to join the WTO because it wants recognition and legitimacy for all of the hard work and tough reforms it has made so far. The island desperately wants the approval of the international community, and by “approval,” I mean trust. Do not forget that Cape Verde is staking its economic future on building a strong services market, which is quite sophisticated. Investors want to know that their money is protected, that the government’s laws and policies conform to international standards and will not be changed capriciously overnight. Cape Verde needs the credibility that WTO membership brings.

Leaving aside the reasons why it might want to join, can Cape Verde hope to *benefit* from WTO membership? That is a more difficult question. We have few models to predict what happens when least developed countries sign onto the WTO. For the most part, and certainly true for African countries, poor countries became members of the General Agreement on Tariffs and Trade (“GATT”)—the precursor organization to the WTO—as a function of independence. That is, their former colonial powers sponsored them into the GATT. When the GATT evolved into the WTO, countries who were already members had an opportunity to transition more slowly into the requirements of WTO membership. But Cape Verde is a different example. It will be only the third least developed country to join the WTO under the full accession process. The first two joined as recently as September 2003. We simply do not have enough experience or data to know what happens when we require least developed countries to essentially hit the ground running. They must become part of the WTO and adopt WTO requirements at a faster rate than other countries have had to do.

For a country like Cape Verde, that is really a dangerous position to be in. How does a least developed country ensure that it has the requisite legal infrastructure in place to be able to join the WTO and to take advantage of the benefits of membership without imposing an unduly heavy and expensive burden on itself? This leads to the last point I will address and to the central question of this conference: How *do* transition economies build the legal infrastructure to develop and become part of the global economy?

B. How Do Transition Economies Build the Legal Infrastructure to Develop and Become Part of the Global Economy?

In Cape Verde's case, the answer is: "quickly". Circumstances forced the country to accelerate its development at a dizzying rate. Over the span of just ten years, from 1991 to 2001, Cape Verde went from state control to a market economy. Now, it will take the next great leap forward by joining the global economic order. But WTO accession comes with an expensive price tag. Part of the tremendous cost that Cape Verde will have to bear is building the legal, administrative, and enforcement infrastructure necessary to effectively implement the WTO agreement.

Let me give you two examples of what I mean when I say Cape Verde will have to build the legal infrastructure to implement the WTO Agreement. Among other things, the WTO Agreement requires members to have a certain customs regime in place as well as a regime to provide Intellectual Property protection. Cape Verde's customs regime is based on a 1950s era Portuguese law. This system works quite well for the country. Customs fees are the biggest source of government revenue, and there are few instances of bribery or corruption. But the customs laws on which Cape Verde operates are outdated by WTO standards and need to be changed to be in conformity with the WTO Customs Valuation agreement. If you want to make Cape Verdean officials mad, tell them that they will have to tinker around with their customs laws. They do not want to do it. But the WTO not only requires officials to do it, but they must also adopt new customs measures under an accelerated timetable. My second example has to do with intellectual property protection. The WTO Agreement requires all members to adopt an IPR regime; that is, laws and regulations for the enforcement of intellectual property rights. No such regime is currently in place. While much of the rest of the world had centuries to develop their regimes, Cape Verde will have to do the same in a handful of years.

The simple reality is that Cape Verde, like other least developed countries, simply cannot build the legal infrastructure for development on its own. It needs technical assistance, and it will continue to need assistance for a long time to come. But what kind of technical assistance am I talking about? In recent years, this notion of technical assistance fell out of favor because it is perceived as rich countries imposing a one-size-fits-all solution on developing countries. Certainly, a number of examples validate that claim. Too often, technical assistance providers come into a developing country with the idea that the country is a blank slate upon which Western notions of law can be imprinted. When that happens, when laws are transported wholesale from Europe or the States and simply grafted on without taking into consideration local conditions, the transplant fails. Countries find ingenious ways of adopting these foreign laws in principle while continuing to enforce their own notions of law and justice.

There are alternatives to an outsider-imposed solution for Cape Verde. The country has demonstrated a tenacious strength and wisdom that we can learn

from. The Portuguese certainly did not do Cape Verde any favors, yet the country managed to come out of a tough situation in relatively good shape. What they achieved in such a short time, only since 1975, is nothing short of miraculous under the circumstances. Cape Verde adopted and enforced systems that work for them in their own context, given their own history and experience. We need to acknowledge and validate those systems. The technical assistance we provide needs to lend credibility to what they have achieved so far. We need to allow more time for least developed countries to adapt to international standards. We cannot expect them to take on new and complex obligations, and then to implement those obligations in two or three years. To have such an expectation is to fool ourselves and set poor countries up for failure.

I have some concerns as Cape Verde moves rapidly towards WTO accession. I worry that the inevitable economic dislocation that comes from WTO accession will jeopardize much of the surprising success stories that Cape Verde has to date. I worry that the kind of assistance we provide will undermine the fragile can-do attitude that Cape Verdeans embody so well. I worry too about the human costs of WTO membership. Only one person in Cape Verde had the three-month WTO training provided in Geneva and speaks English, French, and Portuguese. She is the WTO expert by default. But much needs to change in Cape Verde, and there is not a lot of time to do it. The country needs many more trained personnel before they can adequately respond to the demands of WTO membership.

I do not know how it will all turn out. When I left Cape Verde, the FTM was complete and sent to the WTO in Geneva. Friends tell me that the accession process remains on course, and that the government remains committed to it. I suspect that, with the right kind of assistance, Cape Verde can serve as a model for other developing and transition economies seeking to join the global economy. Cape Verdeans have what it takes. The only question is whether we have what it takes to support them in their efforts, rather than overpowering them with demands from on high about the way they “should” create and implement their legal infrastructure. I sincerely hope we too have what it takes.