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# Lessons from Cambodia's Entry into the World Trade Organization

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ADBI Policy Papers No. 7  
[publications@adbi.org](mailto:publications@adbi.org)

©2005 Asian Development Bank Institute. ADBi Publishing 11/05  
ISBN 4-89974-009-3

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*The author completed these materials before he joined the ITC, while he was still a Cambodian government minister and Visiting Fellow for ADB Institute.*

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# Executive Summary

The Government of the Kingdom of Cambodia applied for accession to the World Trade Organization (WTO) in October 1994. Cambodia completed its negotiations and submitted its acceptance of the terms and conditions of membership set out in the accession protocol, which was approved by the Fifth Ministerial Conference on 11 September 2003. Cambodia became the 148th member of WTO on 13 October 2004 and, along with Nepal, were the first (and the only two) least-developed countries (LDCs) to have succeeded in gaining accession to WTO since the latter's transformation from the General Agreement on Tariffs and Trade in 1995.

Cambodia's accession is unique, for both political and economic reasons, and lessons from its accession have to be drawn with extreme care. If there is an important lesson, it is that each accession case—and Cambodia is no exception— involves different negotiations, with different dynamics.

**Lesson Number 1:** Cambodia differs from most recently acceding countries in that it is the first LDC to have concluded its accession under Article XII of the Marrakesh Agreement establishing WTO. Undoubtedly, Cambodia is a small economy with a de facto liberal trade and economic regime, and the small size of its economy may pose fewer market access issues for major WTO members. Unlike the People's Republic of China, which probably has much more bargaining power than all the recently acceding countries taken together, Cambodia's arguments for flexibility are simple. It has no current or potential capabilities either to become a major player in the world market nor to disrupt powerful WTO members' domestic markets.

**Lesson Number 2:** Cambodia has, from the outset, made its position clear that it looked to the process of WTO accession as a positive externality to stimulate and make irreversible substantial trade liberalization and more broadly based reforms.

**Lesson Number 3:** The clear policy direction was translated into clear political commitment and has enabled the Cambodian negotiating team to secure political support at the highest level both from the executive and legislative branches of government. Political commitments are crucial, if not a *sine qua non*, for rapid

and successful accession. For example, the lead ministry in charge of WTO negotiation would not have had the mandate to drive aggressively the negotiation process. Political commitments were to be reflected also in the ease in securing budgetary allocations. LDCs by their nature suffer from chronic financial or economic constraints, and Cambodia is no exception. WTO accession demands that the necessary funds in the national budget be allocated for required travel associated with working party meetings, missions, and bilateral consultations and negotiations in Geneva. Implementation of laws and policies implies institutional changes, and hence requires adequate financial as well as human resources.

**Lesson Number 4:** Cambodia must demonstrate to its negotiating partners that it has the capacity and political will to implement the commitments made to other WTO members. After all, admitting Cambodia against the promises that it will deliver on the necessary commitments—from making new legislation, to establishing an institutional framework to implement policies related to WTO and WTO agreements, to reconciling domestic policies with those of foreign economic policies—after its accession is also a matter of trust. Cambodia has for that purpose established a large task force comprising over 110 senior government officials—drawn from both political and technical levels—under the chairmanship of the Minister of Commerce.

**Lesson Number 5:** Because it is the private sector that decides how its best interests can be pursued—despite the fact that it is the Government that takes on the contractual responsibilities of WTO membership—Cambodia has ensured before and during the accession process that a national consensus be secured among all concerned parties to the maximum extent, particularly the private sector. Cambodia has probably developed one of the most engaging approaches to policy dialogue consultations. Active public awareness campaigns about WTO, its agreements, the accession, and implications of membership were launched. In retrospect, effective cooperation among the executive and legislative branches and effective public-private sector partnerships were perceived as essential factors for a smooth accession process.

**Lesson Number 6:** It is clear that difficulties existed, and delays occurred, during Cambodia's accession process. Delays can occur on both sides of the negotiating table. Insufficient knowledge, inadequate experience, limited resources, and limited analytical capacities required for accession negotiations were recurrent sources of delay that led to frequent complaints about the Cambodian negotiating team. WTO members, for their part, were also causes of delays. WTO members have yet to agree on common approaches to the terms of accession and often expressed different views on this matter. To illustrate a point, demands by some members required from Cambodia, in some way or the other, a higher level of obligations

and commitments than the level of obligations and commitments made by the original WTO members in the Uruguay Round. Many existing members will undoubtedly deny the role of precedent, claiming that Cambodia's accession was treated on its own merits, yet the evidence contradicted them. Despite the fact that Cambodia was unlikely to become a major trading nation, it has been pressured to accept various commitments throughout the accession process—e.g., zero binding for export subsidies, and the unresolved issues under negotiation in the Doha Development Agenda.

***Lesson Number 7:*** While the process is inherently time consuming and complex, there are a number of steps that acceding countries and WTO members could take that would facilitate and expedite accession. In the case of Cambodia, an aggressive proactive approach and creative modalities for negotiations were resorted to in order to fast-track the accession process, involving:

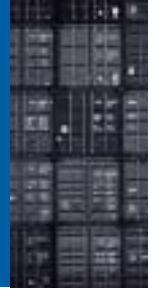
- Submission of its National Legislative Action Plan focusing on an extensive WTO specific legislation requirement.
- Submission to the WTO secretariat of more than 85 pieces of law, draft laws, and regulatory instruments.
- Establishment of three inquiry points, i.e., sanitary and phytosanitary (SPS), physically located with the National Codex Committee; technical barriers to trade (TBT) with the Ministry of Industry, Mines, and Energy; and services with the Ministry of Commerce.
- Rectifications of obvious contradictions with WTO rules and agreements, especially with respect to the principles of most-favoured nation and national treatment, and readjustment of its trade regime to improve over time the country trade policy and regime.
- Using feedback from the working party meetings to remove or amend non-compliant legislation and trade practices.
- Working out “action plans” in each of the four areas (TRIPS, TBT, SPS, and customs valuation) of the WTO agreements in which weaknesses in Cambodia's institutional infrastructure required a delay in the implementation of these provisions. The action plans spelt out the specific steps that Cambodia is to take to bring itself into full conformity with the rules, and the time frame for these steps.
- Fast-tracking bilateral negotiations by travelling to capitals of several key WTO members to engage in negotiations and lobbying activities.
- Pressing on with the need for WTO members to reaffirm their commitments to the WTO General Council Guidelines and requesting them to drop unreasonable demands—the so-called “WTO-plus” requests.



**Lesson Number 8:** The process of accession represents a great opportunity for local capacity building. Cambodia has made active use of technical assistance and consultancies from international organizations, in particular the Integrated Framework for Trade-Related Technical Assistance for Least-Developed Countries such as International Monetary Fund, International Trade Centre, United Nations Development Programme, United Nations Conference on Trade and Development, World Bank, WTO, and other specialized United Nations agencies, as well as from governments of WTO member countries, in the preparation of required documentation, and human resource development. The target beneficiaries encompassed both categories of public sector and private sector decision makers and the civil society stakeholders.

**Lesson Number 9:** The concluding lesson is that Cambodia has used its accession strategy to negotiate and obtain favourable terms of accession while at the same time protecting its sensitive national interests. Indeed, the accession negotiations should not be seen as a “win all or lose all” process but rather a “win some-lose some” or a “give and take”. From this perspective, Cambodia has fared relatively well from the process, especially as a small economy which by default does not command much leverage in market access negotiations. Finally, given that WTO provides an internationally recognized framework in which Cambodia can organize and carry out the necessary development of its legal and institutional structures and pursue an outward-oriented development strategy, the ultimate test of real success would rest entirely on the Cambodians to rise to the challenge and to turn the accession to WTO as a potent instrument for the acceleration of the country's development.

# I Cambodia and WTO



## Introduction

The Government of the Kingdom of Cambodia applied for accession to the World Trade Organization (WTO) in October 1994.<sup>1</sup> At its meeting on 21 December 1994, the Preparatory Committee for the WTO established a working party to examine the application of the Government of Cambodia to accede to WTO under Article XII of the Marrakesh Agreement establishing WTO.

Cambodia submitted, on 21 May 1999, its Memorandum on the Foreign Trade Regime to the Accessions Division of WTO, based on which four main trading partner countries<sup>2</sup> submitted a set of 179 questions. Cambodia completed answering the questions and submitted them to the WTO secretariat on 8 November 2000, opening the way for convening the first working party under the Chairmanship of Mr. Andrea Meloni (Italy), which took place on 22 May 2001 and started at the same time the first round of bilateral negotiations with some interested members. Motivated by these early successes Cambodia committed itself to an aggressive accession agenda with the second and third working party meetings held in 14 February and 14 November 2002 respectively. At the third working party the focus was on the review of the Factual Summary. Cambodia returned to Geneva for the fourth working party in 16 April 2003 to review the accession report. An informal working party was held on 26 June 2003 to review the state of play of bilateral negotiations and focus on substantive discussions on a second version of the working party's draft accession report. The conclusion of the informal working party opened the way for the working party chairman to set the timetable for the formal final working party for 22 July 2003.

Cambodia submitted, on 22 July 2003, its acceptance of the terms and conditions of membership set out in the accession protocol, which was approved by the Fifth Ministerial Conference on 11 September 2003 and signed by Cambodia subject to ratification.<sup>3</sup> Ratification of this protocol was made by the National Assembly and the Senate on September 2004 following the formation of the new Royal Government of Cambodia—after political negotiations lasting 1 year.<sup>4</sup> Cambodia became a member of WTO on 13 October 2004, 30 days after it notified WTO that its Parliament has ratified the protocol. Cambodia, along

with Nepal, were the first (and only two) least-developed countries (LDCs) to have succeeded in gaining accession to WTO since its transformation from the General Agreement on Tariffs and Trade (GATT) in 1995.<sup>5</sup>

## Organization of the Book

The objective of this study is to provide a comprehensive record of Cambodia's negotiations and highlight the negotiating intent behind Cambodia's accession commitments. It aims to provide a frame of reference for Cambodian stakeholders in order to assist them in the implementation stage of WTO accession. Moreover, it will attempt to promote a fuller understanding of the costs and benefits associated with Cambodia's accession as well as bring out relevant lessons for other LDCs wishing to negotiate WTO accession.

The paper is divided into six chapters. The first briefly describes the functions of WTO and the process a non-member country must go through to become a member. Chapter 2 describes the long process that culminated in Cambodia's accession to WTO. As in other accessions, the process involved bilateral negotiations on issues of market access and a multilateral process in which the accession agreement was formulated and the best market access given to any one member was extended to all other members under the most-favoured-nation (MFN) rule. Chapter 3 covers the negotiations on rules governing international trade in goods and services and describes Cambodia's specific policy commitments covered by WTO rules. Chapter 4 contains an in-depth analysis of market access negotiations in goods, including Cambodia's negotiation strategies in goods offers. Chapter 5 describes in detail liberalization of specific services sectors. The last chapter is an attempt to review and summarize some of the key lessons emerging from the entire accession exercise.

## The WTO System and the Evolving Global Economy

The multilateral trading system can be broadly defined as the body of international rules by which countries are required to abide in their trade relations with one another. The basic aim of these rules is to encourage countries to pursue open and liberal trade policies. These rules are continuously evolving. The first major effort to adopt rules to govern international trade relations was made by countries in the years immediately after the Second World War. These efforts resulted in the adoption in 1948 of GATT). The rules of GATT and its associate agreements were further revised and updated to meet changing conditions of world trade in the Uruguay Round of Trade Negotiations, which were held from 1986 to 1994. The text of GATT, along with the decisions taken under it through the years and

several understandings developed during the Uruguay Round, have come to be known as GATT 1994. Separate agreements have been adopted in such areas as agriculture, textiles, subsidies, anti-dumping, safeguards, and other matters; together with GATT 1994, they constitute the elements of the Multilateral Agreements on Trade in Goods. The Uruguay Round also resulted in the adoption of a new set of rules governing trade in services and the trade-related aspects of intellectual property rights.

Another achievement has been the establishment of WTO. GATT, under whose auspices these negotiations were launched, has ceased to be a separate organization and has been subsumed into WTO. WTO differs in a number of important respects from GATT. GATT was a rather flexible institution; bargaining and deal-making lay at its core, with significant opportunities for countries to “opt out” of specific disciplines. In contrast, WTO rules apply to all members, which are subject to binding dispute settlement procedures.<sup>6</sup>

## Principles and Functions of WTO

The WTO system as it has emerged from the Uruguay Round now consists of the following main agreements that define the substantive rights and obligations of members. These agreements are listed in four annexes to the WTO agreements.

Annex I has three parts:

- Annex IA, Multilateral Agreements on Trade in Goods including the General Agreement on Tariffs and Trade (GATT 1994) and its associate Agreements (the GATT 1947 as amended by a large number of understandings and supplementary agreements negotiated in the Uruguay Round);
- Annex 1B, which contains the General Agreement on Trade in Services (GATS); and
- Annex IC, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Annex 2 contains the Understanding on Rules and Procedures Governing the Settlement of Disputes—the WTO's common dispute settlement mechanism.

Annex 3 contains the Trade Policy Review Mechanism (TPRM), an instrument for surveillance of members' trade policies. Finally, Annex 4, Plurilateral Trade Agreements, consists of Tokyo Round codes that were not multilateralized in the Uruguay Round and that therefore bind only their signatories.<sup>7</sup> Together, Annexes I through 3 embody the multilateral trade agreements. Article II of WTO specifies that all the agreements contained in these three annexes are an integral part of the WTO agreement and are binding on all members.

The responsibility for overseeing the implementation of these agreements rests with the councils and committees at WTO in Geneva. In addition, large-scale negotiations, like the Doha Round, require their own special negotiating bodies. At least once every 2 years, WTO members meet at ministerial level. For the rest of the time national delegates—diplomats and national trade officials—conduct the day-to-day work.

In plain terms, what we refer to as WTO is, in practice, an institution and a set of rules—“WTO law”. Each of its members is required to implement the rules as set out above and to provide to other members all the specific trade benefits that are contained in their national schedules of goods, agricultural, and services commitments.

### Principal Functions of WTO

The agreement establishing WTO provides that it should perform the following four principal functions.

The first of these is to establish and administer the international rules governing international trade in goods and services. These rules cover a wide range of issues relating directly to trade, or having an important bearing on trade.<sup>8</sup> To give but a few examples, the rules specify how customs officials must value an imported good for purposes of applying an ad valorem tariff; how officials are to apply safety and health standards to imported products; what kinds of protection must be provided to intellectual property; and how free trade arrangements among members must be organized.

The second principal function of WTO is to serve as a forum for the progressive liberalization of international trade.<sup>9</sup> This has occurred through a series of rounds, during which the members of WTO have negotiated tariff reductions on their imports of goods, and, in the Uruguay Round, have negotiated market access for each other's suppliers of services.

The third function is to provide a means for resolving disagreements between trading countries with regard to the rules.<sup>10</sup> Given their complexity, it is natural that there should sometimes be disagreement on the way in which the rules are to be applied in particular circumstances. The WTO dispute settlement mechanism provides member countries with a way of resolving these disagreements, including, when all else fails, recourse to an independent dispute settlement panel that will make a ruling on the dispute. This mechanism is particularly important to small trading countries such as Cambodia. This is because it allows their disputes with larger trading countries to be settled on the basis of rules and the findings of

objective, outside experts, rather than being simply the outcome of negotiations between two countries of very unequal economic and trading power.

In other words, for the existing members of WTO, the binding and enforceable effect of the mechanism provides assurances of Cambodia's continued commitment to economic and other reform; the adequate implementation, over time, of all WTO rules and disciplines; and predictable terms of market access and investment. For Cambodian companies, if they believe in the future that another WTO member is treating them inconsistently with the contract—the WTO rules—they are entitled in that event to call upon the Government to seek redress through bilateral contacts and, ultimately, to secure a judgement through the dispute settlement system of WTO.

Fourth, WTO is responsible for carrying out periodic reviews of the trade policies of its member countries.<sup>11</sup>

## Principles of WTO

Even though the detailed rules that WTO and its associate agreements prescribe may appear complex and their legal terminology often confusing, they are based on a few simple principles and rules. In effect, the entire framework of WTO is based on four basic principles: (i) transparency and predictability, (ii) non-discrimination, (iii) trade liberalization or market opening, and (iv) special and differential treatment for developing countries.

### *Transparency and Predictability*

At the top of the list is the principle of *transparency*. Nothing is more important to business people than knowing and having confidence in the regulatory environment in which they operate. In essence, transparency is a basic pillar of WTO, and it is a legal obligation, embedded in Article X of the GATT and Article III of the GATS. WTO members are required to publish their trade regulations, to establish and maintain institutions allowing for the review of administrative decisions affecting trade, to respond to requests for information by other members, and to notify changes in trade policies to WTO. These internal transparency requirements are supplemented by multilateral surveillance of trade policies by WTO members, facilitated by periodic country-specific reports (trade policy reviews) that are prepared by the secretariat and discussed by the WTO General Council. From an economic perspective, transparency can also help reduce uncertainty related to trade policy. Mechanisms to improve transparency can help lower perceptions of risk by reducing uncertainty. WTO membership itself, with the associated commitments on trade policies that are subject to binding dispute settlement, can also have this effect.

### *Non-discrimination*

A second key principle that pervades the WTO rulebook is that of *non-discrimination*. Non-discrimination embodied in Articles I and III of the GATT has two major components: the *MFN* rule, and the *national treatment* principle. Both are embedded in the main WTO rules on goods, services, and intellectual property, but their precise scope and nature differ across these three areas. This is especially true of the national treatment principle, which is a specific, not a general commitment when it comes to services.

The principle applies at two levels: among countries seeking to export to, for example, Cambodia and among goods and services that enter the Cambodian market. Looked at from the other way around, non-discrimination means that Cambodian goods cannot be discriminated against in export markets with respect to the same goods arriving from competing countries. Once they enter those export markets, Cambodian goods also cannot be treated any less favourably than the same goods produced locally.

The MFN rule requires that a product made in one member country be treated no less favourably than a “like” (very similar) good that originates in any other country. In other words, Cambodian goods must be treated no less well in the markets of another WTO member than the best treatment available to any other member. Thus, if the best treatment granted a trading partner supplying a specific product is a 10% tariff, this rate must be applied immediately and unconditionally to imports of this good originating in all WTO members. The MFN rule applies unconditionally although it has to be recognized, however, that this principle is increasingly often breached through regional free trade areas and preferential treatment of developing countries.

National treatment requires that foreign goods, once they have satisfied whatever border measures are applied, be treated no less favourably, in terms of internal (indirect) taxation than like or directly competitive domestically produced goods (Article III, GATT). It is an important safeguard against situations in which goods can enter a market but are then made uncompetitive because they are subjected to special taxes, charges, or administrative practices that are not applied to locally produced products of the same kind. The guarantee of “national treatment” will help Cambodian goods succeed in export markets; but it will also restrict the possibilities for coping with import competition within the domestic economy.<sup>12</sup>

### *Trade Liberalization or Market Opening*

A third principle is that of *progressive trade liberalization* through negotiation. WTO is not a free trade agreement. There is scope for the legal protection of

markets from import competition. After accession, WTO members are essentially free to liberalize further to the extent, and at the speed, they think fit.

The principle of market opening is promoted in WTO through successive rounds of multilateral trade negotiations aimed at the progressive lowering of trade barriers. Roughly once every 10 years, GATT and WTO have traditionally launched multilateral trade rounds in which member countries engage in broad, general negotiations to open each other's markets or extend the coverage of the rules. WTO was established as a result of the Uruguay Round. Trade ministers also initiated the latest round of multilateral negotiations at the Doha Ministerial Meeting in November 2001.

### *Special and Differential Treatment*

A fourth principle is that of *special and differential treatment* for developing countries. In practice, this concept largely amounts to providing poorer countries with easier conditions at the end of WTO trade rounds. That can mean making certain provisions of new agreements non-applicable to developing countries. Alternatively, it can mean granting poorer nations longer time periods to implement such provisions than the periods applicable to developed countries.

## Benefits of Membership

Generally, a rules-based multilateral trading system provides transparency, stability, and predictability with respect to market access conditions and various other trade-related issues. The provision of these public goods is intended not simply to promote the development of trade relations but also to foster the economic prosperity of trading partners. As the preamble to the agreement establishing WTO states, relations in the field of trade and economic endeavours should be conducted "with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their [i.e., the parties to the agreement] respective needs and concerns at different levels of economic development".

Benefits of WTO membership can be categorized under three main headings: (i) strengthening of domestic policies and institutions for the conduct of international trade in both goods and services, which is required before accession to WTO can be accomplished; (ii) improvements in the ease and security of market access to major export markets; and (iii) access to a dispute settlement mechanism for trade issues.



## Policies and Institutions

Although there are significant differences in the institutional and policy environment of the various countries applying to join WTO, many developing countries and economies face very similar challenges in establishing the institutions needed to implement WTO commitments. Perhaps the most important of these challenges is the need to introduce laws and institutions for the operation of private enterprises and markets free from government controls other than those explicitly provided under WTO regulations regarding, for example, standards, SPS provisions, intellectual property rights, and state-trading practices.

Equally important to a country's economy is the introduction of greater stability in commercial policy, which is a consequence of adherence to WTO rules and legally binding agreements.<sup>13</sup> Stability is important both to domestic producers and to exporters from other countries wishing to access these economies' markets. Adherence to WTO provisions—for example, by binding tariffs and by specifying conditions for foreign direct investment (FDI) in the services agreement—would improve the efficiency and productivity of acceding countries.

WTO membership also offers the opportunity for new members to lock in existing, relatively liberal trade regimes. Although the trade regimes in acceding economies vary considerably, many have established regimes with relatively low tariffs and no significant formal non-tariff barriers. For these countries, membership provides the opportunity to lock in these regimes by assuming legally binding obligations regarding tariff levels. This not only permits them to enjoy the benefits of liberal trade but also gives them a first line of defence against the domestic protectionist pressures that are present in all market economies.<sup>14</sup>

## Market Access

Two main dimensions of market access are of importance to acceding economies. The first is the extension of permanent and unconditional MFN status, which comes with WTO membership. At present, economies that are not members of WTO have been granted MFN treatment voluntarily by major trading partners, but there is nothing to guarantee that they will continue to be accorded such treatment. For example in the United States (US), extension of MFN to Russia and several other economies in transition is contingent on the economies' adherence to the provisions of the Jackson-Vanik amendment to the 1974 Trade Act regarding freedom of emigration. The second point is the substantial evidence that the incidence of anti-dumping actions (both investigations and definitive measures) is much higher against non-WTO members than against members.

## Dispute Settlement

Access to an impartial and binding dispute settlement mechanism, the decisions of which have a significant chance of being enforced, is an important potential benefit for acceding economies, many of which are small and heavily dependent on international trade. WTO's dispute settlement mechanism has proved successful in providing opportunities for members to obtain satisfaction regarding grievances stemming from practices of other members that cause trade injury. Although developing countries face some problems in accessing this mechanism, membership provides an opportunity that, with proper assistance, can be beneficial to new members, especially in their relationships with large trading partners.

## What are the Benefits for Cambodia?

Like their trading partners, the LDCs view their participation in the multilateral trading system as a means of integrating into the global economy and maximizing their benefits from international trade. However, achieving this depends on supportive terms of accession. As part of its economic strategy to increase export revenues, Cambodia, like other countries knocking at the door of WTO, wants to secure the benefits derived from membership.

But sceptics have questioned whether Cambodia will really benefit from entering WTO. They have cited the situation of the 30 LDC members of WTO. Despite their membership, they have been unable to secure trade opportunities commensurate with their development needs.<sup>15</sup> Given the length and difficulty of the accession process it is surprising that so many members want to enter WTO.<sup>16</sup> However, in the case of a poor country like Cambodia, accession is seen as a necessary means to achieve economic growth. In the words of the Cambodian chief negotiator: "In a time of harsh and fierce global competition, the survival of our country depends on our ability to capture the right opportunities and at the right time. We believe the entry to the WTO is such a case".<sup>17</sup>

## The Process of Accession

The process of accession to WTO is demanding and lengthy.<sup>18</sup> There is no official description of what a country has to do in order to join. Article XII of the Marrakesh Agreement states simply that a country that is not a member may become a member "on terms to be agreed between it and WTO. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO". Article XII does not stipulate any membership criteria nor provide guidance on the "terms to be agreed", these

being left to the negotiations between the WTO members and the candidate. Furthermore, Article XII does not identify any concrete steps, nor does it provide any advice when it comes to the procedures to be used for negotiating the terms of accession.<sup>19</sup> Nonetheless, certain practices have evolved over time that provide reasonable guidance as regards what an acceding country will have to do.

The accession process can be divided into an introductory phase of formalities and three substantive phases. The three substantive phases are (i) the applicant's preparation of a memorandum on the foreign trade regime (the "memorandum"), which describes in detail the country's policies and institutions that have a bearing on the conduct of international trade; (ii) the members' fact-finding phase; and (iii) the negotiation phase. The last two phases, while conceptually separate, tend to overlap in practice. Throughout, the applicant is faced with meeting WTO requirements and provisions, as well as demands by existing members. With very few exceptions, negotiation is in one direction only: the applicant is asked to demonstrate how it intends to meet the existing WTO provisions—it cannot change them. Existing members can ask the applicant to reduce the level of protection in its markets, but the reverse does not usually occur.

Basically, a country seeking to join WTO must take on commitments in four areas related to the functions spelled out above: (i) it must negotiate with members a set of "bindings" or maximum levels of tariffs that it will apply on its imports of goods; (ii) it must negotiate with members conditions for access by foreign service suppliers to its services market; (iii) it must agree to limitations on those forms of support to agriculture that have an effect on international trade; and (iv) it must bring its laws and regulations governing international trade into conformity with WTO rules before it joins WTO.

These negotiations are carried out bilaterally with the main trading partners of an acceding country. The list of concessions in a WTO format (a table) forms an integral part of the protocol of accession, and the concessions should be extended on an unconditional MFN basis to all other WTO members. Market access in the services track involves negotiation of commitments on trade in services, which are also conducted bilaterally and result in a schedule of specific commitments formatted appropriately in a table and annexed to the protocol of accession. Finally, there is a "sub-tract", which is concerned with plurilateral discussions with interested WTO members on agricultural domestic support and export subsidies commitment.

When these negotiations are in the process of being finalized and the applicant has provided assurances that the legislation and institutions that would permit compliance with WTO provisions are in place, a draft report on accession—including the consolidated schedules of concessions of agreed commitments on

goods and services along with the corresponding documents that together stipulate the terms of accession—is prepared by the secretariat for consideration by the working party.<sup>20</sup> After approval by the working party, the report is forwarded to the General Council. Following a favourable decision by the General Council (usually a formality), the country is invited to sign a protocol of accession.

## What are the Specifics of Cambodia's Accession Process?

The accession package for Cambodia consisted, as for any other acceding country, of three major parts:

- Protocol of accession and the report of the WTO working party, in which all of the “systemic” commitments and obligations (i.e., those reflecting consistency with WTO rules) are undertaken with reference to the WTO rules and disciplines;
- Schedule of concessions on market access in goods, namely bound tariffs. This also includes data on domestic support measures and export subsidies in agriculture; and
- Schedule of specific commitments in services.

As a matter of historical perspective, Cambodia came very close to acceding on its own to GATT, due to its former relationship with France. The country's previous colonial status could have facilitated Cambodia's accession to GATT.<sup>21</sup> Under the terms of Article XXVI:5(c) of GATT 1947, countries such as Cambodia were permitted a relatively easy route. Former colonies of GATT contracting parties could acquire *de facto* GATT status upon their achievement of independence. A country could then convert this *de facto* status into full GATT contracting party status by succession, a process that involved much less stringent scrutiny of its trade regime and fewer new commitments than did the ordinary accession process of GATT Article XXXIII. Cambodia qualified for this route to accession, insofar as France applied GATT rules to Cambodian trade while the country was under a protectorate, and duly informed GATT of this fact upon Cambodia's independence. Nonetheless, Cambodia made a very serious effort to accede to GATT on its own, following the more difficult approach of negotiating under GATT Article XXXIII. The country took this approach in order to avoid adopting the tariff commitments that France had already made in GATT negotiations. The country went so far as to finalize negotiations with the existing contracting parties over the terms of its protocol of accession, which were formally concluded on 6 April 1962.<sup>22</sup> Although the Geneva side of the process was concluded, Phnom Penh never completed the domestic ratification procedures. Had it done so, the country could have been a founding member of WTO. Unfortunately, the option expired with the end of GATT, and Cambodia—like all other countries that are still outside the system—had to meet the more rigorous requirements of WTO accession.<sup>23</sup>

## Cambodia's Approach to the Accession Negotiations

Cambodia's accession to WTO was a defining moment for the country. From the outset, it recognized that joining WTO could play an important role in accelerating its growth and development. In order to maximize these benefits (and minimize any potential disadvantages), it was necessary to devise a negotiation strategy that fitted Cambodia's needs, and that would lead to the desired outcomes. This negotiation strategy was backed up, to a large extent, by a larger national policy framework as reflected in a series of policy documents such as the Socio-Economic Development Plan—SEDP I (1996–2000) and SEDP II (2001–2005);<sup>24</sup> the Triangle Strategy; the Royal Government Platform for the Second Term 1998–2003; the Policy Framework Paper; the Interim Poverty Reduction Strategy Paper; the Pro-Poor Trade Sector Strategy; and the National Poverty Reduction Strategy.<sup>25</sup>

### *Domestic Realities*

In formulating such a strategy, the negotiators started with the fundamental realities of present-day Cambodia.

**A fast growing population.** Cambodia is a small country with a relatively small population, a large proportion of which is impoverished. At the same time, Cambodia's population has been growing rapidly. The number of young people entering the job market has thus been growing, and will continue to grow at a rapid pace in the years ahead. Expanding rapidly employment opportunities is therefore a major challenge. Given the lack of purchasing power in the domestic economy, a rapid creation of new jobs can only result from producing for other, larger markets. In other words, Cambodia's future growth and development must be outward oriented, with exports playing a key role in creating employment and reducing poverty.

Cambodia's experience with its garment industry illustrates the role that exports can play in increasing employment rapidly and helping to reduce poverty. The garment industry now employs directly some 260,000 people. Moreover, more than half of these jobs has been created during the past 5 years, making the industry by far the largest source of jobs growth during that period. The workers concerned are generally from low-income families, and their earnings usually flow back to these families in the countryside.

**The need to increase exports and employment.** A second reality of Cambodia's present situation is that the necessary increase in exports and employment can occur only if there is a rapid expansion of investment. Because adequate savings, skills, and technology are not always available within the country, foreign investment has an important role to play in bringing about the necessary expansion.

FDI has an especially critical role to play in expanding exports, since foreign firms know best foreign markets, and possess the technology, managerial experience, and marketing channels that are needed to export successfully.

Again, Cambodia's experience with its garment industry provides a concrete illustration of the way in which FDI can be used to expand exports rapidly. Garment exports rose from \$26 million in 1995 to \$650 million in 1999 and to more than \$1.3 billion in 2003. The knowledge by foreign investing firms of marketing and other requirements in foreign markets has obviously been a key element in this.

This emphasis on exports and FDI must not, however, imply any neglect of the important role of small and medium enterprises in Cambodia's development. These enterprises produce almost exclusively for the domestic market. They account for a very important part of employment (though still a small part of the growth of employment) and are an important breeding ground for the development of indigenous entrepreneurship.

**Developing a rural society and economy.** The third fundamental reality is that it is a rural society and economy, with most Cambodians depending directly or indirectly on agriculture for their livelihood. The economy is competitive (or potentially competitive) across a fairly wide range of agriculture sub-sectors. Much remains to be done, however, to realize to the full extent this actual and potential competitiveness. Achieving this will require, among other things, very large investments in rural infrastructure, in agricultural extension services to improve producer skills, and in improved processing of food products, for example the milling and grading of rice to international standards. Here, government programmes, the donor community, and FDI all have an important role to play. The development of Cambodia's agriculture will be a long and complex process that needs to be backstopped by a trade policy that provides reasonable protection to domestic producers from agricultural imports, while ensuring that competitive Cambodian agriculture has access to markets abroad.

**Millennium Development Goals (MDGs).** Cambodia has committed itself to achieving the MDGs,<sup>26</sup> which both emphasized the importance of efforts to integrate peace and development; and called for a coordinated and comprehensive approach by all partners to support economic growth, social sector investment, environmental protection, peace-building, and the promotion of good governance. Nonetheless, meeting the MDGs is not without challenges for the country, and poverty reduction remains a central one. In addition, in addressing its financing requirement toward achieving the MDGs, Cambodia needs to tackle simultaneously several pivotal areas: (i) increasing official development assistance

flows; (ii) mobilizing domestic resources through a sound fiscal and financial system; (iii) enhancing capital flows through FDI; (iv) using international trade as an engine of growth; (v) capacity development; (vi) debt management; and (vii) addressing systemic and cross-cutting issues such as good governance and gender considerations.<sup>27</sup>

**Rebuilding a new image.** More importantly for Cambodia, accession to WTO is seen as an additional step toward breaking away from its image as a poor, war-stricken country, isolated from the international community. According to one Cambodian official, Cambodia does not want only to be seen as “The Killing Fields”. There is every indication that national policy makers see accession to WTO as a means to fulfilling broader strategic goals, one of which is to facilitate the peaceful re-emergence of Cambodia as a trading nation.

### *External Realities*

In addition to these fundamental realities regarding Cambodia's own situation, important realities of the international trading regime need to be mentioned.

**The challenges of facing a quota-free world.** In accordance with the WTO Agreement on Textiles and Clothing, the special regime governing trade in garments came to an end on 1 January 2005. This regime allowed countries to apply quantitative restrictions on imports of clothing. Accordingly, the garment exports of almost all countries have been subject to quotas in major world markets, in particular the US. Cambodia's garment exports have also been subject to quotas. On 1 January 2005, however, WTO members eliminated quotas on clothing imports from other WTO members. As of that date, access to world markets was unrestrained for WTO members. If Cambodia had not been a member by then, countries would have been free to continue to impose quotas on its exports, and would undoubtedly have done so. Thus, failure to join WTO by 1 January 2005 would have put the country's garment industry at a significant disadvantage relative to its competitors.<sup>28</sup>

**The challenges of the accession process.** Cambodia was also conscious of the difficulties faced by countries seeking accession, particularly arising from (i) substantive policy issues relating to adjustments in their development strategies and implementing instruments, economic and social goals, and legislative reforms—which are all necessary in compliance with the WTO agreements; (ii) insufficient knowledge, experience, resources, infrastructure, and analytical capacities required for accession negotiations; (iii) increasing demands by some WTO members, which require from acceding countries, in one way or another, a higher level of obligations and commitments than the level of obligations and commitments made by the original WTO members in the Uruguay Round, which thus affects the balance of their WTO rights and obligations.<sup>29</sup>

Specifically, Cambodia needed to demonstrate its willingness to participate in the world trading system by making new legislation or, as the case may be, amendments in areas such as intellectual property rights, Technical Barriers to Trade (TBT), SPS, and customs valuation, bearing in mind that, along with the MFN regime and national treatment, the concept of transparency—i.e., complete disclosure and predictability of national legislation—should be the guiding principle for these legislative and regulatory reforms. Moreover, it was necessary for Cambodia to establish an institutional framework responsible for the coordinated implementation of policies and legislation related to WTO and to WTO agreements. These legislative and institutional changes consequently required adequate financial as well as human resources.

### Formulating an Accession Strategy

Within the rules and disciplines of WTO, each country has considerable scope as to how restrictive or liberal its trade regime will be. There are no specific rules as to the maximum level at which a country has to bind its tariffs, how many services it will liberalize, whether to bring in anti-dumping legislation, or how fast to liberalize its agricultural trade. Countries thus have a strategic choice to make during the negotiation phase: how liberal their trade regime will be, consistent with overall WTO disciplines.

A strategy that some countries have pursued in their accession negotiations is to try to liberalize as little as necessary to ensure accession. Several transition countries that have recently become WTO members pursued a different strategy,<sup>30</sup> in most respects adopting a liberal trade strategy.

Cambodia's accession strategy took the form of national dialogue among, and engagement of, all concerned parties in the accession process, particularly the private sector, and at a later stage civil society organizations. While it is the Government that takes on the contractual responsibilities of the WTO membership, it is for the private sector to decide how its best interests can be pursued. Thus forging effective partnerships with the private sector and frequent consultations with all economic actors—including civil society groups—ensured that Cambodia could formulate comprehensive and consolidated positions and arguments during the negotiations. It probably developed one of the most daring and pioneering approaches to policy dialogue consultation.<sup>31</sup> The Government launched active public awareness campaigns about WTO, its agreements, accession, and the implications of membership. In retrospect, effective cooperation among the executive and legislative branches and effective public-private sector partnerships were perceived as essential factors in a smooth accession process.



For Cambodia, the considerations outlined above allowed the WTO negotiating team to formulate some broad negotiating guidelines with WTO members. These guidelines were designed to ensure that the country negotiating strategy at WTO was fully consistent with an understanding of the important role that international trade is playing, and can continue to play, in the country's economic development. The seven main building blocks around which the Cambodian strategy was constructed were as follows.

### *Timing*

Cambodia targeted rapid accession to WTO. The need for rapid accession was driven mainly by the 1 January 2005 deadline facing the garment industry, as explained above. But the Cambodian negotiators also believed that it was in Cambodia's interest to achieve quickly the assured access to all export markets that is guaranteed by WTO membership. Moreover, they believed that the decision by the WTO General Council on the accession of LDCs, described below, made rapid accession feasible. They understood that Cambodia would need to draft and adopt a large number of laws so as to create a trade regime consistent with WTO rules. But they also knew that the decision by the General Council would allow Cambodia to do part of this after accession. Further, Cambodia had not developed any domestic industries that were dependent for their survival on high tariff protection. Allowing time for domestic industry to adjust to any tariff reductions that might be required by accession was thus not a consideration.

Another consideration was the holding of the national general elections in July 2003. The negotiators believed that momentum would be lost during and after the elections, with qualified human resources diverted and reshuffled, financial resources reallocated, and policy focus possibly misplaced.

In short, in terms of timing, Cambodia saw a number of reasons for going forward rapidly, and none for slower accession.

### *Tariff Concessions*

Shortly before negotiations with WTO began, Cambodia had undertaken a reform of its tariffs on imports of goods. This reform had reduced the number of applied tariff bands from 12 to 4, so that after the reform all goods were charged a duty of either 0%, 7%, 15%, or 35%. In the process, Cambodia eliminated some higher tariff rates that had previously been applied. Cambodian policy makers were persuaded that these reductions and simplifications had met the country's needs and also contributed to the overall liberalization of world trade. They were also mindful of the need to keep some protection in place for domestic small and medium enterprises as well as agriculture. Finally, tariffs contributed an important

part of budget revenue. For all of these reasons, the negotiators were determined during the negotiations to avoid any commitment to reduce tariffs further.

### *Export Orientation*

In order to be competitive on world markets, an export industry needs to have access to raw materials and intermediate inputs at world market prices. Cambodia has always recognized this, and, under the Law on Investment, has provided export industries with duty-free access to imported capital and intermediate goods, and to raw materials. The way in which Cambodia does this, however, is not fully compatible with WTO rules. Nevertheless, the negotiators understood that maintaining these privileges was essential to the country's garment industry, and to its future ability to attract other export-oriented industries. They were thus determined to maintain this capacity to offer such advantages, despite WTO rules.

### *Improving the Investment Climate and Fostering FDI*

As mentioned earlier, increased exports and jobs will depend on increased investment, in particular FDI. The negotiators understood, therefore, the central importance of using WTO accession as a means to increase the attractiveness of Cambodia as a place to invest.<sup>32</sup> WTO membership offers three main ways to do this.

First, WTO membership provides certain assurances for investors wishing to produce in Cambodia for export to other markets. This is because a Cambodian exporter can be certain that his goods will be charged a rate of duty in the importing country that is no higher than the rate charged by the importing country on identical or similar goods coming from other exporting countries (MFN treatment). Moreover, because most WTO members have "bound" (i.e., set legal ceilings on) most of their tariff lines, a Cambodian exporter will know the maximum legal duty that can be charged on his export good in any WTO member country. Further, a Cambodian exporter can be certain that his exports will not be subject to quotas or any kind of quantitative restraint in his export markets (for garments, true only after January 2005). For all of these reasons, WTO membership reduces the uncertainty facing an investor who wants to produce in Cambodia for export to other markets. (Note, for investors who wish to export to other Association of Southeast Asian Nations (ASEAN) member countries, the relevant ASEAN norms apply.)

Second, WTO membership requires an intensified effort by Cambodia to put in place the legal framework required by business. The Government has for some time been actively engaged in developing and submitting to the National Assembly the laws necessary for a modern, liberal, and business-friendly legal environment. A member of WTO must have laws that embody WTO rules on international trade and activities related to trade. Cambodia understood from the outset that

this would be necessary, and welcomed the requirement as a way of ordering and accelerating its efforts to create a proper legal framework for business that fully reflects international norms.

Third, Cambodia understood from the beginning that the country's attractiveness to investors depends on the availability of the infrastructure required by business.<sup>33</sup> This infrastructure includes services such as telecommunications, transportation, banking, accounting, and auditing. The investment environment is also enhanced by the availability of an educated and trained labour force. Cambodia saw the WTO accession negotiations on services as an opportunity to encourage foreign investment in key services infrastructure, and therefore as an opportunity to enhance the country's overall environment for business. Likewise, foreign participation in adult education and training would help develop the skilled workforce that is necessary to attract skills-based industries and to allow for increased wages.

For these reasons, the negotiators understood that their negotiations on services could advance the country's overall strategy of improving the business environment. They were aware that the decision of the WTO General Council called for members to limit the scope of negotiations on services. However, rather than seeking to limit Cambodia's commitments to the bare minimum referred to by the General Council, they preferred to address services issues on a case-by-case basis, and when they were convinced that agreeing to liberalization in a particular services sector would help move them toward their broader development objectives, they were prepared to engage in negotiations and take on commitments.

### *Retaining Policy Options and Flexibility on Agriculture*

Market access and improvements in the investment environment will benefit agriculture as well as manufacturing and services. The negotiators knew, however, that there were special rules in WTO regarding the way governments can support their agriculture sector. These rules are designed to ensure that support measures that distort trade are not introduced or increased, and that any existing measures that distort trade are gradually reduced to minimal amounts. They believe that Cambodia is a competitive or potentially competitive agricultural producer across a broad range of agricultural products. Rules that reduce the support provided by other countries to their less efficient producers will therefore ultimately be to the benefit of Cambodia. As mentioned above, however, they understood that the country would need to maintain minimal, but adequate, tariff protection of agricultural products, and retain the right to provide support to domestic producers that genuinely assists them in becoming more competitive. Achieving these ends was an important element of Cambodia's accession strategy.

### *Securing LDC Benefits with Regard to Public Health*

At its Ministerial Conference in Doha in 2001, WTO adopted a declaration granting LDCs certain special privileges as regards WTO requirements for the protection of patents on pharmaceutical products. The objective of the declaration, and subsequent implementing decisions, was to allow LDCs to have access to cheap drug products, including the right to import cheap pharmaceuticals. This provision is particularly important for Cambodia, since it has difficult public health issues as regards HIV/AIDS, tuberculosis, malaria, and other major diseases. At the same time, the country is dependent on imports of drugs to fight these diseases, and the financial resources are limited. It is therefore of great importance that it should have access to medicines at the lowest possible prices. Ensuring that the WTO declaration applied fully to Cambodia was thus an important objective of the negotiations.

### *Securing Maximum Benefits—Special and Differential Treatment*

In view of the difficulties that it was facing, and bearing in mind its status as an LDC, Cambodia called on members of the working party to be flexible in the negotiations to establish its WTO commitments and to extend special and differential treatment as foreseen in the provisions of the WTO agreements regarding LDCs.

The problems were acknowledged by WTO members in the Doha Ministerial Declaration (DMD). Accordingly, they agreed to work to facilitate and accelerate negotiation with acceding LDCs and reaffirmed the commitments undertaken in the Programme of Action for the Least Developed Countries for the Decade 2001–2020, which was agreed at the Third United Nations Conference on the Least Developed Countries in Brussels in May 2001. In the Programme of Action, development partners of LDCs agreed to facilitate the accession process of non-members “on the basis of terms that take into account their stage of development and the basic principles of special and differential treatment” and to “support efforts of LDCs seeking to accede” in various ways, including:

- (i) Ensuring that the accession process is more effective and less onerous and tailored to their specific economic conditions, among others, by streamlining WTO procedural requirements;
- (ii) Providing for automatic eligibility of all acceding LDCs for all provisions on special and differential treatment in existing WTO agreements;
- (iii) In view of LDCs' special economic situation and their development, and their financial and trade needs, WTO members should exercise restraint, where appropriate, in seeking concessions in the negotiations on market access for goods and services in keeping with the letter and spirit of the provisions of the Ministerial Decision on Measures in Favour of the Least Developed Countries;

- (iv) Seeking from LDCs in the accession stage only commitments that are commensurate with their level of development;
- (v) Continuing to provide adequate and predictable assistance to LDCs for their accession process, including technical, financial, or other forms of assistance; and
- (vi) Accelerating the accession process for LDCs that are in the process of accession to WTO.

In the case of LDCs, the Doha Ministerial Conference pledged, in paragraph 42 of the DMD, to facilitate LDC accession to WTO: "Accession of LDCs remains a priority for the Membership. We agree to work to facilitate and accelerate negotiations with acceding LDCs". Implementing the ministerial decision, the WTO General Council agreed that negotiations for accession of LDCs to WTO be facilitated and accelerated through *simplified and streamlined accession procedures*, with a view to concluding these negotiations as quickly as possible, in accordance with the following guidelines:

- *Market access.* (i) WTO members shall *exercise restraint in seeking concessions* and commitments on trade in goods and services from acceding LDCs, taking into account the levels of concessions and commitments undertaken by existing WTO LDC members; and (ii) acceding LDCs shall offer access through reasonable concessions and *commitments on trade in goods and services commensurate with their individual development, financial, and trade needs.*
- *Special and differential treatment.* (i) Such treatment, as set out in the multilateral trade agreements, ministerial decisions, and other relevant WTO legal instruments, *shall be applicable to all acceding LDCs*, from the date of entry into force of their respective protocols of accession; and (ii) *transitional periods/transitional arrangements* foreseen under specific WTO agreements, to enable acceding LDCs to effectively implement commitments and obligations, *shall be granted* in accession negotiations taking into account individual development, financial, and trade needs.

Another important breakthrough came about on 10 December 2002 when the General Council, in pursuance of the Doha mandate, and in an attempt to mainstream the Brussels Programme of Action into WTO work and actions, adopted Decision No. WT/L/508 on the Accession of LDCs.<sup>34</sup> In the decision, members agreed that they would be bound by certain restraints in dealing with LDCs seeking to join WTO. In particular, they agreed that they (i) would not seek sharp reductions in tariff levels; (ii) would require concessions in relatively few services sectors; and (iii) would allow an LDC to join WTO before all its laws and regulations were in full compliance with WTO rules, provided that the LDC

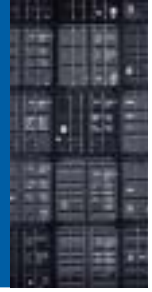
presented a detailed work-plan for achieving compliance in the years immediately following accession, and committed itself to executing fully that programme.

It was expected that the decision (also called “guidelines”) would substantially facilitate LDC accessions, particularly by exercising restraint on WTO members in seeking concessions and commitments on trade in goods and services from acceding LDCs, and allowing acceding LDCs to benefit from the special and differential treatment provisions under the WTO agreements.

These, then, were the main considerations that guided the Cambodian negotiators throughout their negotiations with WTO members.



# II The Negotiation Process



## The Formalities

Cambodia first applied for membership in WTO in 1994. It was not until 1997, however, that it was in a position to undertake the very complex tasks required to set the process of accession in motion. While the interval seemed rather long, observer status at WTO was necessary for Cambodian officials involved in the process to familiarize themselves with the institution before they could become properly organized to prepare a memorandum on its policies or to take subsequent steps.

The preparation of the memorandum presented serious difficulties for Cambodia, as it did not have sufficient human or material resources to address the issues that had to be discussed in detail. It has had to seek assistance from outside experts funded by bilateral and multilateral aid agencies, particularly from WTO itself and from the World Bank.

Generally, the preparation of the memorandum on the foreign trade regime by an applicant country explaining its policies and institutions can be a demanding task because of the range of issues that the memorandum has to address and the degree of detail required. The applicant is solely responsible for the preparation of the memorandum, and for any delay.

The Government was aware that the complex task of preparing such a memorandum and of managing the negotiations to follow required new and special government machinery. The Government instructed the Ministry of Commerce to act as the focal point for activities related to WTO accession. In addition, the Government established in September 1997 an Inter-Ministerial Coordinating Committee on WTO Accession, chaired by the Minister of Commerce. This committee was made up of 15 members at the policy level and three officials from each of the 23 ministries and agencies involved in WTO activities at the working level. Its role was to (i) coordinate policy issues related to WTO accession; (ii) elaborate guidelines to implement WTO agreements; (iii) prepare the necessary documentation; (iv) define the Government's priorities related to foreign trade policies; (v) ensure coordination among ministries; and (vi) report to the Prime Minister on issues related to WTO accession.



## Memorandum on the Foreign Trade Regime

As mentioned earlier, preparing a memorandum on the foreign trade regime is the first step in the accession process for the candidate country. This memorandum is designed to inform the members of WTO of all the laws, regulations, and government decisions and policies affecting trade. The memorandum must be drawn up following an outline established by WTO, and covering all the items included in the outline. The main topics that needed to be covered by the memorandum include:

- monetary and fiscal policy;
- state ownership and privatization policies;
- pricing and competition policies;
- rules regarding the right to trade;
- customs procedures, in particular customs valuation procedures;
- the application of internal taxes to imports;
- quantitative import restrictions, quotas and import licensing;
- preshipment inspection;
- anti-dumping, countervailing duties and safeguards;
- export regulations;
- product standards and technical regulations;
- SPS regulations;
- investment measures related to trade;
- state trading;
- free zones and special economic zones;
- government procurement;
- agricultural policies;
- protection of intellectual property; and
- policies affecting trade in services.

Cambodia's WTO team began work on the memorandum in 1997 and a first draft was completed in 1999. The team asked the WTO secretariat to review the draft memorandum before its circulation to prevent incomplete documentation from being disseminated, and after extensive review the final draft was submitted to WTO in 2000. The memorandum consisted of over 100 pages of description of the country's trade regime, together with many statistical tables. The memorandum was submitted to the members of Cambodia's working party, who reviewed it and, following usual WTO practice, submitted some 75 follow-up questions designed to clarify further aspects of Cambodia's trade regime. Cambodia provided answers to these questions, thus setting the stage for the first meeting of the working party, and the onset of negotiations.

Status of Cambodia's Accession Working Party		
1.	Application Received	8 December 1994
2.	Working Party Established Chairperson: Mr. A. Meloni (Italy)	21 December 1994
3.	Memorandum	22 June 1999
4.	Questions and Replies	4 January 2001
5.	Meetings of the Working Party	22 May 2001 14 February 2002 14 November 2002 22 July 2003
6.	Documentation (other)	
	(a) Additional Questions & Replies	11 December 2001 29 July 2002 3 March 2003
	(b) Agriculture (WT/ACC/4)	11 December 2001 26 July 2002
	(c) Services (WT/ACC/5)	3 March 2003
	(d) SPS/TBT (WT/ACC/8)	11 December 2001 11 December 2001 3 March 2003
	(e) TRIPS (WT/ACC/9)	11 December 2001 31 July 2002 3 March 2003
	(f) Legislative Action Plan	11 December 2001 29 July 2002
7.	Negotiations on Goods	
	(a) Tariff Offers	11 December 2001 29 July 2002 3 March 2003 22 July 2003
	(b) Draft Goods Schedule	
8.	Negotiations on Services	
	Draft Services Schedule	11 December 2001 29 July 2002 3 March 2003 18 July 2003
9.	Factual Summary	30 October 2002
10.	Draft Working Party Report	24 March 2003 19 June 2003 22 July 2003

## Multilateral Track: Working Party Meetings

The first meeting of the working party on Cambodia's accession to WTO was held in May 2001, and, like all subsequent meetings, took place at WTO Headquarters in Geneva, Switzerland. This track is traditionally called the systemic or multilateral track. It provides for examination of the foreign trade regime and economic system of Cambodia and their compatibility with WTO agreements—and ultimately the possible terms of a draft protocol of accession to WTO. This examination is made on the basis of the memorandum submitted by Cambodia and subsequent rounds of questions and answers as well as delivery of the working party's report and the protocol of accession setting out detailed terms of accession. The working party usually does not meet until the memorandum and the initial questions and answers have been distributed.

Membership in the working party is open to all members of the WTO. In the case of applications by large countries such as the People's Republic of China (PRC) or Russia, many countries participate; in the case of smaller countries like Cambodia, the working party is usually made up only of the "Quad"—Canada, European Union (EU), Japan, and US—plus a number of other members, including countries that are significant trading partners of the applicant. The purpose of the working party meeting was to continue the examination of Cambodia's trade laws and regulations, and to allow members to see the extent to which these laws were consistent with WTO rules. Another purpose was to help Cambodia understand more fully the steps that it still had to take to bring its laws and regulations into compliance with WTO rules.

**First working party.** The first meeting consisted of an examination of Cambodia's memorandum, and of the answers that Cambodia had provided to members' questions. As is always the case in all accessions, this examination gave rise to requests for additional information. Cambodia was also requested to submit for the consideration of the working party members relevant legislation on a variety of issues covered by WTO. The question-and-answer process is very time consuming. Cambodia's initial institutional weaknesses resulted in delays of nearly 1 year while the Government ascertained consistency between existing legislation and regulations and WTO requirements. Generally, delays during this phase are frequent. If a member feels that the answers submitted to a question or the actions taken to remedy an inconsistency are inadequate, it simply resubmits the question for the next round. Moreover Cambodia was requested to provide replies to standard detailed questionnaires that the WTO secretariat had drawn up in the areas of services, import licensing, intellectual property protection, support to agriculture, technical barriers to trade, and SPS regulations. It was also requested to prepare offers of the concessions that it would be prepared to make on import tariffs and services.

Once all of these materials had been prepared and approved by the Government, they were sent to WTO and the stage was set for the second working party meeting.

**Second working party.** The second working party meeting was held on 14 February 2002 and was attended by 22 Cambodian delegates, WTO members, and observers from acceding countries and international organizations, as well as staff of the WTO secretariat. This second meeting established the format that would be used in all the subsequent meetings held in 2002 and 2003. The head of the Cambodian delegation was requested to make an opening statement, which focused on the effort and progress made by the Government since the previous working party.<sup>35</sup> Cambodia emphasized the importance of this second working party as the first working party of an LDC, post-Doha Ministerial Conference. The DMD made specific reference to para. 42 where there are provisions highlighting the need to fast-track and facilitate the accession of LDCs to WTO. Cambodia reiterated to the working party that its accession was a test of the sincerity and the intention of developed countries with regard to the DMD.

**Third working party.** Cambodia held its third working party meeting on 14 November 2002.<sup>36</sup> The chairman of the working party said that the outcome of this working party would determine the next stage of the meeting. He felt that Cambodia's accession process had reached a critical stage as WTO members had begun focusing for the first time on the elements of a draft working party report and, thereby, concentrated on agreeing on Cambodia's terms of entry.

**Fourth working party.** On 16 April 2003, Cambodia held its fourth working party meeting, the aim of which was to review the status of bilateral negotiations and to focus on substantive discussions of a first version of the working party's draft accession report. Supporting documents submitted by Cambodia included revised offers of goods and services, action plans, and the legislative programme. The chairman stated that the working party had, by considering the first draft of its final report, moved into the final phase of the negotiations. In the concluding remarks, the working party chairman suggested that WTO members submit or propose commitment paragraphs. At the end of the meeting, participants agreed on the July target for completing the working party's accession report. An informal meeting was proposed in June 2003 to consider a new draft, possibly together with draft schedules of commitments for access to Cambodia's goods and services markets.

**Fifth working party.** On 22 July 2003, Cambodia held its fifth and last working party, at which the Cambodian working party accession report was completed.<sup>37</sup> Cambodia and WTO members in the working party expressed their optimism of completing Cambodia's membership by the Fifth Ministerial Conference in Cancún, in September 2003.

**Views of working party members.** Generally, WTO members welcomed Cambodia's application to join the organization.<sup>38</sup> WTO membership was considered important for the country's development and integration into the world trading system. They were very impressed with the political will of Cambodia and its tremendous efforts in designing its path to accession to the WTO and making its system of laws consistent with WTO rules. Appreciating the efforts already undertaken by Cambodia to achieve compliance with WTO rules and principles, they noted that further work was needed in this regard. Members pledged to work constructively with Cambodia in accomplishing this task, and several members offered technical assistance to facilitate Cambodia's accession. Members looked forward to Cambodia's early accession on appropriate terms. Some members referred to Cambodia's status as an LDC, and considered this a relevant factor in establishing the terms of accession.

## Bilateral Negotiation Track

There are also two bilateral tracks of market access negotiations on goods and services with interested WTO members. After the second working party, Cambodia was requested to submit its initial schedule of offers in goods and services. This consisted of (i) the detailed schedule of tariffs the applicant proposes to impose on goods and the level at which the tariffs are bound and (ii) the commitments it makes (and the limitations it sets) on providing access to its market for services.

Once these offers were put forward for discussion, the accession process entered an advanced phase, which involved specific bilateral negotiations between Cambodia and each WTO member wishing to hold such talks regarding the tariff level or the degree of openness of the services sector proposed by Cambodia.

Generally, bilateral negotiations took place individually in parallel with formal meetings of the working party. Some members expressed a preference to hold negotiations in Geneva at any time suitable for Cambodia, while others were willing to accommodate Cambodia's plea of flexibility where bilateral negotiations could also take place in Phnom Penh and their respective capitals. During the course of the accession process, Cambodia negotiated bilaterally with nine members.<sup>39</sup> Furthermore, to secure support from key players, Cambodian delegates travelled to Washington, DC; Brussels; and Seoul, while the EU and Japan delegates travelled to Phnom Penh. Other members such as the US and Australia chose to work also through their diplomatic channels based in Phnom Penh.

These bilateral meetings were scheduled at the request of individual members, and allowed them to make requests for changes in the initial offers that Cambodia

had proposed with regard to tariff bindings and access to services markets. These requests usually took the form of asking for a lower bound tariff rate on products of particular trading interest to the member country, or asking for additional services sectors to be added to the services offer. Cambodia had to examine each of these requests and determine if it could accommodate it within the overall strategy that it had for the negotiations.

## Strategies to Deal with Bilateral Negotiations on Market Access on Goods

In drawing up the tariff offer, Cambodia had to take account of the fact that members required an acceding country to bind all of its tariff lines. This meant that Cambodia would have to propose a bound rate for each of its 6,823 tariff lines. This binding, in turn, would determine the maximum tariff rate that could be applied to that item. As a WTO member, Cambodia would remain free to set tariffs at levels equal to or lower than the bound rate, but would not, except in exceptional circumstances, be able to charge duties that exceeded the bound rate.

The Cambodian strategy in drawing up this initial offer was to set the bound rates well above current applied rates, i.e., well above the tariff rates it was actually using. As mentioned above, the objective in the negotiations was to avoid any commitment to reducing applied tariff rates, and Cambodia needed ample leeway to respond to requests to lower the bindings while keeping that objective intact.

After Cambodia submitted its initial tariff offer, key members provided Cambodia with their general responses as well as their specific requests, particularly the following:

- (i) Cambodia's tariff bound rates were still unreasonably high and as such Cambodia needed to resubmit a new offer before some members could start negotiations. Some members took the approach that, in general, an acceding country's applied rate structure should serve as the basis for their request and as such requested that Cambodia reduce the level of the tariff bindings closer to the applied tariff rates. Their arguments were that traders need the predictability, transparency, and lower volatility for doing business. Given that Cambodia's applied rates had recently been lowered from 120% to 35%, some members requested that Cambodia take these into account in their reformulation.
- (ii) Some members requested Cambodia to bind all items so as to provide greater commercial certainty for traders.

- (iii) Another member's policy preferences—again for transparency purposes—were that the binding be on ad valorem value and not “mixed and compound”.
- (iv) For Industrial goods some members presented Cambodia with a response proposing specifically the following improvements:
  - that Cambodia join the Information Technology Agreement (ITA) and bind zero tariffs on information technology (IT), arguing that most ASEAN members had accepted ITA and that Cambodia should want to facilitate the importation of such products for investment and development purposes;
  - that Cambodia establish bound rates of duty consistent with chemical harmonization for a variety of chemicals and pharmaceuticals (7% for chemicals, 0% for pharmaceuticals) arguing that valued-added taxes offer sufficient revenue opportunities. Moreover, members felt that a tariff on pharmaceuticals created an unnecessary tax on health care costs and potentially reduced access to medicines.
- (v) On the agriculture sector, a few members proposed a “zero to zero” tariff rate to be implemented on specific items.
- (vi) One member, with whom Cambodia has entered into a bilateral textile agreement, requested that it establish bound textile tariffs consistent with its obligations under that agreement.

### Strategies to Deal with Bilateral Negotiations on Market Access on Services

Formulating the initial offer on services was more complex. A first task was to decide which services sectors to include in the offer. Unlike the case of goods, members do not require commitments on all services sectors. In fact, in the case of LDCs, members had agreed that they would require commitments “on relatively few” services sectors. Still, the WTO classifier for services contains 12 broad headings and 155 services sectors and sub-sectors, and Cambodia needed to choose among them in making its initial offer. Further, WTO has identified four different ways in which any given service can be imported. These include mode 1 on cross-border supply (for example, the purchase of software or insurance by a consumer from a supplier located abroad); mode 2 on consumption abroad (for example, the consumer travels to the territory of a service supplier to purchase, for example, tourism, education, or health services); mode 3 on commercial presence (for example, allowing a foreign architectural firm that intends to employ only

Cambodian architects to establish itself in Cambodia, thus importing the architectural services of the firm); and mode 4 on movement of natural persons or movement of individuals (for example, allowing the foreign architectural firm established in Cambodia to also employ foreign architects, thus importing the services of those individuals). Finally, for each of the services sectors or sub-sectors that Cambodia chose to include, it was required to indicate, for each of the four ways in which the service could be imported, the degree of market access that would be allowed, and the extent to which Cambodia would regulate foreign service providers in the same way as it regulates Cambodian suppliers in that services sector. This latter feature is referred to as national treatment. As would become clear in the subsequent negotiations, the members usually sought commitments to full market access and full national treatment.

When conducting various bilateral negotiations, the Cambodian delegation put forward several arguments to back up its offers: the development needs and priorities on one hand and the legal provisions establishing treatment of the LDCs in the context of services negotiations on the other.

On the development side, Cambodia argued that it would seem premature to make commitments in those sectors where no supporting legislation have been put in place, nor where strategies had been prepared in terms of future development and the expected contribution of the sectors to the economy. Putting institutions, and financial and human resources for development of the adequate legislative and development strategy in all areas of services could be achieved at once and had to be prioritized in terms of the country's immediate development needs. Thus, a gradual approach should be adopted in including the most relevant sectors in the draft offer on services.

On the legal side, several provisions were used as guideposts. GATS Article XIX.2 provides the legal basis for developing countries to progressively extend "market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV". One important objective of GATS Article IV is "strengthening of developing countries' domestic services capacity and its efficiency and competitiveness". In addition, the Decision on Accession of Least-Developed Countries, WT/L/508 has identified development as the primary objective for LDCs in undertaking specific commitments, and the latter should be commensurate with "individual development, financial and trade needs".



## Plurilateral Track

In addition to the previous tracks, Cambodia also held a “sub-tract” of negotiation, or the informal “plurilateral track” at the recommendation of the working party chairman and some members. During the week of each working party meeting, Cambodia met a small number of interested members to explore its programmes benefiting agriculture. Finally, at the margin of the third working party, Cambodia convened an informal plurilateral meeting<sup>40</sup> on 13 November 2002 to share information with other concerned WTO member countries on its agricultural policies and on the agricultural checklist ACC4. This plurilateral meeting had the purpose of allowing members to understand whether any of these programmes were of a sort that distorted international trade. While WTO rules do not limit the overall support that a government may provide to its agriculture sector, they do impose limits on specific forms of support that distort trade. It was thus important to Cambodia and to members to have a common understanding of which Cambodian programmes, if any, would fall into the category (subject to limits).

For the meeting, Cambodia was requested to clarify various issues, and at times confirm certain policies, relating to its agricultural policies and its support measures; more specifically, how far it would go to meet these objectives and what would the various development programmes be administered and their legal underpinning. Some members thought additional details would be helpful, among others, on Cambodia's extension and advisory services and on its inspection services, and how funding would be delivered to participants and for what purposes.

With regard to infrastructure services, Cambodia was asked to confirm that the “expenditures on constructions and maintenance of irrigation system and drainage facilities, including the provision of diesel fuels for pumping water to irrigation canals” were for generally available capital works and not for the provision of on-farm facilities. Similarly for public stockholding for food security purposes, the issues were focused on whether food purchases by the Government were made at current market prices and whether the volume and accumulation of food stocks corresponded to predetermined targets related solely to food security.

Cambodia was requested to clarify the criteria for eligibility to receive the “exemption granted to farmers from agricultural land tax and income tax” and whether the measure was in fact “decoupled income support”. More specifically it was asked whether the amount of revenue forgone related to any of the following: type or value of production undertaken by the producer in any year after the base period; prices (domestic or international) applying to any production undertaken in any year after the base period; or factors of production (such as land under production) employed in any year after the base period.

# III Outcomes on the Negotiations on Rules Governing International Trade in Goods and Services



## Summary of the Terms of Accession

At the final meeting of the working party in July 2003, the members agreed on the terms and conditions on which Cambodia could join WTO. These were the result of the negotiations described in previous chapters. Throughout the negotiations, issues raised were numerous and wide ranging but generally centered on common themes surrounding the basic principles of GATT and WTO. The following summarizes the main characteristics of this outcome.

Cambodia's protocol of accession contains, by reference, 29 separate and sometimes detailed statements describing the way in which it will fulfil its commitment to abide by WTO rules. At the time when the accession negotiations were concluded, most of the tasks as related to legislation had not been completed, and the 29 statements reflect the fact that in some areas the legislative reform was still "work in progress".

Each of the 29 statements deals with a specific policy area covered by WTO rules. In 17 of the 29 areas, Cambodia's present laws and regulations were found to be either in full compliance with WTO rules, or could be made compliant by government decision before the date of accession. In these areas Cambodia's commitment is simply to apply the rules from the date of accession onwards. The topics in question cover:

- pricing policies;
- customs charges other than normal customs duties;
- tariff exemptions;
- fees to cover costs of customs procedures;
- domestic taxes;
- quotas, licensing, and other non-tariff barriers;
- pre-shipment inspection;
- export restrictions;
- industrial subsidies;
- trade-related investment measures;
- state trading;

- free zones and special economic zones;
- transit trade;
- agricultural export subsidies;
- trade in textiles;
- publication of information on trade; and
- free trade agreements.

This leaves 12 areas in which Cambodia was not in compliance with WTO rules, or in which it committed to policies or actions that were not being pursued.

In three of the 12 areas, legislation bringing Cambodia into full compliance with WTO rules had been submitted to the National Assembly. Cambodia therefore committed to having a WTO-compliant customs law in place by mid-2004, and by January 2005 to have in place a law on judicial organization and to have set up a commercial court system.

In four other areas of central importance to the WTO regime Cambodia had made considerable progress in bringing its laws and regulations into compliance with WTO rules. Because of the complexity of these issues, however, it was obvious that the country could not complete quickly the actions required to achieve full compliance. However, WTO members agreed to Cambodia's request that the special arrangements for LDCs, referred to earlier, should apply to these areas. This meant that accession could go forward, even though Cambodia would not be in a position to apply these rules as soon as it joined WTO, or soon thereafter.

The remaining five areas in which Cambodia undertook commitments covered a variety of topics, the most important of these being the non-application of the Agreement on Trade-Related Investment Measures upon accession (these measures do not exist, and are not foreseen as a policy instrument, in Cambodia).

Cambodia did not join two plurilateral agreements—those on government procurement and on trade in civil aircraft.

## Conforming to WTO Trade Rules

### Transparency and Predictability

Members stressed the need for Cambodia to abide by WTO's transparency obligations, as contained in GATT Article X, across the board including with respect to uniform application of its trade regime and independent judicial review. They

considered the basic transparency principle as one of the key elements of the multilateral trading system. The predictability principle, on the other hand, is ensured through a legal hierarchy giving preference to tariffs over less transparent and less secure non-tariff measures such as quotas and licences, and through encouraging members to bind their market opening commitments in goods and services. In the goods area, this binding amounts to setting ceilings on customs tariff rates.

Several members inquired whether Cambodia would consider posting its *Official Journal* on the Internet to improve access to new laws and regulations, and what practical steps it could take to better ensure that all new regulations would be properly published in the *Official Journal*.

Within the context of laws and the operations of government institutions, two broad issues typically receive special attention: the degree of privatization in the economy, and the extent to which government agencies involved in the regulation of economic activity do so on the basis of transparent rules and criteria, as opposed to administrative discretion. A key issue for enterprises that are expected to remain state owned is whether they operate under market conditions or enjoy special monopoly rights and privileges. Cambodia was required to list and describe the scope of business of its remaining state-owned enterprises, and whether or not it believes they constitute state trading enterprises within the meaning of GATT Article XVII and the Understanding on GATT Article XVII.

As a WTO member, Cambodia has committed itself to provide at least 30 days for comment on all proposed new measures affecting trade in goods, services, or the protection of intellectual property. Further, no such measure will become effective until it has appeared in the *Official Journal*. The body of all current laws, regulations, and decrees, as well as administrative and judicial rulings, relating to trade should be available on an official website.

## Judicial Enforcement

Some members remained concerned over the status of the Cambodian court system, although they recognized that the work on the setting up of the commercial court was a positive step. The outstanding issue then was that, as the commercial court would not be in operation for the next few years, how Cambodia could address the issue and how it intended to increase the pace of legal and judicial reforms, specifically on issues such as breach of trust, lack of administrative chambers and appeals mechanism, enforcement of international commercial arbitration awards under the New York Convention (which Cambodia has ratified), and regular publication of full judicial decisions.<sup>41</sup>

More specifically with regard to the TRIPS Agreement, some members requested Cambodia to explain how it intended to provide for civil judicial procedures and remedies; provisional measures; administrative procedures and remedies; border measures; and criminal procedures to implement the enforcement provisions under the Agreement. Others urged Cambodia not to include parallel provisions on intellectual property rights (IPR) in its draft Civil Code, as this would undermine its IPR regime, to which Cambodia had agreed.

## Legislative Development

Bringing the legislation in compliance with WTO rules is one of the most challenging tasks that Cambodia must face. It touches numerous areas and sectors of the economy. In this context, it should be pointed out that, while basic legislation on foreign trade may already be in place, there is still a need to formulate rules and procedures for the effective implementation of these basic laws. Moreover, other mechanisms for the implementation of WTO agreements as embodied in national laws need to be developed, in particular: procedures for the implementation of laws on intellectual property with respect to counterfeit and pirated goods; simplified customs procedures, new WTO rules about the origin of goods, and other customs rules and procedures; and technical legislation and regulations relating to SPS, TBT, and Anti-Dumping and Countervailing Measures.

Some members requested Cambodia for a road map showing when it envisaged that the remaining legislation would be enacted as per its commitment under the National Legislative Action Plan. Others requested for a reprioritization of the legislation to reflect the need to concentrate on the early phase of accession. Others stressed that most of the legislation expected in the plan should be adopted by the time of accession, while a few others even insisted on reviewing Cambodian draft laws prior to their adoption.

Some members expressed their appreciation for the laws supplied by Cambodia and looked forward to receiving additional legislation, in particular in the areas of transparency and due process, trading rights, free or special trade areas, TRIPS, the customs code, the new customs tariff, TBT/SPS, and import licensing.

Other members provided detailed comments and questions on the various IPR drafts, and hoped that these would help Cambodia in its efforts to establish a TRIPS-consistent regime in IPR, in particular in the critical area of copyrights, patents, and industrial designs.

## Market Opening

With respect to market opening, members were impressed with Cambodia's efforts to significantly reduce its tariff and non-tariff barriers as part of its bid to join WTO, as evidenced by the breadth and depth of the voluntary cuts prior to the start of the accession negotiations. Cambodia's willingness to progressively and substantially open up its services sectors to foreign competition was also greatly appreciated. Moreover, members encouraged Cambodia to seize the opportunity as a new member to take a full part in the Doha Round or Doha Development Agenda.

## Framework for Making and Enforcing Policies

Members argued that liberalization commitments and agreements to abide by certain rules have little value if they cannot be enforced. These commitments are important not just for the central government, but also for the provincial authorities that deal with internal trade and regulation. Issues of concern to them related to the jurisdiction and capacity of national agencies to implement policies on which commitments are being made. The fundamental concern is one of governance: Do the agencies have the authority and capacity to implement the commitments that they are making in the context of WTO accession regarding the laws and regulations that affect the conduct of international trade? A related concern has to do with the role and jurisdiction of local authorities and whether they have the right and opportunity to nullify commitments made by the national authorities in the context of accession negotiations.

Cambodia confirmed that provincial and municipal authorities had no jurisdiction over policies affecting foreign trade, such as in the areas of subsidies, investment, application of taxes, charges on imports not applied to domestic goods, or quantitative restrictions on imports or exports. Moreover, it confirmed that local authorities would have no such authority in export processing zones within their jurisdiction.

## Implementation of Agreements

### Transition Periods

Some members were prepared to allow Cambodia transition periods for implementing some obligations, although they insisted on the specificity of the timetable for these transition periods (including the end-point and milestones along the way). While accepting that the transition could include some intellectual

property (TRIPS) provisions, other members said this should not include areas where Cambodia already complies with TRIPS and basic TRIPS principles, such as non-discrimination (MFN and national treatment). They argued that Cambodia might consider the flexibility of the implementation of its legislation and ask for the necessary technical assistance, either bilateral or multilateral, to speed up the adoption process of various key legislation and regulations as committed under the National Legislative Action Plan.

Ultimately, Cambodia was granted four transition periods delaying implementation of the following:

- the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (excluding pharmaceuticals and agricultural chemicals) until 1 January 2007;
- the Agreement on Technical Barriers to Trade (product standards and technical regulations ensuring the safety of products) until 1 January 2007;
- the Agreement on Sanitary and Phytosanitary Measures (measures to protect the health of people, plants, and animals) until 1 January 2008; and
- the Agreement on Customs Valuation until 1 January 2009.

## TRIPS

In this area, Cambodia obtained a 3-year transition period. It made explicit commitments to comply with obligations concerning Part II, sections 5 and 7 of the TRIPS Agreement, namely patents and protection of undisclosed information, although the Doha Declaration on the TRIPS Agreement and Public Health exempted LDC members from the obligations of these provisions for pharmaceutical products until 1 January 2016. Subsequently, before adoption of the terms of accession, the Fifth Ministerial Conference in Cancun (September 2003) assured Cambodia that it was entitled to all the rights of the LDCs.

A special comment is required regarding Cambodia's commitment in the area of protection of intellectual property. Questions were raised as to whether these commitments would allow Cambodia to benefit fully from the Doha Declaration on the TRIPS Agreement and Public Health. As mentioned earlier, ensuring that Cambodia could benefit from the declaration was one of its major objectives in the negotiations.

Cambodia believed that this objective had been fully achieved. Some observers commented on two sentences in Cambodia's commitment paragraphs that deal with the use of test data in patent applications. It is true that these two sentences,

read in isolation, could suggest some restriction on Cambodia's ability to benefit from the DMD. However, it should be noted that Cambodia's own Law on Patents contains provisions allowing it to apply fully the DMD. This law was available to members of WTO well before the conclusion of the negotiations, and there was no comment by members on the provisions dealing with the DMD. Further, in inviting Cambodia to join WTO at the Cancun Ministerial Meeting, the members of the working party declared that "the terms of this accession did not preclude access of Cambodia and LDCs to the benefits under the Doha Declaration on the TRIPS Agreement and Public Health". Members had thus made their intent very clear; Cambodia understood the two sentences in question in this context and said that it would apply them accordingly.

### SPS and TBT Agreements

The main issues related to Cambodia's process of developing legislation that will identify the authority responsible for making notifications to the WTO, and ensure the transparency functions of the SPS and TBT Agreements. Some members enquired about the possibility of Cambodia committing to using the appropriate international standards—i.e., CODEX, International Plant Protection Convention, World Organization for Animal Health—during the transitional period before the provisions of the SPS and TBT agreements are applied. Others requested to see an outline of the steps that Cambodia plans to take to adopt these international standards.

### Customs Valuation and Smuggling

Some members complained that their private sector continued to report difficulty in entering the Cambodian market because of competition from smuggled goods. Weak enforcement impaired market access on an MFN basis, and was, in effect, a non-tariff barrier. In gaining accession to WTO, Cambodia needed to undertake an international obligation to deter smuggling more effectively<sup>42</sup> and to implement WTO customs valuation methods. The current methods were problematic with sequential methods that were not in compliance with WTO rules (i.e., tariff schedules broken down by country of origin enabled customs officials to impose different duties on automobiles originating in different countries).

### Anti-dumping, Countervailing Duties, and Safeguard Regimes

Cambodia took on a commitment not to use anti-dumping, countervailing, or safeguard measures until it had passed WTO-compliant laws governing its actions in these areas.



## Other Agreements

Cambodia agreed to make progress in the implementation of the Agreement on Rules of Origin,<sup>43</sup> and to ensure full compliance with the Agreement on Preshipment Inspections.<sup>44</sup> Cambodia also agreed to comply with the usual WTO rules and disciplines upon their accession, including (i) trade registration requirements/trading rights,<sup>45</sup> (ii) fees and charges for services rendered,<sup>46</sup> (iii) export regulations, (iv) publication of information on trade,<sup>47</sup> and (v) notifications.<sup>48</sup>

## Trade and Competition Policies

### Import Restrictions: Quantitative

Cambodia agreed that it would not introduce, reintroduce, or apply quantitative restrictions on imports,<sup>49</sup> or other non-tariff measures such as licensing, quotas, prohibitions, bans, and other restrictions having equivalent effect that cannot be justified under the provisions of the WTO agreements.<sup>50</sup>

### Import Restrictions: Tariff Rate Quota

Although Cambodia has not resorted to tariff rate quotas so far, it reserves the right to implement such quotas while respecting WTO disciplines on tariff rate quotas.

### Export Subsidies and Domestic Support

Cambodia made a commitment to bind export subsidies in agriculture at zero and not to apply such subsidies in the future.<sup>51</sup> Cambodia had maintained the right to provide export subsidies for industrial goods.<sup>52</sup> Cambodia was able to secure a commitment allowing it to continue to waive customs duties on imported inputs used by its export industries. This is extremely important for the garment industry, which needs to be able to secure imported inputs at the most favourable international prices if they, themselves, are to be competitive in world markets. Being able to waive import duties on imports used by exporting industries is also critical if Cambodia is to be able to attract other export-oriented industries to Cambodia. Although waiving duties on inputs of export industries is not allowed by WTO rules, the commitment made by Cambodia allowed it to continue its existing practice until 2013, after which it will need to choose among other, WTO-consistent, means for ensuring that its export industries can secure inputs at competitive prices.

## Industrial Policies

Cambodia agreed to bring its industrial policies and export subsidy programmes into line with the Agreement on Subsidies and Countervailing Measures.

## Internal Taxes

Cambodia agreed that it would apply internal taxes in a manner that does not discriminate between imported goods and domestically produced products.<sup>53</sup> The taxes would be in compliance with WTO provisions.

## Pricing Policies

Cambodia agreed that price controls would be brought into line with WTO rules and regulations (especially Article III.9 of GATT 1994).<sup>54</sup>

## Public Sector

### State Trading Entities

Cambodia agreed to ensure that current or potential state trading entities conformed with the rules and regulations of WTO, especially Article XVII of GATT.<sup>55</sup>

### State Ownership and Privatization

Cambodia made commitments to ensure transparency with regard to its privatization programme and to make periodic reports on reforms of its economic and trade regimes, as well as on the progress of the privatization programme. In addition, Cambodia undertook commitments to provide information to WTO members on its privatization programme.<sup>56</sup>

## Other Trade Arrangements

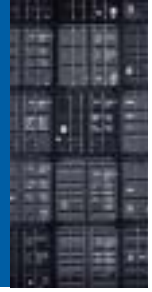
### Free Trade Zones and Special Economic Areas

Cambodia made a commitment that the rules and regulations governing free trade zones would be compatible with the rules and regulations governing international trade, namely the relevant agreements of WTO. It also agreed to inform WTO about the establishment of any free trade zones in the future.<sup>57</sup>

## Regional Trade Agreements

Cambodia agreed to provide notifications of regional trade agreements to WTO under Article XXIV of GATT 1994 and Article V of GATS, although Cambodia's only free trade agreement (within ASEAN) should be governed by the Enabling Clause as an agreement between developing countries and notified to the WTO Committee on Trade and Development.<sup>58</sup>

# IV Market Access Negotiations in Agriculture and Industrial Goods



## Main Outcomes

The initial outcomes of bilateral negotiations were mixed, which is not surprising taking into account the divergent agendas of various WTO members. Cambodia's goods and services initial offers were viewed and accepted by some WTO members as reasonable and a good starting point for negotiation. Others took a tougher position with regard to the offers and rejected them outright—for simple reasons such as Cambodia's tariff bound rates were too high or its market access for services were not deep enough. Others categorically imposed additional demands on Cambodia to commit to several sectoral initiatives such as the ITA, the Chemical Harmonization Initiative, and the “zero for zero” tariff binding on specific items. The zero for zero tariff reductions initiative was an initiative between the Quad members after the Uruguay Round. It was a request/offer system for the achievement of tariff reductions in which the parties involved aim at reducing tariffs to zero (i.e., eliminating tariffs) on a reciprocal basis in complete sectors, such as pharmaceuticals or wood products. Others requested that Cambodia bind all items in the tariff line at rates closer to the applied rates. For some key priority products they even requested a binding below the current applied rates. Others requested a short, or even, no transitional periods. For the agriculture sector, some wanted the country to stick to the “no export subsidy” commitment.

As the negotiations proceeded, Cambodia perceived a softening of the negotiating stance of WTO members leading to a satisfactory conclusion of the negotiations.<sup>59</sup> At the end of this process, all of the changes to Cambodia's initial offers that were agreed with the WTO members were brought together in a consolidated schedule of commitments on tariffs, and a consolidated schedule of commitments on services. These two schedules were part of Cambodia's accession protocol, and an integral part of its legal obligations as a WTO member. The various issues and outcomes that are related to the negotiations of both bilateral tracks of market access negotiations on goods and services are set out in detail in this chapter and Chapter V.

The following summarizes the main characteristics of the outcome of the market access negotiations in goods.

Cambodia agreed to implement its tariff offers largely upon accession. It bound 100% of tariff lines. This means that it has effectively set ceilings on the tariff rates of all imported products, which prevents it from increasing tariff rates on imported goods above the tariff rate to which it has committed. The agreed levels of the binding are in all cases equal to or greater than the level of tariffs that were actually applied by Cambodia in 2003. Thus, no actual reductions in tariffs were required because of WTO membership.<sup>60</sup>

The overall average bound duty rate that Cambodia has agreed to is 19.9%. This compares with the average rate of duty actually applied by Cambodia in 2003 of 16.5%. On agricultural products, Cambodia's simple-average bound rate is 30%, as compared with the average of rates actually applied in 2003 of 19.4%. Peak bound rates for the most sensitive products are 50–60%, and the lowest bound rates are 5%.

For industrial products, the average bound rate is 18.4%. This compares with the rate applied in 2003 of 16.0%. Peak bound rates are 50% and minimal rates are 0%. Cambodia did not participate in the optional tariff initiatives—namely, the zero for zero tariff reduction initiatives, the ITA, and chemical tariff harmonization.

## Specific Outcomes of the Negotiations on Goods

### Bound Tariffs

Cambodia made progressive efforts in various rounds to substantially improve its offer, something members acknowledged.

For agriculture products, Cambodia reduced its average binding rates (ABR) overall by 18.8% from 62.8% to 44% between the second working party and the third. After this substantial reduction, only 64 agricultural goods tariff lines were set at 100%, 238 at 60%, 352 at 40%, 151 at 30%, and 143 at 15%.<sup>61</sup>

Further improvements were made at the fourth working party where the ABR of 44% as submitted at the third working party was reduced to 30.88%, representing another reduction of 29.81%. The peak bound rate of 100% was also reduced to 60%. The lowest bound rates were further reduced from 15% to 5%. At the conclusion of the negotiations, Cambodia's simple-average bound rate was set at 30%, peak bound rates for the most sensitive products were 50–60%, and the lowest bound rates were 5%. In this respect, Cambodia believed that its tariff bound rates were reasonable compared with those of some WTO members. As an LDC, Cambodia's efforts to reduce its bindings were made at the maximum

possible, mindful of the possible consequences on its customs revenues and protection of domestic industries.

The reductions were mainly in meat, meat products, oil, fisheries and seafood products, sugar, and cacao and cacao products. The only exceptions were beer and tobacco products where Cambodia still retained a high level of tariff binding. For temperate-climate products that Cambodia intended to use in the tourism industry, a maximum reduction in the tariff binding was also made.

On industrial products, Cambodia made an overall reduction of 7.14% from 34.58% at the second working party to 27.44% at the third working party in areas like chemicals, drugs, plastics, rubber, yarn, wool, steel, tin, machinery, electrical equipment, photographic equipment, audiovisual equipment, train, wagons, vehicles, and other industrial products.<sup>62</sup>

On specific products like beer, pharmaceutical drugs, steel construction, agricultural equipment, medical equipment, furniture, chemical products, and information and communications technology equipment, despite some members' request for a 0% binding, Cambodia still retained them, at least at the current applied rate for revenue purposes. For industrial products, their average bound rates were reduced from 27.44% to 20.71%. The peak bound rates were also reduced from 100% down to 60% with the number of tariff lines with peak bound rates decreasing significantly from 12 categories down to 7. At the conclusion of the negotiations, Cambodia's average bound rate was set at 18.2%, the peak bound rates at 50%, and minimal rates at 0%.

On sensitive products, Cambodia used primarily tariff peak bound rates as a protectionist tool. Typical examples of lower tariff peak products were many unprocessed agricultural products (rice, coffee, vegetables, etc.). Maximum tariff peak rates covered products with high customs revenues (e.g., passenger motor vehicles, petroleum products, and alcohol products). The reasons for the sensitivity surrounding these products are complex. Tobacco products were included in the sensitive list for public health reasons. Live fish (*sushi*) are considered as luxury products to serve primarily the Japanese tourism industry. (A summary of tariff peak products with 50–60% rates can be found in the top two columns of Annex IV, Part I and Part II.)

Throughout the negotiation stage, members as a whole appreciated Cambodia's efforts to lower its bound tariff rates, noting that this provided a basis for substantial progress in negotiations and allowed them to narrow their request to focus on the remaining critical points. Key members re-submitted a relatively short list, in recognition of Cambodia's good faith efforts and its LDC status, for items that

they considered of economic interest to their particular economies.

To quote one member's statement:

"...We have heard your concerns regarding your least developed status and the stringency of our previous request. Consequently, we have made a significant effort to pare down our request, so that we can move this negotiation forward.... Our revised offer continues to seek meaningful market access improvements but in a manner that considers your least developed status. We have tried to strike a reasonable balance that factors in your revenue concerns, our trade and development interests, and your relationship with other trading partners..."

Some members offered to consider exclusion of individual tariff lines if Cambodia could provide a specific rationale for the higher binding sought on each. Others noted their readiness to negotiate staging periods for sensitive areas. Some members withdrew their requests for any sectoral commitments and cuts below current applied rates.

### Sectoral Initiatives: Participation in the Information Technology Agreement and the Chemical Harmonization Initiative

Most developed members encouraged, while others insisted, on Cambodia joining the ITA and the Chemical Harmonization initiative for its own economic benefit or development. Some made it clear that they were not requesting Cambodia to do so, mindful of the General Council decision adopted on 10 December 2002 on the accession of LDCs. Joining the ITA would mean for Cambodia a sharp drop, right down to a zero tariff rate, on IT products covered by the Ministerial Declaration of 13 December 1996 on Trade in Information Technology Products. Joining the Chemical Harmonization Initiative would also mean a reduction in the tariff rate, even with generous offers of staging periods.

Though Cambodia, as an LDC, was of the view that these demands were unreasonable from the negotiation perspective, it nonetheless saw the merits of the development argument (e.g., access to cheaper IT products, and the ability to attract investment and develop regional ties in the ITA sector). To support its own development policies, Cambodia has unilaterally lowered its tariff on IT products to an average of 16.68% only with the ABR at 26.01%. For some IT products, the applied tariffs were already set between 0% and 7%. Cambodia also advised that it had already unilaterally and gradually lowered the tariff on pharmaceuticals and chemical products. The average applied rate (AAR) for these products was 11.38% while the ABR was only 17.03%. The AAR for chemical products was 11.38%; their ABR was reduced from 17.03% to 11.61%.

Cambodia was of the view it did in fact, to a degree, already take part in these sectoral initiatives. Moreover, its concerns focused to a large extent on maintaining good sources of customs revenues. As a result of these arguments, all developed members, one after the other, decided to drop their request for Cambodia to join the sectoral initiatives.

### Initial Negotiating Rights

Most, if not all, members requested Cambodia to accord them Initial Negotiating Rights (INR). Granting INR did not in itself add any higher level of commitments on the part of Cambodia in terms of its tariff commitments. The effect was that it ensured a right to the member that received such a right to participate in the negotiation if Cambodia wanted in the future to change its tariff binding. Interested members with INR would be entitled to compensation with respect of bindings that might be reduced on other products of interest to them. Members felt that it was a way to preserve the balance of rights and obligations among the WTO membership.

Cambodia informed concerned members that it would accord INR status based on the principles of “principal or substantial suppliers”. The qualifying threshold value for the imported products must be at least 10% of the total product imports. Cambodia informed concerned members that it would have to check its trade volume data to ascertain whether that member had exported those products in its request list before it could decide to accord them the INR status.

### Tariff Rate Quotas

Cambodia indicated its need to study the Special Safeguard and Tariff Rate Quotas (TRQs) implementation, i.e., the products to which it intends to apply TRQs. It would subsequently provide indications for which products it intended to apply the TRQs and clarify that its intention would be to use TRQs—if any—only within the agreed bound rates, so that the out-of-quota rate would not, in any event, exceed the WTO-bound rate.

### Non-Tariff Measures

Some members requested that Cambodia provide advice of any non-tariff measures applicable and those that are not justified under WTO be eliminated by the date of accession, including those related to SPS, TBT, and import licensing.

Cambodia confirmed that it would use only measures allowable under WTO rules, like TBT/SPS measures and import licensing. To make these non-tariff



measures consistent with the WTO agreements, Cambodia stated that it needed time, as mentioned in the respective action plans, as well as technical assistance to develop relevant legislation and training of staff in these areas.

### Market Access in Textiles

Cambodia was requested to bind its textile and apparel tariffs at the rates agreed to bilaterally in the 1999 US-Cambodia Bilateral Textile Agreement. Moreover, it was agreed that the first stage of the growth rate provisions of the Agreement on Textiles and Clothing would be applied.

### Other Duties and Charges

Some members requested clarification and listing of other duties and charges of a kind covered by Article II:1(b) of GATT 1994 and proposed that Cambodia agreed to bind those at zero to reflect the fact that no such duties and charges would be imposed. The necessity for this was a commitment that covered all kind of costs to make the market access commitment effective and predictable.

Cambodia confirmed that other than ordinary customs duties, it imposed no duties or charges of any kind within the meaning of Article II:1(b) of GATT 1994 on or in connection with importation, except for petrol and diesel. On these two items, Cambodia was imposing a charge of US\$0.02 and US\$0.04 per litre, respectively. Cambodia confirmed that these other duties and charges were being transformed and incorporated into a compound tariff rate. It further confirmed that it would bind these charges and all other charges within the meaning of Article II:1(b) of GATT 1994 at zero, in its Schedule of Concessions and Commitments on Goods.

### Staging Period

In the matter of the transitional period, members were concerned with the long transitional period of 10 years as requested by Cambodia in its initial offering. Generally, members were not opposed to a transitional period but Cambodia needed to provide justification for what it considered as sensitive areas for domestic concerns (e.g., why it needed it, and what measures it would take or do to reform during the staging period to foster its infant industries).

Cambodia recognized that the 10-year across-the-board implementation period was a huge request, and as such agreed to eliminate most of the products from the list with the exception of certain products that it considered necessary to protect customs revenues and domestic infant industries. With regard to automobiles,

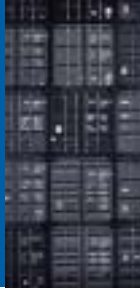
Cambodia confirmed that it had not requested a transitional period in its current offer (60% bound rate; 35% applied rate). As the same rate also applies to Cambodia's ASEAN partners, WTO members will have an equal chance to affirm themselves on the Cambodian market in the coming years. In the near future, it was foreseen that the country would lower its rate from 35% to 5% between 2007 and 2010 in the framework of the ASEAN Free Trade Area.

### Support to Agriculture

The examination by WTO members of Cambodia's support for agriculture revealed that it does not provide such support in ways that distort international trade. Cambodia thus was not required to commit to reducing such support. Under existing WTO rules, the country has the future option of providing assistance that distorts trade up to a limit equal to 10% of the value of its agricultural output (in the case of support measures of a general character) and 10% of the value of each crop (in the case of measures that are applied only to that crop). Further, Cambodia remains free to provide unlimited support to its agriculture sector in ways that do not distort trade. These features, taken together, provide ample leeway for any support policies that a future government may wish to implement.



# V Market Access on Negotiations on Services



## Main Outcomes of the Negotiations for Market Access in Services<sup>63</sup>

Cambodia has undertaken market access commitments in at least one sub-sector under each of 11 different services headings under the WTO classification (excluding “other services not included elsewhere”). These are business services; communications services; construction and related engineering services; distribution services; education services; environmental services; financial services; health-related services; tourism and travel services; recreational services; and transport services.

Services commitments totalled 19 categories and at the sub-category level, Cambodia included 74 sub-categories in its schedule, some sectors with full sub-sector commitments, and other sectors with partial commitments and transition periods (for example, up to 1 January 2009 for the telecommunications sector).<sup>64</sup> These commitments are carefully drafted and reflect Cambodia’s development policies aimed, in particular, at attracting foreign investment.

The commitments that Cambodia undertook in these sectors have the following characteristics.

First, following its strategy for services, Cambodia centered its negotiations on areas that would contribute most to improving those services required by businesses, thus enhancing the environment for investment. For example, Cambodia committed itself to allowing foreign firms to operate in the areas of legal services (with some exceptions), accounting, auditing, bookkeeping, banking, management consulting, telecommunications, and transport.

Second, following this strategy further, Cambodia made commitments in areas that will help Cambodians develop the skills needed for a modern, competitive economy. Thus, it committed to allowing foreign firms to provide higher education and adult education services.

Finally, Cambodia undertook commitments in areas that it felt would contribute to improvements in health care and in the provision of sanitary, refuse, and sewerage

services. Cambodia believed that these can all contribute to improvements in public health in the country.

A number of other considerations entered into the negotiators' decisions to agree, or not, to requests. First, Cambodia felt particularly comfortable in taking on commitments in sectors where it had long had an open policy regarding foreign participation and where that policy has served the country well. This is the case, for example, in banking, tourism, transport, and courier services. Cambodia also felt particularly comfortable in opening up some sectors where it knew its citizens could compete successfully with foreigners, for example in guide services. Where, however, Cambodia saw an advantage for the country in reserving part of a market for domestic small and medium enterprises, it did so. For example, it committed to opening its hotel market only for hotels of three stars or higher, and committed to allowing foreign supply of retailing services only for a small number of specific items or for very large supermarkets or department stores.<sup>65</sup>

Overall, Cambodia believed that it came out of the negotiations on services with a set of commitments that fully reflected its strategy and that will contribute to the future development of the country.

## Specific Outcomes of the Negotiations on Horizontal Commitments

### Subsidies

Cambodia was requested to clarify whether the language “(unbound for) for subsidies and for research and development” was meant to describe the types of subsidies, rather than expand the scope of the limitation. If that was the case, the suggested redrafting should state, “subsidies, including for research and development”. Some members asked if Cambodia intended to give domestic firms preference on subsidies.

Cambodia was aware that there was no specific rule of GATS dealing with the subsidy issues. However, it had only, to a limited extent, social subsidies such as free education and health care. Key WTO members appreciated Cambodia's efforts at narrowing the modes of supply affected by the national treatment limitation for subsidies and made a compromise with Cambodia over its request to maintain the right to use subsidies, including research and development.

## Tax Measures

A member requested Cambodia not to discriminate against its nationals in terms of taxation treatment under the national treatment column. That member had experienced several cases of taxation discrimination against its nationals, which were very costly for it to bring to the panel.

Cambodia has agreed to schedule “none” for all three modes of supply, namely mode 1 on cross-border supply, mode 2 on consumption abroad, and mode 3 on commercial presence.

## Land

In its initial offer, Cambodia scheduled in mode 3 that non-Cambodian natural and juridical persons may lease but not own land. Some members have requested clarification on prohibition on land ownership and details of the terms and conditions under which foreign service suppliers, both individuals and juridical persons, can lease land.

Foreign service providers cannot own land, but they may receive a concession land from the Government for up to 99 years when two criteria are met: the land area must be at least 10,000 hectares and it must be used for agricultural development purposes. Otherwise, foreign service providers can lease private land on a contractual basis between the lessee and lesser. There is no restriction imposed by law on the terms and conditions. Moreover, although foreigners are not allowed to own land, they can still own buildings and structures on the land. Cambodia clarifies that land leases are all privately leased except for state land. All terms and conditions are privately settled among the parties.

## Acquired Rights

A member requested that Cambodia also provide protection for existing foreign service suppliers already operating in the country prior to its accession to WTO. Cambodia saw no objection to the request.

## Commercial Presence

In its initial offer, Cambodia scheduled in mode 3 on commercial presence that authorization and meeting of established requirements for operation in sensitive areas of business activities would be required. Some members have requested clarification on what are considered as sensitive areas (i.e., provide a list of these sectors with criteria of eligibility) as well as the legal basis (i.e., government decrees)

governing them. They were of the view that market access and national treatment limitations on sensitive areas of business activities should be addressed in the sector-specific commitments. Scheduling in such a manner would provide a more transparent approach and foster a positive investment climate for service suppliers in Cambodia. Some members requested an outright removal of market access limitation on these sensitive areas.

After joining ASEAN, Cambodia was required to prepare a sensitive list of investment sectors for reasons of national security, social safety, and economic sensitivity. However, the recent amendments to the Law on Investment will abolish all these sensitive sectors already. As such Cambodia agreed to delete this limitation as well as its footnote.

## National Treatment

In its initial offer, Cambodia scheduled “unbound” under mode 3 on national treatment. Some members considered that a horizontal commitment for mode 3 is too extensive. In general, this should be negotiated within each specific commitment.

Cambodia argued that there were ongoing legislative and regulatory reforms being undertaken by different ministries, in many areas governing commercial activities, particularly in services sectors. Cambodia would like to retain the flexibility in the horizontal commitments in scheduling other sectors/sub-sectors that have not been committed. However, Cambodia agreed to remove “unbound” and replace with “none” for national treatment on mode 3 with the understanding that the limitations would be scheduled under sector/sub-sector-specific commitment.

## Investment Incentives

Several members requested Cambodia to remove the requirement that foreign investors are obligated to provide training and promotion to Cambodian staff. They argued that these measures will be seen as restrictive measures imposed on potential investors and would discourage them. Other members wanted Cambodia to clarify the criteria and the legal basis for these requirements.

In response, Cambodia stated that the Law on Investment introduced the requirement to train and promote Cambodians as a general principle, without providing details on the procedures for its implementation. In practice, this principle is applied on a best endeavour basis by inviting prospective investors to take into account development needs of Cambodia, especially in strengthening human resources and in ensuring growth in labour productivity. Cambodia insisted

on keeping the limitation that requires an obligation for investors to provide adequate training and consistent training to Cambodian staff, including promotion to senior positions.

## Movement of Natural Persons

Cambodia initially scheduled mode 4 as “unbound” except for measures concerning the entry and temporary stay of a natural person who falls under one of the following categories: business visitors; intra-corporate transferees; management personnel; and experts. Entry and stay of business visitors shall be for a period of 90 days, renewable. Temporary residency and work permits are issued for 1 year and may be renewed.

**Work permits.** Some members were concerned with the short time work permit of 1 year and its renewal process (i.e., foreign service suppliers may have their management team working on long-term projects exceeding 1 year) and needed to know in detail about the work permit system, its precise conditions for the initial grant, the renewal, and appeals procedures. They requested Cambodia to extend the duration of the temporary residency and work permits for natural persons to 3 years, with renewal for 2 years.

Cambodia explained its position that the validity of an entry visa of up to 90 days for business visitors is to provide flexibility for them to come to Cambodia at any time within the validity of their visa with an actual stay of 30 days. Cambodia also advised that the 1-year work permit with renewal is a common practice elsewhere. There is no limitation on the number of renewals. To date, there were no complaints from the expatriate community over work permit and renewal application. Cambodia would provide the relevant information on the conditions and procedures for renewal. In its final offer, Cambodia committed to provide work permits for 2 years with annual renewal up to a maximum of a total of 5 years.

**Labour market test.** Some members requested Cambodia to remove any form of labour market test (“and whose qualifications and expertise are not available in the Kingdom of Cambodia”) for intra-corporate transfers between affiliated companies for executives and managers.

Cambodia confirmed that the Labour Law provides that up to 10% of employees can be foreign, but in case specific skills are not available in Cambodia, firms may submit their application to the Minister of Labour for approval to bring those skills into Cambodia. In the final offer, Cambodia agreed to eliminate the labour market test for executives and managers while retaining the commitment for other categories of intra-corporate transfers.



**Contractual services suppliers.** Some members suggested that Cambodia consider making a horizontal commitment for natural persons employed in the services sectors as contractual service suppliers. A contractual service supplier is a juridical person with no commercial presence in Cambodia, who has obtained a service contract in Cambodia requiring the presence of its employees there to fulfil that contract. Such natural persons can be required to have a university degree or equivalent technical qualification—plus the appropriate professional qualifications where this is required by domestic law.

Cambodia asserted that it had no distinction for such type of contract arrangements. Every one is treated as a foreign service provider. Contractual services provided by foreign professionals can be carried out if they registered as sole proprietorships or through making a contract with registered firms in the country. Cambodia declined to make any commitment at that point in time.

## Specific Outcomes of the Negotiations on Specific Commitments

### Form

Some members recommended Cambodia to schedule its commitments based on the “Services Sectoral Classification List” of the WTO secretariat document: MTN.GNS/W/120. For the telecoms sector, the commitments should be based on the scheduling principles provided by the documents: “Notes for Scheduling Basic Telecom Services Commitments” (S/GBT/W/2/Rev.1) and “Market Access Limitations on Spectrum Availability” (S/GBT/W/3). For financial services, Cambodia should follow the classification in the Annex of Financial Services.

### Business Services

**Mode 1 (cross-border supply).** Generally under business services, Cambodia initially put forward its offer with a limitation on mode 1 (cross-border supply). Many members, while welcoming the offer, requested Cambodia to remove the requirement that a company must have commercial presence in the country before it can provide services through mode 1 for architectural and engineering services, arguing that while larger and more established foreign service providers may have the ability to maintain a commercial presence, this requirement discriminated against smaller firms. Many companies often provide cross-border supply of services, such as providing blueprints and professional advice, by telephone, facsimile, and Internet. They requested full market access and national treatment commitments (inscribed as “none”) in mode 1.<sup>66</sup>

Cambodia explained that the limitation on mode 1 was aimed at encouraging participation of domestic architects in this field, transfer of knowledge and know-how, and legal responsibility and liability, but not to restrict market access. Foreign firms can simply establish a small office in the country to provide assurance for quality of their services and to ensure legal liability.<sup>67</sup> Cambodia insisted on keeping the limitation so as to provide some degree of assurance in preventing fraud for services provided by individuals or firms outside Cambodia. Given the weak institutional system, the authorities may also face a challenge in ensuring that standards and other requirements in assuring quality of services supplied are implemented. From the business perspective, mode 1 (cross-border) does not appear as a relevant mode of trade in the area of architecture, as it does not provide for the full understanding of the local environment and does not ensure a client-architect relationship. IT inputs (example, computer-generated graphic design) are the most relevant in providing cross-border inputs into the final output of architectural and engineering design services, and are fully committed under computer services.

Cambodia noted that the limitation on mode 1-related trade is aimed at promoting investment in the country, including job creation and transfer of know-how. Limitation on mode 3 is in line with GATS Article XIX.2 and IV, since it aims at ensuring transfer of knowledge, know-how, and technology on a commercial basis and is the best way to improve capacity of local professionals.

**Mode 2 (consumption abroad).** Cambodia generally had no restrictions.

**Mode 3 (commercial presence).**<sup>68</sup> Generally under business services, Cambodia initially put forward its offer with a limitation on mode 3 (commercial presence required). In architectural, engineering, integrated engineering and urban planning, and landscape architectural services, Cambodia imposed a requirement that "Overall responsibility must be with a Cambodian architect or engineer". Some members sought clarification on the scope and purpose of this commitment (i.e., the required documents and designs that are to be organized with the Cambodian architect/engineer) and requested Cambodia to remove the need to have plans or blueprints signed by Cambodian architects or engineers.

In legal services, Cambodia placed a limitation on mode 3 requiring a partnership with a Cambodian lawyer and prohibiting direct representation of clients in courts. Some members sought mode 3 commitments permitting foreign lawyers to partner with Cambodian lawyers, as well as other business forms that will enable lawyers to associate with each other in a manner preferable to the respective parties. Partnership with Cambodian lawyers should not be required when the object of the legal services is international law, home country law, or third-country law.

The Cambodian Law on the Bar allows a partnership only with a local lawyer. Representation in Cambodian courts is restricted to Cambodian lawyers. The limitation on mode 3 was aimed at ensuring legal responsibility, job creation, transfer of knowledge, and know-how. In its final offer, Cambodia showed some flexibility by agreeing to change from partnership to a form of association which gives more leeway to the requesting member. Moreover, Cambodia also made a full commitment on foreign legal consultancy on the law of jurisdiction where the service supplier is a qualified lawyer (including home country law, third-country law, and international law).

**Mode 4 (Movement of natural persons).** Cambodia scheduled mode 4 as “unbound for all the business services”.

**Services sectors not committed.** Throughout the negotiations, Cambodia was encouraged to consider making additional offers such as investigation and security, public opinion polling services, printing and publishing services, broadcasting, related scientific and technical consulting services, veterinary services, and real estate services (i) involving own or leased property and (ii) on a fee or contract basis.

The Cambodian side provided justification that some of these services sub-sectors (i.e., investigation and security, public opinion polling services, printing and publishing services) are politically and culturally sensitive and, therefore, Cambodia could not open them for the time being.

Others (advertising services) are de facto open, with many European firms already operating in the market, but Cambodia needed time to strengthen local service providers as well. As such, Cambodia agreed to “unbound until 31 December 2008” for modes 1, 2, and 3 of market access and national treatment and to undertake commitments no later than 1 January 2009.

For the remaining sub-sectors, Cambodia explained that it did not have supporting legislation in place, nor had a strategy been prepared in terms of its future development. Based on the provisions of GATS Article XIX.2, the Government of Cambodia considered that it was premature at present to undertake commitments in those services based on the assessment of its own development needs. Putting institutions as well as financial and human resources for the development of an adequate legislative and development strategy in those areas was not of primary importance in terms of Cambodia's immediate development needs.

As a matter of practice, whenever Cambodia received requests from members for new liberalization of sub-sectors, it consistently sought clarification on whether

those members had significant commercial interests in those particular sub-sectors, and whether they had any immediate intention to invest in Cambodia.

Type of Services Sector or Sub-Sector	Description of Commitments
<b>I. BUSINESS SERVICES:</b>	
There are six sub-sectors under business services. Cambodia made commitments in all sub-sectors.	
<b>1. Professional Services:</b> There are 11 sub-sub-sectors under this sub-sector. Cambodia committed in eight sub-sub-sectors.	
(a) Legal services (CPC 861) Foreign legal consultancy on law of jurisdiction where service supplier is qualified as a lawyer (including home country law, third country law, and international law)	The only requirement is commercial association with Cambodian lawyers and the restriction is they may not directly represent clients in court.
(b) Accounting, auditing, bookkeeping (CPC 86211, 86212, 86220) <sup>1</sup>	
(c) Taxation services (CPC 8630)	
(d) Architectural services (consulting, planning or design services) (CPC 8671)	
(e) Engineering services (CPC 8672)	
(f) Integrated engineering services (CPC 8673)	
(g) Urban planning and landscape architectural services (CPC 8674)	
(h) Specialized medical services (CPC 93122) Dental services (CPC 93123) <sup>2</sup> These services are limited only to orthodontic services, oral surgery, and other specialized dental services	
<b>2. Computer and Related Services:</b> There are 5 sub-sub-sectors under this sub-sector. Cambodia committed in all sub-sub-sectors.	
(a) Consultancy services related to the installation of computer hardware (CPC 841)	There is no restriction applied in these sub-sub-sectors, the market is fully open, except mode 4 in that the number of foreign employees working in a firm is subject to Cambodian Labour Law. There are currently no licensing or qualification requirements for computer and related services in Cambodia.
(b) Software implementation services (CPC 842)	
(c) Data processing services (CPC 843)	
(d) Data base services (CPC 844)	
(e) Other (CPC 845+849)	

Type of Services Sector or Sub-Sector	Description of Commitments
<b>5. Rental/Leasing Services without Operators:</b> There are 5 sub-sub-sectors under this sub-sector. Cambodia committed in 1 sub-sub-sector.	
(d) Renting and leasing of studio recording equipment (CPC 83109) <sup>2</sup>	
<b>6. Other Business Services:</b> There are 20 sub-sub-sectors under this sub-sector. Cambodia committed in 9 sub-sub-sectors.	
(a) Advertising services (CPC 871)	(1), (2), (3) Unbound until 31 December 2008 for both market access and national treatment. Cambodia will undertake a commitment no later than 1 January 2009.
(b) Market research services (c) Management consulting services (CPC 865) (d) Services related to management consulting (CPC 866) (e) Technical testing and analysis services (CPC 8676)	<p><i>Note on the Sub-sector:</i> These services do not have supporting legislation in place, and no strategy has been prepared in terms of their future development.</p> <p>Nonetheless, fully aware of the important role that these services play in the economic development, Cambodia considers that even at the present stage it can undertake a few commitments in these services sectors.</p>
(h) Services incidental to mining (CPC 883) <sup>2</sup>	These sub-sector commitments do not include ownership of resources.
(j) Services incidental to energy distribution (887) <sup>2</sup> Exclusively covers only consultancy services related to the transmission and distribution on a fee or contract basis of electricity, gaseous fuels, and steam and hot water to household, industrial, commercial, and other users	<p>Cambodia believed that opening market to foreign service providers will attract foreign investment and provide to energy companies the expertise to produce energy efficiently. This in turn feeds into Cambodia's goal to reduce dependency on foreign energy sources.</p> <p>One member explained that it had strong interests in these sub-sectors as one of its firms is one of the leading mining companies in the world.</p>
(k) Placement and supply services of Personnel (CPC 872)	
(q) Packaging services (CPC 876)	

<sup>1</sup> Cambodia established in 2003 the Kampuchea Institute of Certified Public Accountants and Auditors (KICPAA) to ensure promotion of the accountancy and auditing professions.

<sup>2</sup> Not all sub-sectors are committed as in practice they are very difficult to implement.

## Communication Services

**Courier services.** Cambodia initially did not offer this sub-sector in its services offer schedule. Some members requested for full market access and national treatment commitments for courier services, including express delivery.

The Cambodian market for courier services is already de facto quite open with operators like DHL, TNT, Federal Express, and UPS. Cambodia did not see any objection to accepting the commitment.

Cambodia initially offered very minimal commitment under this sub-sector in its services offer schedule. Most of the negotiating members generally showed a keen interest in Cambodia's effort in legislative reform in the sector and the regulations of the market. While they appreciated Cambodia's efforts to fully liberalize value-added services, they were disappointed that no commitments had been made with regard to basic telecommunications. Given the fundamental importance of this sector for the entire business community, they believed that the Government should consider liberalizing the entire sector and provide full market access and national treatment on all basic telecommunication services.

Most of the negotiating members requested that all market access and national treatment limitations be removed by 2008, including any foreign equity limitations applied. They requested Cambodia to accelerate the end of the monopoly operation in telecoms from 1 January 2009.

**Telecoms Reference Paper.** Most members suggested Cambodia adopt and implement the "Telecoms Reference Paper", which contained the following principles: inter-connection; spectrum management (issue of licence, or auction, acquittal of accounting rate on MFN and national treatment basis); safeguards; and the regulatory side separated from the supply side.<sup>69</sup> Cambodia committed to the reference paper in the additional commitments column.

The initial response of Cambodia was to inform the members that the Government had entered into a long-term contract with investors in the telecoms sector for a domestic market that is very small. Therefore, it would be difficult to fully liberalize this sector because the Government would be unable to assess the long-term investment for the new investors in this particular business. Moreover it was not possible for Cambodia to offer full market commitment on basic telecommunication services at this stage since the legislative and regulatory framework were not yet in place.

As negotiations proceeded, and as internal policy options were explored and better appreciated, Cambodia saw the merit of foreign participation in this sector in the form of improved delivery of services, cheaper services and fee charges, and overall impact on the development of the economy. In the final offer, Cambodia agreed to open the sector fully by 1 January 2009 with foreign ownership allowed up to 51% of the capital of joint-ventures.

With regard to the reference paper, as Cambodia already had provisions for separation of the regulatory side from the supply side in its draft Telecom Law and as Cambodia had already attached the document in the services offer, it saw no objection to reflecting the reference paper in the additional commitments column.

**Economic needs test on mode 3 for mobile services.** Some members had requested further clarification regarding the need for an economic needs test (ENT) for prospective applicants providing cellular mobile telephone services. Cambodia should also specify the details of the licensing procedures. If Cambodia included this ENT due to concerns on spectrum limits, they argued that Cambodia would be covered by the note on “market access limitations on spectrum (S/GBT/W/3)”. Some members had requested the complete removal of the ENT from mode 3 (commercial presence) on market access for mobile phone services. Moreover, Cambodia was requested to add technology neutral language for the additional commitments column to read: “Cambodia commits to permit licensed suppliers of mobile telecommunications services choice of technology used in the supply of such services”.

Cambodia explained that there are currently five mobile phone companies operating in the country. As its market is so small, it may not be necessary to provide more licences to others unless the market warrants it (the rationale behind the requirement for the ENT test). Nonetheless, it agreed with the request to remove the ENT and let market forces take their course.

Type of Services Sector or Sub-Sector	Descriptions of Commitments
<b>II. COMMUNICATION SERVICES</b>	
There are five sub-sectors under this sector. Cambodia made commitments in only two sub-sectors.	
<b>2. Courier Services</b>	
Courier services (CPC 7512)	<i>Note on the Sub-sector:</i> A number of foreign companies, such as DHL, TNT, OCS, UPS, and FedEx, have already provided courier services in Cambodia. Although this market is not yet

Type of Services Sector or Sub-Sector	Descriptions of Commitments
	<p>regulated, these operators are required, in principle, to obtain a licence from the Ministry of Post and Telecommunication (MPTC).</p> <p>MPTC owns and operates the national postal system. The tariffs for main types of service are established by MPTC on the basis of the consumer price index and the conventions of the Universal Postal Union (UPU). There are 40 post offices in Cambodia: one postal department and 6 post offices under its supervision; 23 provincial and town offices; and 10 district post offices. The post offices in Phnom Penh provide all types of postal services as listed below. Six provincial cabinets provide express mail services and parcel services within and outside the country, as well as letter services; the remaining offices provide only letter services. Monopoly in providing postal services is granted to Cambodia Post for all mail transported that weighs 500 grams or less.</p>
<p><b>3. Telecommunication Services:</b> There are 15 sub-sub-sectors under this sub-sector and Cambodia committed to open all sub-sub-sectors.</p>	
<p>(a) Voice telephone services (CPC 7521)</p> <p>(b) Packet-switched data transmission services (CPC 7523)<sup>1</sup></p> <p>(c) Circuit-switched data transmission services (CPC 7523)<sup>1</sup></p> <p>(d) Telex services (CPC 7523)<sup>1</sup></p> <p>(e) Telegraph services (CPC 7522)</p> <p>(f) Facsimile services (CPC 7521<sup>1</sup>+7529<sup>1</sup>)</p> <p>(g) Private leased circuit services (CPC 7522<sup>1</sup>+7523<sup>1</sup>)</p> <p>(h) E-mail (CPC 7523)<sup>1</sup></p> <p>(i) Voice-mail (CPC 7523)<sup>1</sup></p>	<p>Cambodia has committed to open its market for fixed line telephony services starting no later than 1 January 2009 subject to requirement for local share holding of up to 49%. However, Cambodia has undertaken the obligations contained in the Telecoms Reference Paper upon accession.</p> <p><i>Note on the Sub-sector:</i> Although precise quantitative information is often lacking, it is clear that communications services have grown very rapidly during the past several years, and that the market for such services will continue to expand rapidly in the period ahead.</p>



Type of Services Sector or Sub-Sector	Descriptions of Commitments
(j) On-line information and database retrieval (CPC 7523) <sup>1</sup> (k) Electronic Data Interchange (CPC 7523) <sup>1</sup> (l) Enhanced/value added facsimile services, incl. store and forward, store and retrieve (7523) <sup>1</sup> (m) Code and protocol conversion (n) On-line information and/or data processing (including transaction processing) (CPC 843) <sup>1</sup>	
(o) Other services: – Mobile services	<p><i>Note on the Sub-sector:</i> The market for mobile telephony has undergone a rapid transformation, leading to growing selection of services and products for businesses and the population. Currently six operators, including Cambodia Telecom are providing mobile services in Cambodia. Growing competition among operators forced one operator (Tricelcam) to withdraw from the market by 2000, to be replaced by S Telecom. Another company (Camtel) is struggling to survive. Cambodia, being a very young economy, seeks to create a good investment climate to potential investors, to encourage long-term investments, which are only possible when certain levels of return on their investments can be ensured. Presently, the legislative base in the area of telecommunications is under preparation. In the absence of legal provisions governing licensing procedures for the establishment of new operators, each application is being reviewed on a case-by-case basis, taking into account the needs for further development of the network infrastructure, the expected coverage, and the customer base, etc.</p>
<p><sup>1</sup> Not all sub-sectors are committed as in practice they are very difficult to implement.</p>	

## Construction and Related Engineering Services

In its initial offer, Cambodia required foreign service providers to have a joint venture with a local company, though in practice such a requirement did not exist. This argument was used to retain some business in the country. Some members requested Cambodia to explain in detail the reasons and legal basis for the imposition of joint-venture requirements (i.e., establishment of joint corporation, limitations on percentage of foreign capital, and selection of partner in establishing joint venture).

For construction and engineering services, the sector was already wide open and since Cambodia needed more technology and know-how as much as additional increases in FDI to boost the economy, Cambodia agreed to the request.

Type of Services Sector or Sub-Sector	Descriptions of Commitments
<b>III. CONSTRUCTION AND RELATED ENGINEERING SERVICES</b>	
There are five sub-sectors under this sector. Cambodian made commitments in all sub-sectors.	
1. General Construction Work for Buildings (CPC 512)	<i>Note on the Sub-sector:</i> Due to the huge potential that could be generated from the construction business in the future, Cambodia has committed to allow foreign firms to establish in the country. Cross-border services are not allowed. The number of foreign employees working in a firm is subject to Cambodian Labour Law.
2. General Construction Work for Civil Engineering (CPC 513)	
3. Installation and Assembly Work (CPC 514; CPC 516)	
4. Building Completion and Finishing Work (CPC 517)	
5. Other (CPC 511, 515, 518)	

## Distribution Services

Cambodia did not include distribution services in the initial services offer because of concerns that making a commitment in this sector would open the flow of foreign service suppliers in the retail domestic market to the detriment of local retail stores owners. To grant full market access in this sector would seriously affect the growth of Cambodian small and medium enterprises and the economy as a whole. Many members, while appreciating Cambodia's difficulties, expressed great regrets that Cambodia had not bound this sector in its initial offer. They strongly requested Cambodia to bind distribution services, including distribution of automobiles and motorbikes, franchising services, commissioned agents' services, and deeper commitments in wholesale trade services.

Cambodia subsequently improved its offer in supermarkets and large department stores and retail services, though with limitations. Members further sought clarification of what supermarkets and large department stores would be included, or the sensitivities Cambodia was trying to exclude from its offer by not making a broader commitment.

Cambodia accepted motor fuel distribution services, but not others because of employment and immigration control problems. Cambodia insisted on retaining

Type of Services Sector or Sub-Sector	Descriptions of Commitments
<b>IV. DISTRIBUTION SERVICES</b>	
There are five sub-sectors under this sector. Cambodian made commitments in all sub-sectors under this sector with certain transitional periods.	
1. Commission agents' services (CPC 621)	Cambodia will open its market for these types of services starting 31 December 2008.
2. Wholesale trade services (CPC 622) including wholesale trade services of radio and television equipment, musical instruments and records, music scores and tapes (CPC62244)	<i>Note on the Sub-sector:</i> Cambodia's market is de facto open.
3. Retailing services, excluding pharmaceuticals. For supermarkets and large department stores only: <sup>1</sup> (CPC 631 + 632, including Retailing services of radio and television equipment, music instruments, music scores, and audio and video records and tapes CPC63234) – Wholesale and retail sales of motor vehicles (CPC 6111); – Sales of parts of motor vehicles (CPC 6113); – Sales of motorcycles and related parts (CPC 6121).	
5. Franchising services (CPC 8929)	Cambodia will open its market for these types of services starting 31 December 2008.
6. Other – Retail sales of motor fuel (CPC 613)	
<sup>1</sup> Large supermarkets and department stores are those of floor space no less than 2,000m <sup>2</sup> .	

the retailing services to remain only in supermarkets and large department stores as reflected in the previous offer. The danger for Cambodia, coming in particular from very strong intra-regional competition, is that allowing unrestricted retailing outside the supermarkets and large department stores would lead to a flood of small businesspeople from neighbouring countries in Cambodian markets and a devastation to Cambodian “mom-and-pop” businesses.

On commission agents' services and franchising, Cambodia stated its unwillingness to commit to accession (due to a lack of a legislative and regulatory framework) but agreed to a compromise to provide full national treatment commitments (inscribed as “none”) for modes 1, 2, and 3. Market access commitments will remain unbound until 31 December 2008.

### Educational Services

Cambodia initially did not offer this sub-sector in its services offer schedule. Some members subsequently requested it to commit the following sub-sectors: higher education services, adult education services, and other education. Cambodia did so with limitations on mode 3 (market access) described as: “except subject to approval by the ministry concerned, and accreditation aimed at ensuring standards and qualifications of institutions and individuals”. Members then requested Cambodia to clarify its mode 3 limitation (i.e., requirements for approval and accreditation of institutions and individuals, and whether these requirements are applied on a non-discriminatory basis or not).

Cambodia advised that the Ministry of Education, Youth and Sports had finalized the draft Law on Higher Education. When this Law has been adopted, it will provide the legal basis for liberalization of education services. In practice, there are many foreign universities from US, Australia, and United Kingdom that have entered into partnership agreements with local universities to provide higher education services in the country. Therefore, Cambodia did not see an issue,

Type of Services Sector or Sub-Sector	Descriptions of Commitments
<b>V. EDUCATIONAL SERVICES</b>	
There are five sub-sectors under this sector. Cambodia made commitments in three sub-sectors.	
3. Higher education services (CPC 923)	<i>Note on the Sub-sector:</i> Cambodia's market is de facto open
4. Adult education (CPC 924)	
5. Other education services (CPC 929)	

rather an economic opportunity, in making full market access and national treatment, and the country may benefit from such a commitment.

In terms of accreditation, Cambodia agreed to list under the additional commitments column the fact that it will seek to establish an independent national accrediting process for market purposes in education services, which is in keeping with global practice.

## Environmental Services

Cambodia initially did not offer this sector in its services offer schedule. Some members have subsequently requested Cambodia to commit all four sub-sectors: sewage services, refuse disposal services, sanitation and similar services, and other environmental services.

In all areas of environmental services as classified under GATS, Cambodia welcomes foreign investment and services. Moreover, Cambodia's legislative and regulatory framework is well developed in the area of environmental protection, such as the Law on Environmental Protection and Natural Resources Management, and the sub-decrees on Environmental Impact Assessment Process, on Water Pollution Control, on Solid Waste Management, and on Air and Noise Pollution Control.

Type of Services Sector or Sub-Sector	Descriptions of Commitments
<b>VI. ENVIRONMENTAL SERVICES</b>	
There are four sub-sectors under this sector. Cambodia made commitments in all sub-sectors.	
<ol style="list-style-type: none"> <li>1. Sewage services (CPC 9401)</li> <li>2. Refuse disposal services (CPC 9402)</li> <li>3. Sanitation and similar services (CPC 9403)</li> <li>4. Other services:               <ul style="list-style-type: none"> <li>– Cleaning of exhaust gases (CPC 9404)</li> <li>– Noise abatement services (CPC 9405)</li> <li>– Nature and landscape protection services (CPC 9406)</li> <li>– Other environmental services not included elsewhere (CPC 9409)</li> </ul> </li> </ol>	<p><i>Note on the Sub-sector:</i> Cambodia looks to attract foreign investment and services to provide all areas of environmental services.</p>

## Financial Services

### *Life Insurance, Non-Life Insurance, Reinsurance, and Retrocession*

Cambodia initially did not offer life insurance in its services offer schedule. There was still no life insurance market nor any foreign service provider in the country. None of the insurance companies that had applied for a licence in the area of insurance has applied for the provision of life-insurance services. In the absence of the market for life insurance, lack of awareness among the population on the importance of life insurance and low income of the population, undertaking commitments in this sector would seem to be premature. Some members subsequently requested Cambodia to provide more information on the financial services market in Cambodia (i.e., what types of financial service providers, aside from banks and insurance companies, may provide services in Cambodia? What are the thresholds for underwriting large-scale risks? And why not allow non-insurance companies such as large banks to provide these kind of services?)

Regarding Cambodia's non-life mode 3 commitment, some members requested Cambodia to provide specific information on licensing requirements (i.e., whether these are applied on a non-discriminatory basis? And whether there existed any existing numerical or quota limitations related to this licensing?). Some members requested full market access for non-life insurance mode 1, 2, 3 for marine, aviation, and transport. For non-life excluding marine, aviation, and transport, they requested Cambodia to remove the limitation requiring licensing listed in mode 3.

For reinsurance and retrocession, some members requested information on whether Cambodia's existing insurance regime required companies to reserve 20% of their risk in Cambodia Re, and if so to provide the appropriate legal reference for any existing requirement. They also requested that Cambodia remove its market access limitation on modes 1 and 2 regarding contracts worth \$500,000 for reinsurance and retrocession.

Cambodia clarified its position regarding the requirement listed under mode 3, which applied equally to domestic and foreign companies. Insurance activities were regulated by the Insurance Law, adopted in 2000, and the Insurance Sub-Decree, adopted in 2001, for the implementation of the Insurance Law. The current licensing requirements for insurance companies were the following:

- (i) Registered capital \$7 million;
- (ii) Solvency margin \$3.5 million;
- (iii) Deposit requirement \$700 000;
- (iv) Licence fee KR5 million (equivalent to \$12,500); and

- (v) Provision of the necessary documents, including application form, statute, financial statement, curriculum vitae of the key officers and managers to be appointed and non-existence of criminal record, and sample of the insurance policy, etc. These requirements are listed under Articles 47 and 48 of the insurance sub-decree.

There are no legal barriers to entry for foreign insurance providers. They are allowed to establish a commercial presence through a branch. Natural or juridical persons of Cambodia can enter into a contract only with the insurance companies licensed to carry out insurance business in Cambodia. The need to reconsider this provision with respect to marine, aviation, and transport insurance would be taken into account in the process of further developing and adapting national legislation.

All insurance companies may provide reinsurance services. However, according to the insurance sub-decree, all insurance companies were required to re-insure 20% of their total risks in Cambodia Re. In addition, all insurance contracts of total sum insured of less than or equal to \$500,000 must be reinsured locally with any of the insurance companies operating in Cambodia. Caminco is operating on the same commercial basis along with other insurance companies in Cambodia.

Cambodia further explained that it was not in a position to phase out the requirement for 20% reinsurance with Cambodia Re. The company was established in 2002 and had just started its operations in this area. Based on experience accumulated, necessary amendments would be made to ensure that all the necessary preconditions would be in place for strengthening of the reinsurance market.

### *Banking and Other Financial Services*

Cambodia put forward initially a very limited services offer under commercial banking services, namely: (i) acceptance of deposits and other repayable funds from the public, and (ii) lending for financing of commercial transaction and productive investment. Some members, while appreciating Cambodia's initial offer, requested that Cambodia include all sub-sectors in the GATS Annex on Financial Services and then list any limitations it sought to maintain in these areas under the market access and national treatment columns. Their arguments were that there is a correlation between financial sectors open to foreign investment and economic growth, particularly when accompanied by strong financial sector supervision. The introduction of competition from reputable, international financial service providers can promote growth by increasing the productivity of financial intermediation. World class financial institutions can introduce the latest management and risk-sharing methods, the latest financial products that improve risk allocation, the best technology, and a wide variety of products and services to domestic businesses and consumers at low prices. Furthermore, the presence of

well-capitalized branches of foreign firms can expose the home market to advanced supervisory techniques given that home authorities would work closely with authorities hosting their institutions' branches.

Some members requested Cambodia to explain whether foreign banks were permitted to establish branches in Cambodia; whether foreign banks were permitted to purchase existing banks; whether there was a foreign investment cap on the establishment of banks in Cambodia; and whether commercial Cambodian banks were allowed to conduct activities other than deposit taking, lending and payment services (for example, factoring and leasing).

Cambodia was in agreement with members that sufficient commitments in financial services sector would encourage foreign investment. Cambodia has separate laws and institutions governing insurance and banking services and as such insurance and financial service providers are subject to different jurisdiction. Cambodia considered the financial sector as a very sensitive one where the existence of a sound legislative and regulatory framework is crucial for the protection of the public. For the moment, this framework was still lacking. For that purpose Cambodia and some members reached an agreement on the tabling of the sub-sectors (f)–(l) to reflect as: “Cambodia did not bind the sub-sectors until the Government determines what types of entities can conduct these services, the related laws and regulation are established, and such business is authorized by the government or other relevant designated authority”.

Type of Services Sector or Sub-Sector	Descriptions of Commitments
<b>VII. FINANCIAL SERVICES</b>	
There are three sub-sectors under this sector and Cambodia committed to open all of them.	
<b>1. Insurance and Insurances related Services:</b> There are 4 sub-sub-sectors and Cambodia made commitment in all of them.	
(a) Life insurance services (CPC81211)	Cambodia made a commitment only for mode 3 where the establishment of a commercial presence with 100% foreign ownership is allowed. The services must be provided through an insurance company. Cross-border supply is unbound except for marine, aviation, and transport insurance, which will be allowed from 1 January 2009 or once a law has been passed, the appropriate regulations are in place, and a local firm is authorized, whichever comes first and thereafter, none.
(b) Non-life insurance services (CPC 8129)	



Type of Services Sector or Sub-Sector	Descriptions of Commitments
(c) Reinsurance and retrocession (CPC 81299)	<p><i>Reinsurance:</i> All co-insurance companies must reinsure 20% of their total risks with Cambodia Re, until 31 December 2008. Insurance contracts of a total sum insured of less than or equal to \$500,000 must be reinsured locally until 31 December 2008. Insurance companies are free to choose where and with which company to reinsure all other risks.</p> <p><i>Additional commitments:</i> Cambodia needs to make the necessary amendments to ensure that all the necessary preconditions are in place for strengthening the reinsurance market by 31 December 2008.</p>
(d) Services auxiliary to insurance (including broking and agency services) (CPC 8140)	Cambodia places no restriction on cross-border supply.
<p><b>2. Banking and other financial services:</b> There are 12 sub-sub-sectors under this sub-sector and Cambodia made commitment only in 3 sub-sub-sectors. For sub-sectors (c), (e), (f)–(l), Cambodia will unbound them until the Government determines what types of entities can conduct these services, the related laws and regulation are established, and such business is authorized by the government or other relevant designated authority.</p>	
The commitments for sub-sectors (a), (b) and (d) refer to commercial banking only.	<p><i>Note on the Sub-sector:</i> As of 30 September 2002, the banking sector in Cambodia included 13 commercial banks, 1 of which was a state-owned bank, 9 privately-owned banks, and 3 foreign-owned banks (two of which were subsidiaries). The Law on Banking and Financial Institutions (LoBFI) and subsequent regulations guaranteed foreign banks rights and obligations equal to local banks and there was no restriction regarding foreign ownership of banks.</p>
(a) Acceptance of deposits and other repayable funds from the public (CPC 81115–81119)	The scope for the operations of banks and financial institutions are set out in the LoBFI, which includes among others leasing, guarantees, and commitments under signature, etc. However, at the moment banks are mainly focusing in the area of acceptance of deposits and lending.
(b) Lending of all types, including, among others,	A financial institution can be locally incorporated in Cambodia or be a branch of a

Type of Services Sector or Sub-Sector	Descriptions of Commitments
consumer credit, mortgage credit, factoring and financing of commercial transaction (CPC 8113);	foreign bank. There are no separate regulations to govern foreign bank branches. Both local banks and foreign banks are subject to the same prudential and supervisory procedures.
(d) All payment and money transmission service, including credit, charge and debit cards, traveller cheques and bankers drafts (CPC 81339) <sup>1</sup>	A Prakas on Licensing of Rural Credit Specialized Banks came into effect in January 2000. During 2002, with the aim of strengthening micro-finance institutions and specialized banks two more Prakas have been issued: Prakas on Loan Classification and provisioning Applicable to Specialized Banks and Licensed Micro-Finance Institutions, and Prakas on Onsite/Offsite Inspection Procedures. The former is aimed at classifying different types of loans and establishing the necessary credit provision while the latter addresses procedural aspects related to the examination of the banking activities in terms of their compliance with the relevant provisions of laws and regulations.
The commitments for sub-sectors (c) and (e) refer to commercial banking only.	In addition to commercial banks, specialized banks and insurance companies, a number of and micro-finance institutions currently have operations in Cambodia. Some NGOs (about 90 operating to date), which started their operations with humanitarian activities and began focusing on poverty reduction in line with a government policy introduced in 2000, also provide some sort of financial services by issuing credit and promoting savings especially among their members. There is no specific law/regulation to govern non-bank financial institutions. So far no non-bank financial institution has applied nor approached officially Cambodian authorities to provide such services. Perhaps this relates to the fact that the financial sector in Cambodia is still in its early stages of development and in the reform process.
(c) Financial leasing (e) Guarantees and commitments (f) Trading for own account	For sub-sectors (f)–(l), Cambodia did not bind the sub-sectors, waiting until the Government determines what types of entities can conduct these services, the related laws and regulation are

Type of Services Sector or Sub-Sector	Descriptions of Commitments
<p>or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:</p>	<p>established, and such business is authorized by the Government or other relevant designated authority.</p>
(a) Money market instruments (including cheques, bills, certificates of deposits);	<p><i>Note on the Sub-sector:</i> The LoBFI has no specific provision regarding the supply of financial information and advisory services. So far there has been no request from banks to carry out this service.</p>
(b) Foreign exchange;	
(c) Derivative products including, but not limited to, futures and options;	
(d) Exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;	
(e) Transferable securities; and	
(f) Other negotiable instruments and financial assets, including bullion.	
(g) Participation in issues of all kinds of securities, including underwriting and placement as agency (whether publicly or privately) and provision of services related to such issues;	
(h) Money broking;	
(i) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;	
(j) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;	
(k) Provision of financial information, and financial data processing and related software by suppliers of other financial services	

Type of Services Sector or Sub-Sector	Descriptions of Commitments
(l) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, and advice on acquisitions and on corporate restructuring and strategy.	
<sup>1</sup> According to services sectoral classification list, this refers to only part of the total range of activities covered by the CPC concordance.	

## Health-Related and Social Services

Cambodia did not offer this sub-sector in its initial services offer schedule. Some members sought full market access and national treatment commitments on the ownership and management of private hospitals and clinics including direct ownership, and management and operation by contract of such facilities on a fee basis (inscribed as “none”) for modes 1, 2, and 3.

Cambodia agreed to make the commitment as it was in line with the Government’s health sector policy. Cambodia recognized it has to develop more regulations to administer the sector.

Type of Services Sector or Sub-Sector	Descriptions of Commitments
<b>VIII. HEALTH RELATED AND SOCIAL SERVICES</b>	
There are four sub-sectors under this sector. Cambodia made commitments in one sub-sector.	
1. Hospital services Ownership and management of private hospitals and clinics only	<i>Note on the Sub-sector:</i> The law on hospital services has been adopted and the sub-decree has been passed. However, a number of specific questions on establishment and the operation of hospitals need to be clarified further. The general approach is toward opening of the market access to direct ownership and management and operation by contract of such facilities on a “for fee” basis. However, the primary objectives of the Government are to achieve the access to essential

Type of Services Sector or Sub-Sector	Descriptions of Commitments
	<p>medicine for the poorest parts of the population and to improve and ensure the quality of medical services. The private market for hospital services is very small with only three private hospitals operating in Phnom Penh (with a population above 1 million). The purchasing power of the people is very low and the burden for providing medical services falls on public establishments. Public hospitals are trying to adopt the “cost recovery” system, which is not functioning smoothly at the moment yet.</p>

### Tourism and Travel-Related Services

Cambodia initially offered only two sub-sectors, namely hotel services with limitation on mode 3, and tourist guide services. Some members sought deeper and broader commitments from Cambodia, to cover hotels and restaurants, travel agencies, and tour operators by providing full market access and national treatment commitments (inscribed as “none”). For hotel services some members requested commitment as well for 2 stars or lower.<sup>70</sup>

The sector is fully liberalized except for a restriction for mode 3. Cambodia intends to provide the opportunity for any Cambodian who has a small amount of capital to find their own partners to build 1- or 2-star accommodation or guest houses. Cambodia has no restriction on tourism travel agencies, except tour guides where they must use Cambodian guides to preserve the cultural heritage (foreign equity participation is limited to 49% for travel agencies). Cambodia also made a commitment in restaurant services where permits are granted taking into account the characteristics of the area, such as the number of and impact on existing restaurants, historical and artistic characteristics of the location, geographical spread, impact on traffic conditions, and creation of new employment.

Tourist guide services are particularly sensitive as they provide employment for lesser-skilled individuals, including women and young people. This limitation is fully in line with the development goals and objectives of Cambodia and is in line with provisions of GATS Article XIX.2 and Decision on Accession of LDCs. (Limiting access to nationals for tourist guides services is practised in a number of countries and Cambodia has found this limitation in the schedules of specific commitments of the present WTO members, including developed countries.)

Type of Services Sector or Sub-Sector	Descriptions of Commitments
<b>IX. TOURISM AND TRAVEL RELATED SERVICES</b>	
There are four sub-sectors under this sector. Cambodia made commitments in three sub-sectors.	
<ol style="list-style-type: none"> <li>1. Hotels (CPC 64110)               <ul style="list-style-type: none"> <li>– Restaurants (CPC 642, 643)</li> </ul> </li> <li>2. Travel agencies and tour operators services (CPC7471)</li> <li>3. Tourist guides services (CPC 7472)</li> </ol>	<p><b>Hotel services:</b> There is no restriction on foreigners to engage in 3-star or higher hotel business, except the number of foreign employees working in a firm is subject to Cambodian Labour Law.</p> <p><i>Note on the Sub-sector:</i> Tourism is one of the key economic sectors in terms of contribution to value added in GDP and employment, and the second most important source of foreign currency in the economy. Cambodia has only recently prepared a draft national plan with assistance from ADB concerning the policy and strategy on sustainable development of the tourism sector and is currently preparing the draft Law on Tourism. This draft law, among other provisions, will also establish conditions for the operation of the travel agencies and tour operators. The overall policy in Cambodia is to help and encourage business initiative and local investment in the area of lower-end hotels and guesthouses and to support the development of a network of travel agencies, which would provide important employment and business opportunities to locals.</p>

### Recreational, Cultural, and Sporting Services

Cambodia did not offer this sub-sector in its initial services offer schedule. Some members requested Cambodia for commitments in audiovisual services, including motion picture and video tape production and distribution services, motion picture projection services, radio and television (not including transmission services), sound recording services), and news agency services. Commitments made in modes 1, 2, and 3 also extend to foreign content affecting the supply of audiovisual services and services supplying audiovisual products.

In Cambodia, the goal in the area of TV and radio broadcasting is to ensure that the population in remote provinces and areas has access to TV and radio

programmes. To achieve this goal, Cambodia greatly depends on the availability of foreign assistance. There is no law on TV and radio broadcasting and on specific requirements for production and distribution of audiovisual products, particularly concerning the cultural products/industries, with the exception of a sub-decree on administering cinema and/or video (production, projection, and distribution). The priority for the Government is the protection of Khmer culture, but no instruments have been put in place to help achieve this objective.

In this context, it would seem premature for Cambodia to undertake specific commitment in the area of motion picture and videotape production and distribution, and radio and television services. However, Cambodia may consider commitments for leasing of videos and for cinema theatres. This is an area where Cambodia needs more flexibility as an LDC.

Type of Services Sector or Sub-Sector		Descriptions of Commitments
<b>X. RECREATIONAL, CULTURAL, AND SPORTING SERVICES</b>		
There are five sub-sectors under this sector. Cambodia made commitments in only one sub-sector.		
<ul style="list-style-type: none"> <li>– Other Entertainment Services n.e.c (CPC 96199)</li> <li>– Cinema theatre services, including cinema projection services</li> </ul>	<p>Cambodia has placed no limitation on modes 1, 2, and 3 in both market access and national treatment.</p> <p><i>Note on the Sub-sector:</i> The market of Cambodian filmmaking is small though it has shown a good development trend. Currently, 57 companies are producing motion pictures in Cambodia, showing them in the cinemas and distributing them as videotapes. On average, production costs of a motion picture are around \$70,000–80,000. After showing films in cinemas, they are sold on videotapes for the price of \$1–3. There were 130 video rental outlets in 2001 in Phnom Penh. Five cinema theatres are operating in Phnom Penh with two more expected to open to the public shortly. The only condition for operating a cinema theatre in Cambodia is to show one Cambodian film after opening.</p> <p>In the area of motion picture production and distribution, the Government has prioritized and continues to concentrate its efforts on ensuring the protection of intellectual property rights of all cultural products. Regulations prepared in the area of films and videos were focusing exclusively</p>	

Type of Services Sector or Sub-Sector	Descriptions of Commitments
	<p>on this aspect. Neither a strategy for development of its own cultural industries nor legislation for its implementation has been under consideration by the Ministry of Culture. Policy issues are in the very early stages of discussion in the Ministry.</p> <p>There is no law concerning the cultural products/ industries, but only a sub-decree on administering cinema and/or video (production, projection, and distribution).</p> <p>The priority for the Government is the protection of Khmer culture, but no instruments have been put in place to help achieve this objective. No law regulating sound recording exists at the moment. In the area of TV and radio broadcasting the goal of the Government is to ensure that the population in remote provinces and areas has access to TV and radio programmes. To achieve this goal, Cambodia greatly depends on the availability of foreign aid assistance. In addition, issues related to IPR may arise in the TV broadcasting area in the operations of private TV stations. There is no law on TV and radio broadcasting and production and distribution.</p>

## Transport Services

In its initial offer, Cambodia limited the ownership participation of foreign service suppliers in road transport services only to 49%. For transport and related services, the requirement of commercial presence of 49% equity is based simply on the rationale of fostering infant industry or giving a chance to small local operators.

Some members requested Cambodia to remove the 49% foreign equity limitation for commercial presence for passenger transportation, freight transportation, and rental of commercial vehicles with an operator. For air transport services, some also requested Cambodia to make full market access in the sector. Due to the shortage of regulations administering this sector it is very difficult to understand how to make a commitment in this sector. On maritime transport services, one member encouraged Cambodia to consider opening the sector while another member requested that Cambodia only agree to make a commitment for non-discrimination on access of port and facility uses under the additional commitments column.



Cambodia agreed to remove the 49% foreign equity limitation for commercial presence on road transport services but chose not to commit on any maritime service sub-sector in market access or national treatment columns.

Type of Services Sector or Sub-Sector	Descriptions of Commitments
<b>XI. TRANSPORT SERVICES:</b>	
There are nine sub-sectors and Cambodia made commitments in three sub-sectors.	
<b>1. Maritime Services</b>	
International transport (Freight and passengers) (CPC7211 and 7212), excluding cabotage	Cambodia did not make any market access commitment although it will not apply any measures that deny reasonable and non-discriminatory access to the following services: 1. Towing and tug assistance; 2. Provisioning, fuelling, and watering; 3. Garbage collecting and ballast waste disposal; 4. Emergency repair facilities; 5. Lightering and water taxi services; 6. Ship agencies; 7. Customs brokers; 8. Stevedoring and terminal services; and 9. Surveying and classification services.
<b>3. Air Transport Services:</b> Cambodia includes only three sub-sub-sectors out of five.	
<ul style="list-style-type: none"> <li>– Aircraft repair and maintenance services (CPC 8868)</li> <li>– Selling and marketing of air transport services</li> <li>– Computer reservation system services (CRS)</li> </ul>	Cambodia applies only one restriction in these sub-sub-sectors—only 49% of capital can be owned by foreigners.
<b>6. Road Transport Services:</b> Cambodia made commitments in all five sub-sub-sectors.	
<ul style="list-style-type: none"> <li>(a) Passenger transportation (CPC 7121 + 7122)</li> <li>(b) Freight transportation (CPC 7123)</li> <li>(c) Rental of commercial vehicles with operator (CPC 7124)</li> <li>(d) Maintenance and repair of road transport equipment (CPC 6112+8867)</li> </ul>	Cambodia applies only one restriction on cross-border supply which requires a commercial presence.  <i>Note on the Sub-sector:</i> This area of road transport is dominated by numerous small and medium companies, which are contributing to the creation of employment. It is important to continue provide scope for business opportunities to local service providers. At the same time, technology and knowledge are important and the establishment of joint ventures with participation

Type of Services Sector or Sub-Sector	Descriptions of Commitments
(e) Supporting services for road transport services (CPC 744)	of foreign capital could facilitate attainment of this objective. This condition is attached in the spirit of GATS Article XIX.2 and the need to realign development and trade objectives.
<b>7. Pipeline Transport Services:</b> Cambodia made commitments in both sub-sectors.	
(a) Transport of fuels (CPC 7131)	Cambodia placed limitations on the following: mode 1 where services must be provided through a contract of concession granted by the state on a case-by-case basis; and mode 3 where services must be provided through a contract of concession granted by the state on a case-by-case basis.
(b) Transport of other goods (CPC 7139)	

## MFN Exemptions

Cambodia has listed for MFN exemptions the following: legal services and transport. Several members requested Cambodia's removal of the MFN exemption on legal services stating that "conditions creating the need for the exemption" seem to extend beyond reciprocity for WTO members that have commitments in legal services. They argued that this ambiguity would undermine Cambodia's legal services commitments and that the provision of legal services should be allowed according to national licensing or qualification requirements, applied on a non-discriminatory basis. Others argued that this MFN exemption was contrary to the multilateral commitment and at times even argued that it violated basic principle of GATS. Ultimately they requested Cambodia to remove the legal services from the list. One member even went as far as requesting Cambodia to remove the entire MFN exemption list from the services offer schedule.

On audiovisual, Cambodia was given advice by a member to list an MFN exemption if Cambodia intended to secure access to funding (or possible access), through any bilateral/plurilateral agreement with other countries, especially on movie co-production. Without this MFN exemption, this possibility may be undermined.

Cambodia argued that MFN exemption is allowed under GATS, particularly for LDCs. Nonetheless it agreed to remove legal services from the MFN exemption list but insisted on keeping the transport sectors arguing that it reserved its right to enjoy Article XXIV of GATT to engage in future agreements with ASEAN member states, as well as other sub-regional economic cooperation. Only through listing them in the MFN exemption list could Cambodia avail itself of these special arrangements with countries in the sub-region. Cambodia also requested the inclusion of audiovisual services in the MFN exemption list.<sup>71</sup>



# VI Lessons Learned from Cambodia's Accession Process



## Facing the Challenges of Accession

Cambodia's accession is unique, for both political and economic reasons, and lessons from it have to be drawn with extreme care. If there is an important lesson, it is that each accession case, and Cambodia is no exception, involves different negotiations, with different dynamics. This makes it difficult to generalize.

Cambodia differs from most recently acceding countries in that it is the first LDC to have concluded its accession under Article XII of the Marrakesh Agreement establishing the WTO. Undoubtedly, Cambodia is a small economy with a de facto liberal trade and economic regime, and the small size of its economy may pose fewer market access issues for major WTO members. Unlike the PRC, which probably has much more bargaining power than all the recently acceding countries taken together, Cambodia's arguments for flexibility are simple. It has no current or potential capabilities either to become a major player in the world market nor to disrupt powerful WTO members' domestic markets.

Moreover, Cambodia did not want to run the real risk of being a template model for the accession of other LDCs and developing countries. The establishment of a precedent would confirm the trend of demanding increasingly higher levels of commitments of those countries that have not yet entered WTO. As pointed out by the Cambodian negotiators, Cambodia accepted the challenges because "Cambodia sees the benefits of joining the world trading system".<sup>72</sup>

In sum, there is really no miracle prescription that would render the accession process easy. While the process of WTO accession has been and is likely to continue to be lengthy, complex, and challenging for all countries, especially LDCs, the experiences drawn from Cambodia's accession process do reveal, nevertheless, a few recurring themes that some acceding economies could learn and benefit from.

It is clear that difficulties existed, and delays occurred, during Cambodia's accession process. Delays can occur on both sides of the negotiating table.

## Difficulties and Delays on the Cambodian Side

### *Policy Issues*

Resolving substantive policy issues relating to internal adjustments shocks takes time. They will have to be taken into account in Cambodia's development strategies and implementing instruments, economic and social goals, and legislative reforms—which are all necessary if Cambodia is to be in compliance with the multitude of WTO rules and disciplines.

### *Consistency with Development Strategies*

To policy makers it was clear that accession of Cambodia to WTO was not an aim by itself, and membership should not be achieved at any cost. It was necessary to consider that the real terms of integration of Cambodia into the world economy, including efficient use of advantages of membership in WTO, will be determined, first of all, by the long-term development impact on the Cambodian economy as a whole. Reflecting these political realities Cambodia, in the course of its negotiation, was unwilling to make commitments on some sensitive areas—for example, it did not offer to liberalize services sectors like opinion polling nor did it agree, for budgetary reasons, to bind tariffs at or closer to applied rates. Vice versa, in areas where Cambodia has a clear vision and development objectives, as in the banking and financial services sector, its liberalization commitments were extensive though commensurate with its development needs.<sup>73</sup>

### *Commitments to Domestic Reforms*

Because WTO accession requires thorough understanding of the WTO agreements ranging from trade in goods and services, to trade-related intellectual property rights, and to trade-related investment measures, Cambodia will need to carry out serious legislative reforms to achieve conformity with the WTO requirements. In concrete terms, it would need to adopt an ambitious National Legislative Action Plan of more than 40 new laws.<sup>74</sup> It is worth noting though that Cambodia is quite conscious of the central role of legal and judicial reforms in the overall national development agenda, and that these reforms are being undertaken to foster development of a vigorous private sector to better respond to the requirements of the regionalization and globalization of world trade<sup>75</sup> and to make the Government more accountable to its own citizens.

### *Capacity Issues*

Insufficient knowledge, inadequate experience, limited resources, and limited analytical capacities required for accession negotiations were also recurrent sources of delay that led to frequent complaints about the Cambodian negotiating team. The scope of negotiations were so broad and comprehensive, ranging from one end of the spectrum—on the consistency of Cambodia's policies and institutions

with various aspects of the WTO agreements—to the other end—on the specific tariff bindings and commitments in agriculture and services.

### *Complex Documentation and Negotiations*

In addition to all the above, Cambodia was required to prepare voluminous and complex documentation regarding its trade regime for goods and services, and had to engage in lengthy negotiations with the WTO member countries, at both the bilateral and multilateral levels. While acknowledgement was made by many WTO members that Cambodia had made substantial progress in preparing for its bilateral negotiations, Cambodia still suffered from shortcomings in the area of agriculture negotiations. In the services offer, Cambodia would have benefited from a more thorough understanding of the policy and economic implications arising from, for example, the various services sector commitments like telecoms and professional services. Moreover, Cambodia needed to ensure that its concessions and commitments made under the WTO accession process were consistent with other international obligations, e.g., International Monetary Fund (IMF) or World Bank loan conditionalities, and were compatible with those made, or to be made, under regional trading arrangements such as the ASEAN Common Effective Preferential Tariff/ASEAN Free Trade Area.<sup>76</sup> For that matter, Cambodia had to resort to frequent consultations with other member countries of regional trading arrangements to avoid any scope for conflict.

### *Delays from the WTO Members' Side*

#### *Lack of Common Approaches to the Terms of Accession*

WTO members, for their part, were also causes of delays. WTO members have yet to agree on common approaches to the terms of accession and often expressed different views on this matter. To illustrate a point, demands by some members required from Cambodia, in some way or the other, a higher level of obligations and commitments than the level of obligations and commitments made by the original WTO members in the Uruguay Round. While some members were not satisfied with the level of liberalization proposed or were unwilling to accept Cambodia's delays in bringing its laws and institutions into conformity with WTO provisions, others were of the view that it was fair to offer some flexibility in Cambodia's initial offers. The reality was that Cambodia would not be able to escape the demands to liberalize by existing members, irrespective of the level of protection that it initially proposed. Although there was merit in the flexible initial offer argument, the Cambodian experience was that it did not prevail. When Cambodia put forward such an initial offer, some members basically refused to consider it or to enter negotiations on that basis. They simply asked Cambodia to resubmit a revised offer with bound rates closer to the applied ones before they would return to the negotiating table.

### *Issue of Precedence Setting*

Many existing members will undoubtedly deny the role of precedent, claiming that Cambodia's accession was treated on its own merits, yet the evidence contradicted them. Despite the fact that Cambodia was unlikely to become a major trading nation, it was pressured into accepting various commitments throughout the accession process—i.e., zero binding for export subsidies, the unresolved issues under negotiation in the Doha Development Agenda (e.g., market access versus cultural identity on the issue of audiovisual).

**Zero binding for agriculture export subsidies.** While the Government in practice had ruled out agricultural export subsidies for fiscal reasons, Cambodia should not have to bind it at zero. Referring to the General Council Decision on "Accession of Least-Developed Countries" of 10 December 2002, Cambodia argued that there was no current WTO LDC that had made a commitment to bind export subsidies at zero. The Doha Ministerial Declaration states that members agreed on "reductions of, with a view to phasing out, all forms of export subsidies". However, they did not agree that the phasing out would be completed within the Doha Round—this is one of the issues that is currently debated at the WTO negotiations on agriculture. It is likely that LDCs will be exempted from the reduction commitment during the phasing-out period in any case.

In light of the above, Cambodia had originally proposed the following language which was not accepted: [The representative of Cambodia confirmed that taking into account the fact that Cambodia had not been using export subsidies in agriculture, and also that no LDC member had made binding commitments in this area, Cambodia would not apply export subsidies under the Agreement on Agriculture, on the condition that this does not preclude Cambodia's rights to use measures, which are provided for under Article 9.4 of the Agreement on Agriculture or any other WTO provisions, as well as those related measures, which may be included in future WTO agreements. The working party took note of this commitment.]

Finally, Cambodia had to agree to the following more restrictive commitment language: [Para. 164. The representative of Cambodia agreed that, upon Cambodia's accession, his country would bind its agricultural export subsidies at zero in its Schedule of Concessions and Commitments on Goods, and not maintain or apply any export subsidies for agricultural products. The working party took note of these commitments.]

**Audiovisual services.** On audiovisual services, which cover the production, distribution, and exhibition of films and videotapes, Cambodia had to battle to strike a balance on claims of cultural identity (e.g., the Temples of Angkor Wat are

considered one of the Seven Wonders of the World), the protection of intellectual property rights, and the aim to liberalize trade. These competing claims play themselves out against the broader canvas of rapid technological change and the new possibilities for distribution of audiovisual services it offers.

Audiovisual services in the Uruguay Round represented one of the more contentious sectors in the services negotiations, with the EU and the US as the main actors. The EU, like many other participants, felt that in this area it had important cultural interests to protect. For the US, the significance of this sector lies in the fact that films and videotapes account for more than half of the value of its exports of entertainment services. It already enjoys very good access for its audiovisual services into most countries, and by and large actual market access impediments did not appear to be a real issue for it, though it vigorously sought the removal of remaining barriers. Cambodia had once again to strike a balance between the two major trading partners by offering some market access to the US while asking the latter to agree on its request to list some MFN exemptions—here at the satisfaction of the EU.

**Other issues.** In a last moment, while apparently not requesting market access negotiations, the PRC requested that Cambodia enter into an exchange of letters<sup>77</sup> in which Cambodia explicitly agreed not to apply the discriminatory clauses applicable to the PRC after Cambodia's accession.<sup>78</sup> While sympathizing with the PRC's plea, Cambodia chose not to do it at that time out of concern for setting a precedent for other acceding countries.<sup>79</sup>

Cambodia expressed its concern with regard to certain unreasonable last-minute requests for concessions made by some members, which placed Cambodia in a very awkward situation vis-à-vis its fellow acceding LDCs. While Cambodia could accept many of those concessions thanks to its liberal economic system, by so doing Cambodia was facing a "*cas de conscience*" as the first acceding LDC.<sup>80</sup>

Sometimes, delays and complications stemmed not from the WTO accession process as such but from disagreements between the EU and the US over Cambodia's commitments on audiovisual services. Another good case at point was the political issue of Taipei, China and the PRC.

In sum, the terms of accession of Cambodia to the WTO clearly reflect the spirit, though not the exact letter, of major decisions and commitments by the international community in the Third Programme of Action for the Least Developed Countries for the Decade 2001–2010 and the Doha Ministerial Declaration, as well as the decision of the WTO General Council on Accession of LDCs. Cambodia has certainly benefited from flexibility, particularly in



technically complex areas such as TRIPS, customs valuation, TBT, and SPS. While substantial questions by outside observers remained over whether WTO members did really exercise restraint in seeking concessions and commitments on trade in goods and services from Cambodia—some of the commitments undertaken by Cambodia certainly were well above the level of concessions and commitments undertaken by the existing WTO LDC members—the responses of Cambodia were unequivocal. Without the restraint exercised by WTO members, there would have been no way—according to the Cambodian negotiators—in which Cambodia could have acceded in such a rapid time.

## Approach to Expedite the Process of Accession

While the process is inherently time-consuming and complex, there are a number of steps that acceding countries and WTO members could take, which would facilitate and expedite accession. In the case of Cambodia, an aggressive proactive approach and creative modalities for negotiation were adopted in order to fast-track the accession process.<sup>81</sup>

As mentioned above, Cambodia saw the necessity, first, to establish a central steering committee with the support of a large task force to provide direction and manage the multiplicity of legislative and regulatory changes necessary for accession.

### National Legislative Action Plan

In response to Cambodia's submission of its National Legislative Action Plan focusing on an extensive WTO-specific legislation requirement, WTO members requested reprioritization of the legislation to reflect the need to concentrate in the early phase of accession.<sup>82</sup> Other members stressed that most of the legislation slated in the plan be adopted by the time of accession while a few others even insisted on reviewing Cambodian draft laws prior to their adoption. To speed up the process, Cambodia submitted to the WTO secretariat more than 85 pieces of law, draft laws, and regulatory instruments.<sup>83</sup>

### Operationalizing of Inquiry Points

Cambodia has also moved rapidly to set up three inquiry points (SPS physically located with the National Codex Committee; TBT with the Ministry of Industry, Mines, and Energy; and services with the Ministry of Commerce) followed by a rapid mobilization of technical assistance to enable Cambodia to build up the necessary capacity to operationalize these institutions.

## Streamlining the National Trade Policy and Regime

Along the process of accession, Cambodia has rectified obvious contradictions with WTO rules and agreements, especially with respect to the principles of MFN and national treatment, and readjusted its trade regime, thus improving over time the country trade policy and regime (i.e., lifting the rice export licence, and removing the Cambodian ownership requirement in the formation of companies). Since the submission of the memorandum in 1999, Cambodia has drawn feedback from the working party meetings to remove or amend non-compliant legislation and trade practices. Questions by WTO members on the memorandum were gradually reduced over a period of time, enabling Cambodia to move after three working party meetings to a more advanced level in the accession process, namely discussing commitments and entry terms.<sup>84</sup>

## Justification for the Transitional Periods

Cambodia believed that WTO members' insistence on a liberal commercial policy at entry was likely to serve Cambodia's long-term development interests, as well as WTO members' commercial objectives. But insistence on adherence to all WTO commitments at entry and without transition periods in areas (such as customs valuation, TRIPS, TBT, and SPS) where there were obvious institutional weaknesses in Cambodia raised serious problems. Cambodia has thus worked out "action plans" in each of the four areas of the WTO agreements in which weaknesses in Cambodia's institutional infrastructure required a delay in the implementation of these provisions. The action plans spelt out the specific steps that Cambodia will take to bring itself into full conformity with the rules, and the time frame for these steps.<sup>85</sup>

When putting forward the action plans, Cambodia included detailed assessments of the technical assistance that it would require in order to adhere to the time frames included in the plans. These were duly noted by WTO members, who have stated their willingness to provide such assistance, working both through WTO mechanisms, such as the LDC Trust Fund, and bilateral and multilateral assistance programmes.

These action plans allowing compliance to be achieved after joining WTO were a key element of flexibility in Cambodia's accession process. The inclusion of such plans in the Cambodian accession commitments was made possible because of the diplomatic activity and political pressure applied in Geneva by the group of LDCs, which has been working for a number of years to reform WTO procedures to take account of the special difficulties faced by all LDCs. Cambodia's accession could not have occurred any time soon without these reforms.

## Fast-Tracking Bilateral Negotiations

In addition to bilateral meetings in Geneva, and despite its financial constraints, Cambodia felt that the best way to accelerate the negotiations was to travel to capitals of several key WTO members to engage in negotiations and lobbying activities. Without their support, the likelihood of Cambodia speeding up its accession would not have been realistic. The argument for choosing such an approach was based on the premise that, while the real trade negotiators were based in Geneva, the decision makers were all based in their respective capitals.<sup>86</sup> Moreover, the Geneva trade negotiators had very limited knowledge of the reality of Cambodia, whether in terms of economic, social, or political issues. By engaging the senior officials based in the capitals and their counterpart diplomats in Phnom Penh, Cambodia was successful in arguing its case for a better understanding of various legal and economic issues and, indeed, for better flexibility in the terms of accession. Deputy US Trade Representative Ambassador Jon Huntsman in his early 2003 visit to Cambodia suggested that Cambodia should work more with the US embassy in Phnom Penh in liaising with Washington, DC.<sup>87</sup> His recommendations bore fruit. A small high-level mission of Japanese trade policy makers from Tokyo to Phnom Penh was crucial in breaking a deadlock on a few sensitive issues for Japan.<sup>88</sup> Several other bilateral meetings were held either in Phnom Penh, or in Washington, DC, Brussels, and Seoul. Other media of exchange were explored, i.e., the use of e-mails for exchange of views or for follow-ups on technical matters.

## Breakthrough on the Doha Development Agenda

Cambodia was mindful of the need to earn the respect of WTO members as they could also contribute a larger share of the efforts to help expedite Cambodia's accession process. It was in their interests that the organization bring in the first LDC into membership sooner rather than later. In this regard, Cambodia capitalized on General Council Decision No. WT/L/508 on the Accession of LDCs that provided guidelines for the facilitation and acceleration of negotiations through simplified and streamlined accession procedures, with a view to concluding those negotiations as quickly as possible.

Cambodia further pressed on the need of members to reaffirm its commitments to the General Council Guidelines and requested WTO members to drop unreasonable demands, or the so-called "WTO-plus" requests such as binding tariffs at zero within the optional tariff initiatives; acceptance of the optional ITA and binding ITA products at zero; and commitment on opening maritime transport and some other services sectors where so far no WTO members had committed themselves.<sup>89</sup> The responses were positive and WTO members' own disagreements or disputes over

the audiovisual services were settled. Suitable time-bound extensions in meeting WTO obligations were also agreed on.<sup>90</sup>

## The Crucial Role of Capacity Building and Technical Assistance

The process of accession represents a great opportunity for local capacity building in this respect. Cambodia has made active use of technical assistance and consultancies from international organizations, in particular the Integrated Framework such as IMF, International Trade Centre, United Nations Development Programme, United Nations Conference on Trade and Development (UNCTAD), World Bank, WTO, and other specialized UN agencies and from governments of WTO member countries in the preparation of required documentation, and human resource development. The target beneficiaries encompassed both categories of public sector and private sector decision makers and civil society stakeholders.

### Capacity Building for Policy Makers and Trade Negotiators

Because WTO accession is a negotiation process where public sector decision makers would be asked to play a very important role in the process of policy adjustments, Cambodia saw the need to pull together a solid and competent trade negotiating team.<sup>91</sup> Two aspects of capacity building are noteworthy:

- **Full knowledge of the rules.** Detailed knowledge of the agreements was very important for effective negotiations with WTO members that were represented by highly qualified specialists. As such the trade negotiating team took an active part in trade policy and other WTO-related courses organized by WTO and other multilateral organizations. Specialist knowledge and expertise for each specific WTO agreement were developed, with particular attention paid to training of specialists on different WTO agreements (TRIPS, Trade-Related Investment Measures, Agriculture, TBT, SPS, Services, and customs valuation).
- **Continuity of the trade negotiating team.** Ensuring administrative continuity and consistency in the negotiation process was very important for effecting the activities both of Cambodia as an acceding country and of WTO members. In this respect, having and maintaining a stable and appropriately qualified team was an essential element to continue the momentum in the accession as well as in the post-accession implementation process. Moreover, Cambodia has maintained a network of contacts with negotiators from other countries.

## Capacity Building for Private Sector Operators

Capacity building for the private sector is a must as it is they who will directly participate in implementing the agreements. They will be the ones to change investment, production, and trade as a result of the new situation.<sup>92</sup> For a start, Cambodia has conducted courses or lectures in institutions of higher education on WTO legal principles, agreements, and dispute resolution; these were followed by specific seminars and courses.<sup>93</sup> Preparation and distribution of special reference materials on these issues as supporting tools were also undertaken.

## The Integrated Framework for Trade-Related Technical Assistance for LDCs

To ensure proper compliance with the global trade rules is a huge task, and despite all the efforts and political will so far displayed, Cambodia as an LDC just could not afford to do everything in a short time frame. Some WTO members were of the view that Cambodia's accession process was an opportunity to identify areas where technical assistance could help build trade capacity and incorporate trade as part of Cambodia's economic development programme. Thus they welcomed Cambodia's submission of a proposal for technical assistance.

Within the context of the Integrated Framework, developed nations extended their technical assistance to Cambodia on a fast-track basis in some specific areas where immediate compliance with WTO rules was needed in line with their pledges made in numerous political statements.<sup>94</sup>

Technical assistance mobilized for both the preparation of its WTO compliance legislation agenda and for other supply-side capacity building included, to name a few: Canada for the preparation of the rules for the Commercial Arbitration Centre and the drafting of the Law establishing the Commercial Court; Australia for the support in the drafting of the Laws on Anti-Dumping, Countervailing and Safeguards, SPS legislation and implementing regulations, and the Law on Geographical Indications; Austria and Norway for the financing through the United Nations Industrial Development Organization on the preparation of the TBT and industrial standards legislation and implementing regulations; France for the drafting of the Law on Geographical Indications, the Criminal Code, and Criminal Procedure Code; Japan for the drafting of the Civil Code and Civil Procedure Code; the World Bank for the review of compliance of the telecoms legislation and the Telecoms Reference Paper; IMF for the drafting of the Law on Customs; the Asian Development Bank for the drafting of the Law on Secured Transactions, the establishment of a public registry for secured transactions, and the drafting of the Law on E-Commerce; and the EU for technical assistance in operationalizing the

WTO legal compliance unit at the Ministry of Commerce and other post-accession activities, and IPR.

## The Value of Neutral Advice

Throughout the preparatory stage and prior to each working party meeting, Cambodia was fortunate to have at its disposal the technical assistance provided by UNCTAD. UNCTAD experts have long experience in WTO accession negotiations, and were able to brief the Cambodian negotiators on the way the negotiations were usually conducted, thus helping them better understand what to expect.<sup>95</sup> They also were able to help put the accession process in a development perspective. They continued to assist the Cambodian team until the end of the negotiations.<sup>96</sup>

## Conclusions

### Achieving Mutual Objectives

Cambodia's accession to WTO was a defining moment for both the country and WTO. Cambodia, for its part, has finally been able to join the worldwide family of trading nations, and has taken its rightful place as a member of WTO. Cambodia restored relations with IMF and the World Bank more than a decade ago, and joined ASEAN in 1999. Joining WTO has marked the final step in bringing Cambodia back into the major regional and international organizations that govern international economic relations.

For the WTO this was proof that it could “deliver” for an LDC. It will also be presented as a satisfactory outcome to the long-standing demand by LDC members that accession procedures for LDCs be simplified and streamlined. At the signing of the first bilateral EU-Cambodia agreement on 19 June 2003, EU Trade Commissioner Pascal Lamy, commented: “This agreement is a clear demonstration of Europe's commitment to facilitate the accession of least developed countries to the WTO. The least developed countries have asked for this, it is reasonable, and we, the richer members of the WTO, have to deliver”.<sup>97</sup>

It should also be recalled that Cambodia was the first LDC to conclude an accession negotiation to WTO. Other poor countries entered the WTO's predecessor, GATT, having effectively made no commitments. Thus, Cambodia cannot be regarded as a “free rider” (taking the benefits of WTO membership without making its own contribution) and therefore devoid of individual negotiating weight. On the contrary, even if it is a minor player in world trade, Cambodia has earned the

right to be taken very seriously in WTO trade negotiations—including the current Doha Round.

### Balancing the Benefits and Costs—Living Up to the Legal Rights and Responsibilities

More generally, joining WTO has concrete significance. Cambodia, like other LDCs wishing to pursue an open trade policy, have much to gain from WTO in terms of guaranteed market access and lock-in of earlier trade liberalizations. The accession process has necessarily forced the process of trade reform in Cambodia away from an incremental approach to one incorporating quite detailed rules for trade policy. It has shaped in very practical terms the way in which business is done in Cambodia. WTO accession provides the 12 million Cambodian people with secure, predictable, and non-discriminatory access to the markets of 147 trading partners. It also gives this same population secure and non-discriminatory access to the goods and services of these other WTO members. Cambodian producers and exporters will more confidently be able to make long-term business decisions on the expansion of their activities and can increase the returns from trade reform in Cambodia through reciprocal market access abroad and help the Cambodian Government resist pressure domestically to reverse the process of reform.

More specifically, each of the seven main negotiating objectives mentioned earlier was fully achieved:

First and foremost, it will protect the country's garment industry from having quotas imposed on their exports in 2005 and beyond. In the process, of course, Cambodian employment has also been protected;

Second, WTO accession should not be equated with free trade; in Cambodia case prior to accession tariffs were streamlined and lowered but Cambodia has set only maximum tariff bindings and has avoided any obligation to lower tariffs below the actual applied rates. Where national interests require selective protection for infant industries this is possible through tariff peaks, although Cambodia is conscious that for a small open economy, import substitution as a strategy for infant industries has limited relevance;

Third, national concerns were addressed in selected areas where Cambodia has retained the ability to offer exporters duty-free access to imported inputs. Cambodia will be able to improve the investment climate by ensuring unimpeded access to foreign markets, improving the legal framework for businesses and enhancing the business services infrastructure;

Fourth, while the use of agricultural export subsidies was ruled out, Cambodia still retained ample flexibility to develop appropriate policies to support the agriculture sector in a manner that would be financially sustainable;

Fifth, for the services sector, Cambodia has much to gain from an open policy; selected restrictions were retained only where local groups appeared threatened (e.g., Cambodia committed to opening its hotel market only for hotels of three stars or higher, and committed to allowing foreign supply of retailing services only for a small number of specific items or for very large supermarkets or department stores.); and

Lastly, Cambodia will benefit fully from the Doha Declaration on the TRIPS Agreement and Public Health. Cambodia has thus succeeded in harnessing WTO accession in a way that advances and reinforces its outward-looking development strategy. This is a very important accomplishment.

The full significance of this accomplishment will depend, however, on what happens next. The reality of WTO accession is that it is no guarantee of success in world trade. It is a tool, to be used by the Government, the private sector, and other stakeholders, which provides opportunities and safeguards. It involves living up to the obligations and taking advantage of the opportunities. If joining WTO opens up a new range of possibilities for Cambodia, it does not guarantee that these possibilities will be translated into advantages. In order to transform potential into reality, much hard work will need to be done in the future.

In terms of legal obligations, the first and most obvious challenge is to fulfil the commitments for legislative and administrative change that Cambodia has agreed to in the protocol of accession. In a decision taken on 27 February 2004, the Council of Ministers identified 98 separate tasks that flow from the protocol and that need to be accomplished before the end of 2005, and distributed responsibility for executing these tasks among 20 different ministries and agencies.<sup>98</sup> Committing to abide by international treaty rules and the rule of law in the conduct of trade and in domestic policy reform is likely to push Cambodia to accelerate the process forward at an even more impressive pace—from implementing legal and domestic policy reform, ensuring uniform and impartial implementation of trade commitments with much greater transparency and security, strengthening of prudential regulation and supervision. A modern, liberal, business-friendly and WTO compliant legal regime will only be as good as its implementation and enforcement. Everyone recognizes the magnitude of the multiple challenges that Cambodia faces in this respect. Cambodia is at the very earliest stages in developing a properly functioning judicial system. Cambodia must push ahead with this as a matter of urgency, and, in the meantime, ensure that non-judicial measures such



as arbitration and administrative enforcement are used to the fullest to ensure that laws are implemented and obeyed.

The Council of Ministers will monitor periodically progress and will progressively add to the work agenda tasks that need to be completed in 2006 and beyond. As these tasks are completed, the Cambodian trade regime will come progressively into full compliance with WTO rules, and the legal environment for businesses will approach international norms. It is when this happens that Cambodia will reap benefits from joining WTO.

Only time will tell whether the commitments can be used to good effect. They may impose a competitive strain in some sectors. They may also limit policy flexibility. On the other hand, the commitments made should spur the Government to move ahead with business-friendly reform measures.<sup>99</sup> Successful reforms will lead to significant improvements in the services markets themselves in terms of prices, quality, product variety, and the availability of new products. More efficient provision of telecommunications, transport, and other services will also advance the integration of the Cambodian economy with that of the rest of the world and within the country itself. The more open the Cambodian economy becomes, the more Cambodia—its exporters, and importers, but also all Cambodian citizens—and foreign investors as well will benefit from the legal security of the rules-based trading system.

### The Way Forward—Cambodia has Chosen not to Protect, but to Compete

Accession to WTO will afford Cambodia market access to member country markets on an MFN basis, but will also intensify competition from foreign goods and enterprises in both domestic and international markets.<sup>100</sup> Accession creates opportunities, but will also create a more competitive market environment for which an effective, competitive supply response is needed. No doubt, the vigorous pursuit of the multiple tasks referred to above will improve the competitiveness of Cambodian firms and create an environment that will be more attractive to new investors.<sup>101</sup> As such, Cambodia's investment climate will need to converge toward international norms by removing the impediments that put its exporters at a disadvantage relative to other exporters competing for similar markets.

Finally, WTO provides an internationally recognized framework in which Cambodia can organize and carry out the necessary development of our legal and institutional structures and pursue an outward oriented development strategy. If Cambodia rises to this challenge, WTO accession will be seen by future historians as a major turning point leading to the acceleration of Cambodia's development.

## Endnotes

- 1 Letter of the Minister of Commerce No. 088/MC of 19 October 1994.
- 2 The four members are Australia, EU, Japan, and US.
- 3 See Annex I for the text of the draft Decision on the Accession of the Kingdom of Cambodia.
- 4 Cambodia failed to ratify its WTO membership by the deadline of 31 March 2004. A formal extension request was sent to the WTO secretariat and a new ratification deadline was extended to 30 September 2004. See also *WTO News: 2004, Cambodia Membership Application*, General Council, WTO members extend Cambodia's ratification deadline, 11 February 2004. Available also on <<http://www.wto.org>>.
- 5 See *WTO News: 2004, Accessions: Cambodia raises WTO membership to 148*, 13 October 2004. Available also on <<http://www.wto.org>>.
- 6 This is attractive to groups seeking to introduce multilateral disciplines on a variety of subjects, ranging from the environment and labour standards to competition and investment policies to animal rights. But it is a source of concern to groups that perceive the (proposed) multilateral rules to be inappropriate or worry that the adoption of specific rules may negatively affect the ability of governments to regulate domestic activities and deal with market failures.
- 7 For the most part, all WTO members subscribe to all WTO agreements. After the Uruguay Round, however, there remained four agreements, originally negotiated in the Tokyo Round, which had a narrower group of signatories and are known as "plurilateral agreements", while the other Tokyo Round agreements became multilateral obligations (i.e., obligations for all WTO members) when the WTO was established in 1995. Those four plurilateral agreements are: (i) Agreement on Trade in Civil Aircraft, (ii) Agreement on Government Procurement, (iii) Agreement on Dairy Products, and (iv) Agreement on Bovine Meat.

The Agreement on Trade in Civil Aircraft entered into force on 1 January 1980 with 30 signatories and has as its main purpose the elimination of import duties on all aircraft, other than military aircraft, including civil aircraft engines and their parts and components. The Agreement on Government Procurement was first negotiated during the Tokyo Round and entered into force on 1 January 1981 and amended on 1 January 1996 with 28 members. Its purpose is to open up as much of the business as possible to international competition. It is designed to make laws, regulations, procedures, and practices regarding government procurement more transparent and to ensure they do not protect domestic products or suppliers, or discriminate against foreign products or suppliers. The new agreement covers both goods and services (including construction services),

procurement at the central and sub-central level (for example states, provinces, departments, and prefectures), and procurement by public utilities. The International Dairy Agreement and International Bovine Meat Agreement were scrapped at the end of 1997. Countries that had signed the agreements decided that the sectors were better handled under Agriculture and SPS Agreements.

- 8 WTO Agreement Article III:1.
- 9 WTO Agreement Article III:2.
- 10 WTO Agreement Article III:3.
- 11 WTO Agreement Article III:4.
- 12 National treatment ensures that liberalization commitments are not offset through the imposition of domestic taxes and similar measures. The requirement that foreign products be treated no less favourably than competing domestically produced products gives foreign suppliers greater certainty regarding the regulatory environment in which they must operate.
- 13 Liberalization commitments and agreements to abide by certain rules of the game have little value if they cannot be enforced. The non-discrimination principle, embodied in Articles I (on MFN) and III (on national treatment) of GATT, is important in ensuring that market access commitments are implemented and maintained. Other GATT articles play a supporting role, including Article II (on schedules of concessions). Once tariff commitments are bound, it is important that there be no resort to other, non-tariff, measures that have the effect of nullifying or impairing the value of the tariff concession. A number of GATT articles attempt to ensure that this does not occur. They include Article VII (customs valuation), Article XI, which prohibits quantitative restrictions on imports and exports, and the Agreement on Subsidies and Countervailing Measures, which outlaws export subsidies for manufactures and allows for the countervailing of production subsidies on imports that materially injure domestic competitors.
- 14 The tariff commitments made by WTO members in a multilateral trade negotiation and on accession are enumerated in schedules (lists) of concessions. These schedules establish "ceiling bindings": the member concerned cannot raise tariffs above bound levels without negotiating compensation with the principal suppliers of the products concerned. The MFN rule then ensures that such compensation—usually, reductions in other tariffs—extends to all WTO members, raising the cost of renegeing.
- 15 Low-income countries account for 40% of the world's population but only 3% of world trade. During the period 1997–2000, non-oil exporting LDCs have actually seen their value of exports decrease because of the absence of any WTO, or other international, measure to address falling commodity prices (Oxfam 2003).
- 16 For more of these views, see Oxfam (2002 and 2003).

- 17 See Prasad Cham (2003c).
- 18 See WTO (1999).
- 19 By early December 2004, more than 20 new members had joined the WTO since its establishment, bringing membership to 148, including two LDCs (Cambodia and Nepal) and three separate customs territories (Taiwan, Penghu, and Kinmen and Matsu [Taipei, China]; Hong Kong, China; and Macau).
- 20 These bilateral schedules of commitments on Goods and Services once reviewed in the working party will be multilateralized thereafter, that is, extended on an MFN basis to all WTO members. In this way, these became part of the multilateral treaty terms of the acceding country's membership in the WTO.
- 21 See VanGrasstek (2000).
- 22 See the "Protocol for the Accession of Cambodia", in GATT, *Basic Instruments and Selected Documents* Eleventh Supplement (Geneva, Switzerland: GATT, 1963), pages 12–16. Note that this document does not include the annexes to the protocol (which would consist primarily of the tariff concessions that Cambodia made in the negotiations over its accession).
- 23 See also Sopheak Sok (2002).
- 24 The documents are available also at <<http://www.moc.gov.kh>>.
- 25 For an in-depth analysis of the Cambodia trade policies, see Ministry of Commerce (2002a).
- 26 The MDGs constitute eight basic poverty reduction goals ranging from access to social services and gender equity to environmental sustainability. More specifically they are: Goal 1: Eradicate extreme poverty and hunger; Goal 2: Achieve universal primary education; Goal 3: Promote gender equality and empower women; Goal 4: Reduce child mortality; Goal 5: Improve maternal health; Goal 6: Combat HIV/AIDS, malaria, and other diseases; Goal 7: Ensure environmental sustainability; and Goal 8: Develop a global partnership for development.
- 27 Excerpt of Cambodia's Viewpoints Presented at the International Conference on Financing for Development (Monterrey, Mexico, 18–22 March 2002).
- 28 For a full understanding of the Cambodian garment industry strategy, see Ministry of Commerce (2002b). Available also on <<http://www.moc.gov.kh>>.
- 29 Based on recent accession experience, Tariffs, Agriculture, and Rules and Disciplines are the areas in which members typically request that acceding countries make more far reaching commitments than those made by many existing members at similar levels of development.

*Tariffs.* Acceding countries are requested to bind all tariffs, whereas many developing countries continue to have a large portion of their tariff schedule outside agriculture unbound. Ceiling bindings have been accepted, but there is pressure to bind close to applied rates.

*Agriculture.* In addition to binding the tariff schedule, commitments are expected on aggregate measures of support (AMS), export subsidies, and the like. Since many acceding countries did not provide substantial support to agriculture but, rather, penalized it, the requests they face for reductions in AMS may not be warranted, and in any case meaningful calculation of commitments in this area is subject to serious statistical difficulties.

*Rules and Disciplines.* Acceding countries are typically requested to meet all commitments at entry with regard to, for example, TRIPS, customs valuation, standards, and SPS regulations, without time limits such as those available to existing members at similar levels of development, and regardless of whether institutional weaknesses make it difficult for them to fulfil such commitments. Such weaknesses relate broadly to the operations of a market economy; it takes time to establish the institutional infrastructure that would enable the applicants to discharge their responsibilities properly under the WTO agreements. When such weaknesses are brought out in negotiations, members suggest that the applicant seek technical assistance, available from a variety of bilateral and multilateral donors, and that it present a detailed plan regarding the particular aspects of the relevant WTO provisions in which weaknesses exist and how and within what time period it proposes to remedy them.

- 30 Examples of economies choosing such an approach are Albania, Estonia, Georgia, Kyrgyz Republic, Latvia, and Mongolia.
- 31 The Cambodian Government has established since 2000 seven public/private sector consultative working groups: (i) Banking & Finance, (ii) Export Processing & Trade Facilitation, (iii) Manufacturing & Small and Medium Enterprises, (iv) Agriculture & Agro-Industry, (v) Energy & Infrastructure, (vi) Legislation, Tax & Governance, and (vii) Tourism. So far eight public forums were held under the chairmanship of the Prime Minister in the past 3 years to discuss issues raised at the working groups.
- 32 See Siphana Sok (2001a).
- 33 See World Bank and the Public-Private Infrastructure Advisory Facility (2002).
- 34 See Annex II for the main summary of the General Council Decision.
- 35 See Annex III for a full length of an opening statement made by Cambodia.
- 36 Working party members: Australia; Canada; PRC; EU and member states; India; Japan; Republic of Korea; Malaysia; New Zealand; Singapore; Taipei,China; Thailand; US; and Venezuela.
- 37 Working party members: Australia; Canada; PRC; EU; India; Japan; Republic of Korea; Malaysia; New Zealand; Panama; Singapore; Taipei,China; Thailand; US; and Venezuela.
- 38 See *WTO News*: 2002, Cambodia membership negotiations, fifth working party meeting, working party completes Cambodia's membership negotiation, 22 July 2003. Available also on <<http://www.wto.org>>.

- 39 They included the following: Australia; Canada; EU; India; Japan; Republic of Korea; Panama; Taipei,China; and the US.
- 40 Members participating in the meeting included Australia; US; Canada; EU; Taipei,China; Japan; and Thailand.
- 41 Sok, Sarin, and Eric Le Dreau (1999), and Sarin, and Siphana Sok (1998).
- 42 In response to these concerns, the Customs and Excise Department has undertaken several initiatives, including: strengthening anti-smuggling capacity through establishment of new customs offices (Phnom Penh and its sub-branches); creation of an Intelligence Unit; enhancement of anti-smuggling teams at provincial customs branches; institutionalizing cooperation with the police, military, and local authorities to implement Government Order No. 02; and developing and implementing an enforcement strategy and programs based on the principles of risk management in order to reduce smuggling and other illegal cross-border activities.
- 43 Cambodia confirmed its intent to comply fully with the provisions of the WTO Agreement on Rules of Origin in the application of preferential and non-preferential rules of origin and would be able to do so after enactment of the new Customs Law and its implementing regulations, no later than 1 January 2005. In particular, the requirements of Article 2(h) and Annex II paragraph 3(d) of the Agreement, which require provision, upon request, of an assessment of the origin of the import and outline the terms under which it will be provided, would be established in Cambodia's Law on Customs from the date of its promulgation, or if necessary, by government decree, no later than 1 January 2004. See Report of the Working Party on the Accession of Cambodia, WT/ACC/KHM/21 (15 August 2003) at para. 96.
- 44 Some members considered the 0.8% ad valorem charge for preshipment inspection a violation of Article VIII of the GATT as the fee was not related to the approximate cost of the services rendered. Cambodia replied that upon expiration of the present contract, a new or modified contract on preshipment inspection would stipulate compliance with GATT Article VIII by requiring the preshipment inspection fee to be commensurate with the service rendered and not the value of the goods inspected. In addition, a member pointed out that the 7% penalty imposed on non-inspected goods would be in contravention of GATT Article VIII paragraph 3. Cambodia confirmed that from the date of accession it would take full responsibility to ensure that the operations of the preshipment inspection companies, if retained by Cambodia, meet the requirements of the WTO agreements, including the establishment of charges and fees consistent with Article VIII of the GATT 1994, due process and transparency requirements of the WTO agreements, in particular Article X of the GATT 1994, and the provisions of the Agreement on the Implementation of Article VII of the GATT 1994 and the Agreement on Preshipment Inspection. See Report of the Working Party on the Accession of Cambodia, WT/ACC/KHM/21 (15 August 2003) at paras. 103–105.

- 45 A prohibition on companies with less than 51% Cambodian ownership to engage in import/export activities for the sole purpose of re-selling goods without transformation had been abolished pursuant to a Declaration of the Ministry of Commerce of 25 January 2000. Cambodia confirmed that all firms, foreign and domestic, properly registered with the Ministry of Commerce, could engage in import and export activities of all types of goods except military equipment and narcotic drugs. See Report of the Working Party on the Accession of Cambodia, WT/ACC/KHM/21 (15 August 2003) at para. 44.
- 46 Cambodia stated that, from the date of accession, it would not apply, introduce or reintroduce any fees and charges for services rendered that were applied to imports on an ad valorem basis. See Report of the Working Party on the Accession of Cambodia, WT/ACC/KHM/21 (15 August 2003) at para. 62.
- 47 Cambodia confirmed that by 1 January 2004 it would establish or designate an official journal or website, 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. See Report of the Working Party on the Accession of Cambodia, WT/ACC/KHM/21 (15 August 2003) at para. 217.
- 48 Cambodia said that at the latest 12 months after the entry into force of the Protocol of Accession, it would submit all initial notifications required by any agreement constituting part of the WTO agreements. Any regulations subsequently enacted by Cambodia which gave effect to the laws enacted to implement any agreement constituting part of the WTO agreements would also conform to the requirements of that agreement. See Report of the Working Party on the Accession of Cambodia, WT/ACC/KHM/21 (15 August 2003) at para. 218.
- 49 Cambodia confirmed that, no later than 1 June 2005, Cambodia would eliminate quantitative restrictions on the importation of fertilizers, pesticides and other agricultural inputs and establish a WTO-consistent method of registration and review of imported agricultural chemicals. See Report of the Working Party on the Accession of Cambodia, WT/ACC/KHM/21 (15 August 2003) at para. 77.
- 50 If balance-of-payment measures were necessary, Cambodia would impose them in a manner consistent with the relevant WTO provisions, including Article XVIII of the GATT and the Understanding on Balance-of-Payments Provisions of the GATT 1994. See Report of the Working Party on the Accession of Cambodia, WT/ACC/KHM/21 (15 August 2003) at para. 82.
- 51 For Cambodia this means that it has effectively forgone the right to use export subsidies for agricultural goods, a right that is granted to other LDC members by the Agreement on Agriculture. National policy wise, Cambodia had never considered providing such subsidies, and the Government did not, and do not, believe that it would be sound policy. Certainly there are current features of the Cambodian economy that reduce the competitiveness of its agricultural

exporters—for example, high internal transport costs as a result of poor feeder roads and various informal charges for road use. But policy and Cambodia's scarce resources need to be directed at eliminating these underlying problems, rather than attempting to use export subsidies to offset their costs to exporters, which could in any case only be a temporary expedient.

- 52 Cambodia considered the import duty exemption for export-oriented projects analogous to the exemption referred to in Article 1 (note 1) and paragraph (h) of Annex I of the Agreement on Subsidies and Countervailing Measures. Cambodia acknowledged that a duty drawback scheme would be a better way to address this issue, but Cambodia lacked the administrative resources to implement such a scheme properly at present. In any case, Cambodia considered LDCs exempt from the provisions of Article 3.1(a) by virtue of Article 27.2 of the Agreement on Subsidies and Countervailing Measures. Cambodia confirmed that any subsidy programmes it provided after accession would be administered in conformity with the Agreement on Subsidies and Countervailing Measures, including Article 27, and that all necessary information on Cambodia's export subsidies and other notifiable programmes would be notified to the Committee on Subsidies and Countervailing Measures according to Article 25 of the Agreement upon entry into force of Cambodia's Protocol of Accession. Cambodia also confirmed that it would either eliminate the existing system of remission of import fees and waiver of duty for certain goods used by certain investors or establish a functioning duty drawback system consistent with WTO provisions, through amendment of the Law on Investment, as necessary, by the end of 2013.
- 53 Some members noted that Cambodia had introduced a tax of 3%, applied solely to imported alcohol and tobacco products, in late 1998. Cambodia was requested to bring this tax into conformity with Article III of the GATT 1994. Cambodia replied that the 3% tax in effect on imported alcohol and tobacco products since September 1999 had been extended to domestically-produced items on 1 January 2002. Cambodia further confirmed that, from the date of accession, Cambodia would apply its domestic taxes, including those on products listed in Tables 2 and 3 and paragraphs 63 to 70 in strict compliance with Article III of the GATT 1994 and in a non-discriminatory manner to imports regardless of country of origin. See Report of the Working Party on the Accession of Cambodia, WT/ACC/KHM/21 (15 August 2003) at paras. 64 and 71.
- 54 Cambodia stated that price controls had been lifted in 1989. Prices for goods and services were determined freely by the market, except for electricity and water. Electricity prices were regulated by the Ministry of Industry, Mines and Energy pursuant to Sub-Decree 35 of 26 April 1999, while the regulation of water user charges rested with municipal and provincial bodies. Cambodia confirmed that, from the date of accession, in the application of price controls, Cambodia would apply such measures in a WTO-consistent fashion, and take account of the interests of exporting WTO members as provided for in Article III.9 of the GATT 1994, and in Article VIII of the GATS. Cambodia also



confirmed that it published the list of goods and services subject to state control and any changes in its Official Gazette and would continue to do so after accession. See Report of the Working Party on the Accession of Cambodia, WT/ACC/KHM/21 (15 August 2003) at paras. 26 and 27.

- 55 Cambodia said that 11 state-owned companies were engaged in importation and exportation of products such as rice, rubber, fertilizer, fishery products, pharmaceutical products, and agricultural equipment. The enterprises operated in full accordance with commercial considerations and private business practices, and no special privileges were granted to them. Cambodia was thus of the view that none of its state-owned enterprises came within the scope of Article XVII of the GATT 1994, the Understanding on the Interpretation of Article XVII of the GATT 1994, or the informal illustrative list of state-trading enterprises contained in document G/STR/4. See Report of the Working Party on the Accession of Cambodia, WT/ACC/KHM/21 (15 August 2003) at para. 145.
- 56 Cambodia stated that private initiative had been encouraged in agriculture since 1987, while nationalised industries had been granted progressive autonomy from the state planning system in subsequent years. Private ownership was now a constitutional right enshrined in the 1993 Constitution. Privatization had been carried out during a first phase from 1991 to mid-1993, and a second phase starting in April 1995. Cambodia confirmed that foreign and domestic investors were treated equally in the privatization process, except with regard to the general restriction on foreign ownership of land. As of April 2000, 177 enterprises had been privatized—mainly in manufacturing, agriculture and commerce—of which 152 had been leased to private investors, five were joint ventures, and 20 had been sold off. Eleven enterprises had been transformed into public enterprises and 16 remained to be privatized. Out of these, 13 enterprises, which performed key public services—including railway, water, electricity, and public works and transport enterprises, as well as agricultural companies—to the Cambodian economy would be retained as state-owned enterprises upon completion of the privatization programme. Seven rubber companies would remain in state ownership until 2006. See Report of the Working Party on the Accession of Cambodia, WT/ACC/KHM/21 (15 August 2003) at paras. 21–24.
- 57 A draft Law on Industrial Zones had been approved by the Council of Ministers in March 2003 and was currently under consideration by Parliament. Pending the passage of this law, other zones could possibly be established by sub-decree. Cambodia confirmed that the draft Law contained no export performance measures or local content requirements. In addition, in accordance with the (draft) Law on Industrial Zones, from the date of accession goods produced in any such 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 Cambodia, including the application of tariffs and taxes. See Report of the Working Party on the Accession of Cambodia, WT/ACC/KHM/21 (15 August 2003) at paras. 150–151.
- 58 Cambodia's multi-track trade policy of using regionalism, sub-regionalism,

and bilateralism to complement multilateralism has been beneficial in generating deeper trade preferences, for example: (i) under the ASEAN-PRC Free Trade Area's Early Harvest scheme signed in July 2003, the PRC has granted to Cambodia, effective from 1 January 2004, a special preferential tariff (SPT) treatment for 297 agricultural products at 0% tariff rates; (ii) under the ASEAN Integrate Special Preferential (AISP), Thailand has agreed to provide Cambodia a special and preferential tariff treatment for 249 products, Lao People's Democratic Republic (Lao PDR) 150 products, and Myanmar 300–400 products, effective from this year in 2004; (iii) the Cambodia-Canada Memorandum of Understanding signed by the two countries in March 2003 has given Cambodia, along with other least-developed countries, a quota and duty free access to all its markets except banana. Its exported goods must meet the rule of origin which is contained at 25% Cambodia's added value. Under the ASEAN agreement, raw materials importing from ASEAN countries are also considered local origin; (iv) meanwhile, Japan expanded its duty and quota free treatment for LDCs to 496 agricultural and fishery products in 2003 and Cambodia is also eligible for this treatment as an LDC; (v) the Japan-ASEAN Comprehensive Economic Partnership signed in 2003 has provided Cambodia a broad-based liberalization of trade and investment promotion. The Japan-ASEAN Comprehensive Economic Partnership has focused on regional trade and investment promotion with other facilitation measures, including, customs procedures, standards and conformance, financial services, information and communications technology, science and technology, human resource development, small and medium enterprises, tourism, transport, energy and food security; (vi) the Summit for Economic Cooperation Strategy between Cambodia, Lao PDR, Myanmar, and Thailand that was held on November 2003 in Bagan, Myanmar. The Bagan Declaration for Economic Cooperation Strategy among the four countries has a 10-year time frame of 2003–2012 with focused areas on Trade and Investment Facilitation, Agricultural and Industrial Cooperation, Transport Linkages, Tourism Cooperation, and Human Resources Development.

- 59 See Press Release: *Progress of Bilateral Market Access Negotiations for the Accession of the Kingdom of Cambodia to the World Trade Organization (WTO)*, 15 July 2003, Phnom Penh, Cambodia.
- 60 There is one small, technical exception to this statement. In early 1999 Cambodia concluded a bilateral agreement with the US on textiles and garments. That agreement set limits on the tariff levels that Cambodia would apply to imports of textiles and clothing coming from the US. Cambodia extended those lower rates to other countries to which it granted MFN treatment. However, as a WTO member, Cambodia will need to apply these lower rates to imports from all WTO member countries. For a small number of products originating in a small number of countries this will involve lowering the tariff rates presently charged.
- 61 See Annex IV for Cambodia applied tariffs and tariff bindings on agriculture products

- 62 See Annex IV for Cambodia applied tariffs and tariff bindings on industrial goods.
- 63 Source: Cambodia's Services Schedules: WT/ACC/SPEC/KHM/21/Add.2 of 19 August 2003.
- 64 The liberalization commitments were made along the GATS and covered the supply of a service through any of four modes. Mode 1, *cross-border supply*, is analogous to trade in goods and arises when a service crosses a national frontier, for example, ordering a set of architect drawings from a Thai architect and having him mail the drawings to Phnom Penh, thus importing architect services. Mode 2, *consumption abroad*, arises when the consumer travels to the territory of a service supplier to purchase, for example, health, tourism, or education services. Another example, sailing a Mekong ferry boat to a Vietnamese shipyard for repairs, so that when the ferry returns to Cambodia it imports repair services. Mode 3, *commercial presence*, involves foreign direct investment (for example, when a foreign firm establishes a branch or subsidiary in Cambodia or when allowing a foreign architectural firm that intends to employ only Cambodian architects to establish itself in Cambodia, thus importing the architectural services of the firm). And Mode 4, *movement of natural persons*, occurs when independent service providers or employees of a multinational firm temporarily move to Cambodia. In scheduled sectors, the existence of any of these limitations has to be indicated with respect to each of the four modes of supply described above.
- 65 See Siphana Sok (2003b).
- 66 The *market access* provision of the GATS Article XVI prohibits six types of limitations, unless they have been inscribed by a member in its schedule. These are as follows: (i) limitations on the number of suppliers; (ii) limitations on the total value of service transactions or assets; (iii) limitations on the total number of service operations or on the total quantity of service output; (iv) limitations on the total number of natural persons (i.e., individuals rather than juridical persons) that may be employed; (v) measures that restrict or require specific types of legal entity or joint venture; and (vi) limitations on the participation of foreign capital.
- 67 Some members were not comfortable with Cambodia's argument on legal responsibility and liability.
- 68 Mode 3 for commitments on commercial presence generally generated a range of restrictive measures, such as (i) restrictions on the form of establishment—the typical restriction is the requirement to form a joint venture that is either an equity joint venture (EJV) or a contractual joint venture (CJV). Foreign ownership in EJVs is frequently restricted to specified levels, ranging from minority ownership 49% or less, to 50% ownership, to majority ownership, to full ownership; (ii) restrictions on geographic scope—i.e., in special economic zones (SEZs); (iii) restrictions on business scope—i.e., transactions may be permitted only with a subset of consumers or restricted in some other way;

and (iv) restrictions on regulatory requirements—i.e., foreign firms may be required to possess a certain minimum amount of assets and be established as a representative office for a certain period of time before commencing full business operations.

- 69 See Annex V for a summary of the WTO Reference Paper for Basic Communications.
- 70 Hotel stars are defined as in the Fifth Draft Hotel Rating Classification of March 2003, which was adopted and implemented in December 2003.
- 71 In 2003 the Cambodian Prime Minister asked the Ministry of Commerce, Ministry of Public Works and Transport and other concerned institutes to conduct a detailed feasibility study on the promotion of sea ports mainly in areas of Koh Kong, Sre Ambel, Keo Phus, Kampot, and Keb into international seaports as part of his plan to have an “Open Sea Policy”.
- 72 See Prasad Cham (2003c).
- 73 The Government's Financial Sector Blueprint for 2001–2010 outlining a long-term vision and strategy for sequencing policy reforms to develop the financial system over the next 10 years was clearly instrumental in easing the concerns of the Cambodian negotiators when confronting the difficult choices of liberalization commitments. The Blueprint addressed key policy issues and proposed reform agenda in the banking and non-banking sectors, contractual savings, and interbank/money and capital markets, as well as the basic infrastructure to underpin the development of the financial sector.
- 74 Progress were made in the legislation process aimed towards WTO rules compliance: adoption of key intellectual property rights laws like the Law on Marks, Trade Names and Acts of Unfair Competition, the Law on the Protection of Patents, Utility Model Certificates and Industrial Designs, and the Law on Copyrights. In field of investment, the adoption of an amended Law on Investment; the Insurance Law; the Land Law; the Law on Corporate Accounts, Audit and Accounting Profession; the Forestry Law; and the Electricity Law. In the pipeline for adoption are the Business Enterprises Law, the Insolvency Law, the Secured Transactions Law, the Commercial Arbitration Law, the Customs Law, the Tourism Law, the Negotiable Instruments and Payment Transactions Law, the Civil Code, and the Civil Procedure Code. In the immediate terms are the preparation of key trade legislations on rules of origin, anti-dumping, countervailing and safeguards.
- 75 In the field of administrative and judicial enforcement, with the enactment of the Trademarks Law Cambodia was able to enforce and protect intellectual property rights of well-known marks belonging to multinationals like British American Tobacco, Sheraton, and McDonalds, etc.
- 76 Framework Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area.
- 77 See (Communications from) the PRC (2003).

- 78 As a background, during the negotiation of the PRC's accession to WTO, the PRC had to accept many clauses that are contrary to the principle of non-discrimination, such as Transitional Product-Specific Safeguards Provisions, Non-Market Economy Status Clauses, and Textiles-Product Restrictive Measures.
- 79 See Ministry of Commerce/Task Force (2003bb).
- 80 On 15 April 2003, Minister Cham Prasidh and Ambassador Suos Someth met with Dr. Supachai Panitchpakdi to plead their case to the WTO Director General.
- 81 Cambodia's Opening remarks at the second working party meeting in February 2002.
- 82 See Sok, Siphana (ed.). (1995). Also available in <<http://www.clrdc.com.kh>>. See also World Bank (2000).
- 83 See Annex VI for the full listing.
- 84 The Customs and Excise Department has undertaken numerous reform initiatives with noticeable progress in the last few years, among others: the development and implementation of streamlined customs clearance procedures to enhance trade facilitation and improve effectiveness of operations; process review has been completed in major customs offices and branches; recommendations have been made for improving the customs clearance process; Sihanoukville Customs Branch has now given the role of distance monitoring and enforcement rather than direct involvement in routine clearance process; implementation of a new organizational structure through comprehensive human resource development; establishment of new customs offices (Audit; IT and Statistics; and International Affairs); establishment of a Customs Training Centre (CTC) to provide good facilities for conducting training programs—national and international courses (trainers from abroad) are organized at CTC regularly; a Customs Reference Library has been established; and development and implementation of comprehensive and coordinated training and development programs (5-year plan) to strengthen management skills and technical expertise.
- 85 See Annex VI for the full tables of the four Action Plans.
- 86 In a meeting in Brussels, EU Commissioner Pascal Lamy recognized Cambodia's efforts and considered its accession exemplary. He hoped to conclude Cambodia's first bilateral negotiations and also pledged the EU's support to lobby those countries of concern to Cambodia.
- 87 Official visit on 11–12 March 2003.
- 88 Ministry of Commerce (2002q).
- 89 Cambodia's opening remarks at the fourth working party meeting on 16 April 2003.

- 90 In a private meeting with the Cambodian chief negotiator, Dr. Supachai expressed his support for Cambodia's pleas and pledged to look at the remaining difficulties with the Chairman of the LDC Subcommittee. He hoped that ultimately the WTO members would drop those demands. He agreed that it is certainly a very tough experience for the first acceding LDC to set up the standards. But there should not be a minimum standard nor a "one size fits all". There are some LDCs which are more ready than the others to perform.
- 91 See Siphana Sok (2001d).
- 92 See Siphana Sok (2001c).
- 93 See Siphana Sok (2001k).
- 94 Noteworthy statements included, among others: the Millennium Summit Development Goals (September 2000); the Statement of Quad countries regarding WTO Rules and their implementations (May 2001); the WTO Fourth Ministerial Declaration in Doha, Qatar (November 2001); and statements made at the Financing for Development (FfD) Conference in Monterrey, Mexico (March 2002) and at the World Summit for Sustainable Development in Johannesburg, South Africa (August 2002).
- 95 UNCTAD has provided, among others, extensive explanatory memos regarding services with Australia; Canada; EU; Japan; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Taipei, China); and Panama; Technical notes on Audiovisual services; and Notes on Questions linked to Agriculture policies. See UNCTAD (2003a, 2003b, 2003c, and 2003d).
- 96 During a courtesy call to the Secretary General Dr. Rubens Ricupero in Geneva, the Cambodian Commerce Minister expressed his gratitude to UNCTAD and personally to the Secretary General and his untiring staff for being so committed to assisting Cambodia in this process. He added that the efforts had paid off and that as a result, the Cambodian team had full ownership of the work at hand and was ready for the final working party meeting.
- 97 See also statement of Suos, Someth (2003).
- 98 See Annex VII for the full details of the Work Plan.
- 99 Cambodia Enters the WTO: New Hope For A Twilight, *Dow Jones International News*, 27 August 2003 and WTO May Deliver Justice Denied at Ballot Box, *The Asian Wall Street Journal*, 24 July 2003.
- 100 See World Bank (2003).
- 101 In 2003 the Law on Investment was amended to make the investment climate more conducive to growth.



# *Annex of Supplementary Documents*

## **ANNEX I: DECISION**

WORLD TRADE  
ORGANIZATION

WT/MIN(03)/18  
11 September 2003  
(03-4846)

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MINISTERIAL CONFERENCE  
Fifth Session  
Cancun, 10-14 September 2003

### **ACCESSION OF THE KINGDOM OF CAMBODIA Decision of 11 September 2003**

The Ministerial Conference,

Having regard to paragraph 2 of Article XII and paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (the “WTO Agreement”), and the Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed by the General Council (WT/L/93),

Taking note of the application of the Kingdom of Cambodia for accession to WTO Agreement dated 19 October 1994,

Noting the results of the negotiations directed toward the establishment of the terms of accession of the Kingdom of Cambodia to the WTO Agreement and having prepared a Protocol on the Accession of the Kingdom of Cambodia,

Decides as follows:

1. The Kingdom of Cambodia may accede to the WTO Agreement on the terms and conditions set out in the Protocol annexed to this Decision.

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### **PROTOCOL ON THE ACCESSION OF THE KINGDOM OF CAMBODIA**

Preamble

The World Trade Organization (hereinafter referred to as the “WTO”), pursuant to Article XII of the Marrakesh Agreement Establishing the World Trade Organization



(hereinafter referred to as the “WTO Agreement”), and the Kingdom of Cambodia,

Taking note of the Report of the Working Party on the Accession of the Kingdom of Cambodia to the WTO Agreement reproduced in document WT/ACC/KHM/21, dated 15 August 2003 (hereinafter referred to as the “Working Party Report”),

Having regard to the results of the negotiations on the accession of the Kingdom of Cambodia to the WTO Agreement,

Agree as follows:

### **PART I – GENERAL**

1. Upon entry into force of this Protocol pursuant to paragraph 8, the Kingdom of Cambodia accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.
2. The WTO Agreement to which the Kingdom of Cambodia accedes shall be the WTO Agreement, including the Explanatory Notes to that Agreement, as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of entry into force of this Protocol. This Protocol, which shall include the commitments referred to in paragraph 224 of the Working Party Report, shall be an integral part of the WTO Agreement.
3. Except as otherwise provided for in paragraph 224 of the Working Party Report, those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with the entry into force of that Agreement shall be implemented by the Kingdom of Cambodia as if it had accepted that Agreement on the date of its entry into force.
4. The Kingdom of Cambodia may maintain a measure inconsistent with paragraph 1 of Article II of the GATS provided that such a measure was recorded in the list of Article II Exemptions annexed to this Protocol and meets the conditions of the Annex to the GATS on Article II Exemptions.

### **PART II – SCHEDULES**

5. The Schedules reproduced in Annex I to this Protocol shall become the Schedule of Concessions and Commitments annexed to the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the “GATT 1994”) and the Schedule of Specific Commitments annexed to the General Agreement on Trade in Services (hereinafter referred to as “GATS”) relating to the Kingdom of Cambodia. The staging of the concessions and commitments

listed in the Schedules shall be implemented as specified in the relevant parts of the respective Schedules.

6. For the purpose of the reference in paragraph 6(a) of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of the Schedules of Concessions and Commitments annexed to this Protocol shall be the date of entry into force of this Protocol.

### **PART III – FINAL PROVISIONS**

7. This Protocol shall be open for acceptance, by signature or otherwise, by the Kingdom of Cambodia until 31 March 2004.

8. This Protocol shall enter into force on the thirtieth day following the day upon which it shall have been accepted by the Kingdom of Cambodia.

9. This Protocol shall be deposited with the Director General of the WTO. The Director General of the WTO shall promptly furnish a certified copy of this Protocol and a notification of acceptance by the Kingdom of Cambodia thereto pursuant to paragraph 9 to each Member of the WTO and to the Kingdom of Cambodia.

This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Cancún this [date of month in full] day of September, two thousand and three in a single copy in the English, French and Spanish languages, each text being authentic, except that a Schedule annexed hereto may specify that it is authentic in only one of these languages.

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#### **ANNEX I**

#### **SCHEDULE CLVI – THE KINGDOM OF CAMBODIA**

Authentic only in the English language.  
(Circulated in document WT/ACC/KHM/21/Add.1)

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#### **SCHEDULE OF SPECIFIC COMMITMENTS ON SERVICES LIST OF ARTICLE II EXEMPTIONS**

Authentic only in the English language.  
(Circulated in document WT/ACC/KHM/21/Add.2)

## ANNEX II: ACCESSION OF LEAST DEVELOPED COUNTRIES

Decision of 10 December 2002

[The General Council] Decides that:

Negotiations for the accession of LDCs to the WTO be facilitated and accelerated through simplified and streamlined accession procedures, with a view to concluding these negotiations as quickly as possible, in accordance with the guidelines set out hereunder:

### I. Market Access

- WTO Members shall exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs, taking into account the level of concessions and commitment undertaken by acceding WTO LDCs' Members;
- acceding LDCs shall offer access through reasonable concessions and commitments (on trade in goods and services commensurate with their individual development, financial and trade need, in line with Article XXXVI.8 of GATT 1994, Article 15 of the Agreement on Agriculture, and Articles IV and XIX of the General Agreement on Trade in Services.

### II. WTO Rules

- Special and Differential Treatment, as set out in the Multilateral Trade Agreement, Ministerial Decisions, and other relevant WTO legal instruments, shall be applicable to all acceding LDCs, from the date of entry into force of their respective Protocol of Accession;
- transitional period transitional arrangement foreseen under specific WTO Agreements, to enable acceding LDCs to effectively implement commitment and obligation, shall be granted in accession negotiations, taking into account individual development, financial and trade needs;
- transitional periods arrangements shall be accompanied by Action Plans for compliance of WTO rules. The implementation of the Action Plan shall be supported by Technical Assistance and Capacity Building measures for the acceding LDCs. Upon the request of an acceding LDC, WTO Members may coordinate efforts to guide that LDC through the implementation process;
- commitments to accede to any of the Plurilateral Trade Agreements or to participate in other optional sectoral market access initiatives shall not be a precondition for accession to the Multilateral Trade Agreements of the WTO. As provided in paragraph of Article IX and paragraph 3 of Article XII of the WTO Agreement, decisions on the Plurilateral

Trade Agreements shall be adopted by the Members of, and governed by the provisions in, those Agreements. WTO Members may seek to ascertain acceding LDCs' interest in the Plurilateral Trade Agreements.

### III. Process

- The good offices of the Director-General shall be available to assist acceding LDCs and Chairpersons of the LDC's Accession Working Parties in implementing this decision;
- efforts shall continue to be made, in line with information technology means and development, including in LDCs themselves to expedite documentation exchange and streamline accession procedures for LDCs to make them more effective and efficient, and less onerous. The Secretariat will assist in this regard. Such efforts will, *inter-alia*, be based upon the WTO Reference Centres that are already operational in acceding LDCs;
- WTO Member may adopt additional measures in their bilateral negotiations to streamline and facilitate the process, e.g., by holding bilateral negotiations in the acceding LDC if so requested;
- upon request, WTO Member may through coordinated, concentrated and targeted technical assistance from an early stage facilitate the accession of an acceding LDC.
- Targeted and coordinated technical assistance and capacity building, by WTO and other relevant multilateral, regional and bilateral development partners, including *inter alia* under the Integrated Framework (IF) shall be provided on a priority basis, to assist acceding LDCs. Assistance shall be accorded with the objective of effectively integrating the acceding LDC into the multilateral trading system:
- effective and broad-based technical cooperation and capacity building measures shall be provided on a priority basis, to cover all stages of the accession process, i.e. from the preparation of documentation to the setting up of the legislative infrastructure and enforcement mechanisms, considering the high costs involved and in order to enable the acceding LDC to benefit from and comply with WTO rights and obligations.

The implementation of these guidelines shall be reviewed regularly in the agenda of the Sub-Committee on LDCs. The result of this review shall be included in the Annual Report of the Committee on Trade and Development to the General Council. In pursuance of their commitments on LDC's accession, in the Doha Ministerial Declaration, Ministers will take stock of the situation at the Fifth Ministerial Conference and, as appropriate, at subsequent Ministerial Conferences.

### **ANNEX III: OPENING STATEMENT AT THE 3RD WORKING PARTY MEETING ON CAMBODIA'S ACCESSION TO THE WTO**

**by H.E. Mr. Sok Siphana Secretary of State for Commerce and Head of the Cambodian Delegation**

WTO, Geneva – 14 November 2002

*Mr. Chairman, Excellencies, Ladies and Gentlemen,*

First of all, on behalf of the Cambodian Delegation, I would like to express our deep appreciation to the WTO Secretariat and the Chairman of the Working Party on Cambodia's accession into the World Trade Organization for making this third Working Party meeting possible as well as for the arrangements of bilateral negotiations in Geneva. I would like to also take this opportunity to convey the warmest greetings of Commerce Minister Cham Prasidh to Dr. Supachai Panitchpakdi, Director General, and our best wishes for a successful mandate for the enlargement of WTO membership and free trade.

*Mr. Chairman, Ladies and Gentlemen,*

Since our second Working Party last February 14, 2002, much has happened and I think it is appropriate for me to provide a quick update to the Working Party on the recent developments in the Cambodian economy.

Overall, the Cambodian government has continued to make good progress in implementing its economic reform program and in maintaining macroeconomic stability. Inflation remains very low and economic growth is being sustained at an annual average growth rate of nearly 7% during the last three years, from 1999–2001 despite a severe string of drought and floods for the last 3 years and a weaker external environment. In fact, despite some difficulties due to drought and flood in 2002, we were still able to achieve our forecasted rate of growth of 5–5.5%. Export remains strong well above the 1 billion dollar mark for the last 3 years. According to the International Monetary Fund (IMF) Cambodia has performed quite well during the first half of 2002. To that effect, the Executive Board of the IMF completed on 22 July 2002 its fifth review of Cambodia's economic performance under the Poverty Reduction and Growth Facility program (PRGF) and concluded that progress in the implementation of structural reform has also been broadly satisfactory although reform efforts need to be strengthened in key areas like in revenue administration, public expenditure management, forestry policy and civil service reform. This positive review has led to the release of an additional tranche of US\$11.2 million for the support of Cambodia's balance of payments.

In June 2002 a meeting of the Consultative Group (CG) was convened for the first time in Cambodia to assess the progress and setbacks in the performance of the governments reform programs. The outcomes of the meeting was a overwhelming success with the donor

community pledging a total of US\$635 million in new assistance to Cambodia—excluding the US\$50 million pledged by NGOs, a figure far exceeding the government request for only US\$486 million for the year 2002.

On July 2002, the Government launched the Second Socio-Economic Development Plan for 2001–2005 the thrust of which is the reduction of poverty through private sector development, employment creation and trade mainstreaming.

Recently, just 10 days ago, Cambodia has hosted with great success several historic events including the Greater Mekong Subregion (GMS) Summit, the ASEAN Heads of State Summit, the ASEAN+3 (Japan, Korea, and China) Summit and the ASEAN-India Summit. Historic agreements were signed including the Comprehensive Framework Agreement on Economic Cooperation between ASEAN and China, the Joint Declaration of the Leaders of ASEAN and Japan on the Comprehensive Economic Partnership, the ASEAN Framework Agreement on Tourism, and the Cambodian Trade Agreements with India and Korea.

*Mr. Chairman, Ladies and Gentlemen,*

Cambodia is quite conscious of the central role of legal and judicial reforms in the overall development agenda of Cambodia. While Cambodia has established an ambitious National Program of Legislation of more than 40 new laws in order to meet the requirements for WTO accession, we foremost believes that these are being undertaken to foster development of a vigorous private sector to better respond to the requirements of the regionalization and globalization of world trade and to make our Government more accountable to our own citizens.

Cambodia believes that it is critical for the efficiency of Cambodia's WTO accession that it provides relevant legal texts as soon as possible and we are fully committed to do so, in particular in the areas of transparency and due process, trading rights, free or special trade areas, TRIPS, the custom code, the new custom tariff, TBT/SPS, and import licensing as they become available.

This said, allow me Mr. Chairman to take a few minutes to describe and highlight the changes that have taken place since the last WP meeting as regards the status of all legislation on the revised legislative agenda.

Despite the difficult tasks of translating these legal texts, we have nevertheless been able to submit recently 17 legislations and draft legislations which are now available from the Secretariat for consultation and available in electronic format. Legislations wise we have submitted: (1) Law on Corporate Accounts, Their Audit and The Accounting Profession; (2) Law on Forestry; (3) Sub-Decree on Insurance; (4) Decision on the Establishment of the Inquiry Points for (i) Services, (ii) SPS, (iii) TBT, and (iv) Legal compliance with WTO

agreements. For draft legislations we have submitted: (1) Revised Draft Law on Copyright and Related Rights; (2) Revised Draft Insolvency Law; (3) Revised Draft Tourism Law; (4) Draft Water Supply and Sanitation Regulatory Law; (5) Draft Law on Customs; (6) Draft Law on Commercial Arbitration; (7) Draft Amendment of the Law on Investment; (8) Draft Law on Negotiable Instruments and Payment Transactions; (9) Draft Sub-Decree on Plant Quarantine; (10) Draft Sub-decree on sanitary inspection of animal and animal products; and last but not least (15) the Draft Civil Code. The Draft Civil Procedure Code is currently being edited and will be provided within a few weeks. At the specific request of a WTO member we have also submitted the Financial Blueprint of the Royal Government of Cambodia (2001–2010).

While we appreciate the concerns of some WTO members that Cambodia needs to reprioritize its legislative implementation agenda and expedite work in the area of basic legislative code for the effective operation of the Legal and Judicial system—The Civil Code and the Civil Procedure Code—we also need their understanding on the constraints that Cambodia is facing in term of legislative process, stakeholders' debates, and our limited human resources. A case at point is the drafting of the Civil Code and the Civil Procedure Code which despite a massive technical assistance from Japan and a dedicated team working on the draft the time consuming consultation process among various stakeholders has nonetheless prevented us from speeding the timetable. This is a case where Cambodia firmly believes that the substantive contents of this legislation should not be compromised for the sake of speed. Last month after 3 long years in the making the Government finally unveiled the broad content of the Civil Code and Civil Procedural Code.

While the case of the draft Civil Procedure Code is an extreme case the constraints facing the legislative process for other legislations are the same, although with different degrees of complexity. The draft law on customs, the amendments of the law on investment, the draft copyrights and patent laws are just some examples.

In the field of administrative and judicial enforcement, we have seen that with the recent enactment of the Trademarks Law Cambodia was able to enforce and protect intellectual property rights of well-known marks belonging to multinationals like British American Tobacco, Sheraton, and McDonald, etc.

Institutional development wise, the Government has taken a big leap forward with the restructuring and revitalizing of the Council for Legal and Judicial Reform with the inclusion of the Secretary of State for Commerce as a full fledge member of the Council. This inclusion is a tacit recognition of the important role of Commerce in the larger legal and judicial reform framework.

What are the prospects for the future in the implementation of the National Program of Legislation? Mr. Chairman, my assessment is that the prospects are bright. As you and many

other WTO members are aware Cambodia was selected and succeeded as a pilot country in the Integrated Framework for trade related Technical Assistance for LDCs ("IF"). As a result we were able to mobilize substantial technical assistance from many developed WTO members in the preparation of our WTO compliance legislations agenda.

I take this opportunity to express my thanks for their support, in particular to Canada for the preparation of the rules for the Commercial Arbitration Center and the drafting of the Law establishing the Commercial Court; to Australia for the support in the drafting of the Laws on Anti-Dumping, Countervailing and Safeguards, SPS legislations and implementing regulations, and the rules on Geographical indications; to Austria for the financing through UNIDO on the preparation of the TBT and industrial standards legislation and implementing regulations; to France for the drafting of the Law on Geographical indications and the Criminal Code and Criminal Procedure Code; to the Asian Development Bank for the drafting of the Law on secured transactions and the establishment of a public registry for secured transactions, and the drafting of the Law on e-Commerce; the EU for technical assistance in operationalizing the WTO legal compliance unit at the Ministry of Commerce.

*Mr. Chairman, Ladies and Gentlemen,*

If Cambodia is to accede to the WTO and to benefit from this global trading system it must obviously overcome many of these institutional challenges. Capacity gaps need to be addressed in a wide range of areas, often simultaneously, and an unusually diverse array of stakeholders needs to be engaged. "Trade rules compliance capacity" is needed to enable Cambodia to improve knowledge and implementation of trade rules while "Trade competitiveness capacity" is needed to enable Cambodia to better exploit the improved market access for its exports. Without technical and financial support to upgrade the capacity of our key policy makers, regulators and enforcement officers, Cambodia will not be able to actively participate and effectively derive all the benefits brought about by its accession to the WTO.

Institutionally the Government has expanded its Permanent Mission of Cambodia to the WTO in Geneva and have taken great pain in strengthening the capacity of over 100 senior officials in the government think tank to assist in matters related to Cambodia's accession to the WTO.

Through the IF initiative, Cambodia was able to mobilize technical support from various donors to respond to the challenges and overcome the barriers as identified in our TA matrix. Since the last CG meeting in June 2002 the Government has taken advantage of its status as an IF Pilot Scheme country to secure other necessary trade-related capacity building, both to improve knowledge and implementation of trade rules as well as to better exploit the improved market access for its exports. Larger scale projects and loan programmes with international financial institutions like the World Bank and the Asian Development Bank are currently being designed to tackle in a holistic way the bottlenecks and limitations arising from 3



main areas: (1) border barriers to trade; (2) the 'behind the border' barriers; and (3) barriers in accessing global markets.

Cambodia is quite confident that the necessary technical assistance will be secured for activities identified in the Action Plans which Cambodia is using as the basis to request transitional periods. The delivery of these TA will be crucial for Cambodia for it to be able to fully readied itself once the transitional periods have expired.

*Mr. Chairman, Ladies and Gentlemen,*

Cambodia can't help but stress its LDC Status in the context of its WTO accession and is quite concerned that not a single LDC was able to accede to the WTO since its transformation from the GATT more than 7 years ago. Since then developed nations have pledged continuously in their numerous political statements like The Millennium Development Goals, (September, 2000), the Quad Statement at the UN LDC III Conference in Brussels (May 2001), the WTO Fourth Ministerial Declaration in Doha (November 2001), The Monterrey Consensus made at the Financing for Development (FFD) Conference (March, 2002), and the statement made at the recent World Summit for Sustainable Development in Johannesburg (August 2002). A few weeks ago at the APEC meeting Cambodia was pleased to hear about US President Bush's Enterprises for ASEAN Initiatives (EAI) where the US pledged to start bilateral free trade negotiations with each ASEAN member which is a WTO member and to support those which are not yet members of the WTO for their early accession, specifically Cambodia, Lao PDR, and Vietnam.

Based on this spirit of the above statement Cambodia strongly reiterates our request for members' serious consideration to facilitate and accelerate negotiations with acceding Cambodia as declared in paragraph 42 in the Doha Ministerial Declaration. Cambodia would expect that in accordance with the Work Programme for LDCs, concrete modalities would be agreed upon, by the WTO General Council, by the end of 2002.

*Mr. Chairman, Ladies and Gentlemen,*

In term of market accession negotiations, Cambodia is also pleased that it has made "substantial improvements" in both its goods and services offer. We believe that these "substantial improvements" were made in good faith while painstakingly taking into account Cambodia's individual development, financial and trade needs as well as the level of commitment of existing WTO Members at similar stages of development. On this note Cambodia wishes to express its thanks to the EU for dispatching their trade negotiators to Cambodia for the bilateral negotiations. A positive lesson can be drawn from this flexible approach of the EU. Cambodia was able to interact on the spot with the various policy makers in the country on the various requests from the EU and our Council of Ministers was able to decide on a substantial improvement in one of the key services sector.

*Mr. Chairman, Ladies and Gentlemen,*

Cambodia wishes to congratulate the WTO Secretariat on the preparation of the Factual Summary. Our expectation is that at the end of this Working Party meeting the Secretariat can be invited to complete those sections of the Summary not yet completed, and to transform the document into a draft Report of the Working Party. We appreciate the inclusion of the Action Plans that are included as annexes of the Factual Summary and we would welcome an active dialogue with developed WTO Members on possible provisions of technical assistance.

*Mr. Chairman, Ladies and Gentlemen,*

I think I have painted a very broad picture of our efforts made so far and also of our expectations from this accession process. While we are quite pleased to see so much support generated from the IF, we feel that this success would be whole on the day when we can successfully accede to the WTO. It is our hope that Cambodia can realize its dream at the Fifth WTO Ministerial Meeting in Cancun next year. To get there, we would need to accelerate our accession pace and once again we would request flexibility from WTO Members both in the granting of Special and Differential Treatments and in their demands for goods and services offers. We hope that the last Working Party can be held sometimes in early March or April 2003 the object of which will be to examine the draft Working Party Report and to resolve the few remaining outstanding issues.

On this note, *Mr. Chairman, Ladies and Gentlemen,* I would like to conclude my remarks and thank the Working Party for their attention.

## ANNEX IV: CAMBODIA TARIFF OFFER

### Part I – Agricultural Products

HS Head.	Description of Goods	Applied rate	Final bound rate
22	Wine of fresh grapes, including fortified wines; Vermouth and other wines of fresh grapes flavoured with plants or aromatic substances – Of an alcoholic strength by volume not exceeding 15% vol; Other fermented beverages (for example, cider, perry, mead).	35	60
22	Beer made from malt; Stout and porter; Other beer, including ale.	35	50
24	Cigars, cheroots, cigarillos and cigarettes, tobacco substitutes; Other manufactured tobacco and manufactured tobacco substitutes.	35	50
01	Live swine weighing less than 50 kg.	15	40
02	Meat of bovine animals, swine, sheep or goats, horses, asses, mules or hinnies, poultry fresh, frozen or chilled, salted, in brine – dried or smoked; Carcasses and half-carcasses.	35	40
04	Milk and cream, concentrated or containing added sugar or other sweetening matter; Buttermilk, curdled milk and cream, yogurt; Butter and other fats and oils derived from milk, dairy spreads; Cheese and curd; Birds' eggs, in shell, fresh, preserved or cooked.	35	40
08	Coconuts, Brazil nuts and cashew nuts, fresh or dried, whether or not shelled or peeled, desiccated; Bananas, including plantains, fresh or dried; Pineapples; Citrus fruit, fresh or dried; Oranges; Watermelons; Strawberries; Durian.	7	40
09	Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion; Pepper; dried or crushed or ground fruits of Capsicum or Pimenta; White Vanilla; Cinnamon and cinnamon-tree flowers; Nutmeg, mace and cardamoms; Seeds of anise, badian, fennel, coriander, cumin or Caraway; Juniper berries.	15	40
10	Rice.	7	40
11	Wheat or meslin flour; Cereal flours; Rye flour; Cereal, meal and pellets; Flour, meal, powder, flakes, granules and pellets of potatoes and powder of the dried leguminous vegetables: manioc (cassava). Cereal grains otherwise worked of maize (corn).	35	40
12	Sunflower seeds, whether or not broken; Flours and meals of oil seeds or oleaginous fruits, of soya beans, cannabis, Gum Benjamin.	7	40
13	Sunflower seeds, whether or not broken; Flours and meals of oil seeds or oleaginous fruits, of soya beans, cannabis, Gum Benjamin.	35	40
15	Vegetable saps and extracts; Opium; Extracts and dyes of cannabis. Palm oil and its fractions, whether or not refined, but not chemically modified. Crude oil.	7	40
16	Sausages; Other prepared or preserved meat, meat offal or blood; Extracts and juices of meat, fish or crustaceans, molluscs or other	35	40

HS Head.	Description of Goods	Applied rate	Final bound rate
18	aquatic invertebrates; Prepared or preserved fish, caviar and caviar substitutes prepared from fish eggs; Fish, whole or in pieces, but not minced: Sardines; Salmon; Anchovies.	35	40
19	Cocoa paste, Cocoa butter, fat and oil; Chocolate and other food preparations containing cocoa.	35	40
20	Malt extract; Food preparations of flour, meal, starch or malt extract, not containing cocoa; Tapioca and substitutes therefor prepared from starch; Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals (other than maize (corn); Bread, pastry, cakes, biscuits and other bakers' wares.	35	40
21	Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid; Cucumbers and gherkins; Tomatoes; Mushrooms and truffles, prepared or preserved; Potatoes; Unshelled beans, olives and other vegetables (other than peas, shelled beans, asparagus and sweet corn) and mixtures of vegetables, preserved by sugar; Orange juice, frozen, concentrate.	35	40
22	Extracts, essences and concentrates, of coffee, tea or maté and preparations with a basis of these products; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof. Sauces and preparations; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard; Soya sauce; Soup and broth and preparations.	35	40
24	Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter not flavoured; and other non-alcoholic beverages.	15	40
21	Unmanufactured tobacco; tobacco refuse; tobacco, not stemmed/stripped: Virginia type leaf tobacco wrapper, flue cured.	7	35
23	Yeasts (active or inactive); Other single-cell micro-organisms; Prepared baking powders.	35	35
29	Preparations of a kind used in animal feeding; Dog and cat food.	35	35
33	Acyclic alcohols and their halogenated, sulphonated, nitrated or nitrosated derivatives; Other polyhydric alcohols.	35	35
35	Essential oils, including concretes and absolutes; Resinoids; Extracted oleoresins.	35	35
09	Casein, caseinates and other casein derivatives; Casein glues; Albumins, albuminates and other albumin derivatives; Gelatin sheets and gelatin derivatives; Peptones and other protein substances and their derivatives; Dextrins and other modified starches.	7	30
	Tea, whether or not flavoured; Green tea in immediate packing of a content not exceeding 3 kg.	15	30
	Ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices.		

HS Head.	Description of Goods	Applied rate	Final bound rate
10	Pop corn.	7	30
12	Ground-nuts, not roasted or otherwise cooked, whether or not shelled or broken; Copra; Other oil seeds and oleaginous fruits, whether or not broken; Palm nuts and kernels.	15	30
13	Vegetable saps and extracts of liquorice.	15	30
15	Sunflower-seeds, safflower or cotton-seed oil; Crude oil of Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined, but not chemically modified; Other fixed vegetable fats and oils; Linseed oil and its fractions; Margarine; edible mixtures or preparations of animal or vegetable fats or oils; Vegetable waxes, beeswax; Other insect waxes.	7	30
17	Cane or beet sugar and chemically pure sucrose, in solid form; Glucose and glucose syrup.	7	30
20	Jams, fruit jellies, marmalades, fruit or nut puree and fruit or nut pastes, being cooked preparations; Homogenised preparations.	7	30
21	Non-dairy creamer.	7	30
41	Raw skins of sheep or lambs (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not with wool on or split.	15	30
43	Raw furskins (including heads, tails, paws and other pieces or cuttings, suitable for furriers' use), other than raw hides and skins.	15	30
01	Live horses, asses, mules and hinnies; Feeder cattle weighing not exceeding 330 kg in weight	15	25
06	Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared; Orchids; Foliage, branches and other parts of plants, without flowers or flower buds, and grasses, mosses and lichens.	15	25
08	Other nuts, fresh or dried, whether or not shelled or peeled; Dates; Raspberries, blackberries, mulberries and loganberries; Peel of citrus fruit or melons (including watermelons), fresh, frozen, dried or provisionally preserved in brine, in sulphur water or in other preservative solutions.	7	25
04	Milk and cream, not concentrated nor containing added sugar or other sweetening matter; Of a fat content, by weight, not exceeding 1 %.	7	20
05	Human hair, unworked, whether or not washed or scoured; Pigs', hogs' or boars' bristles and hair; badger hair and other brush making hair; Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof, fresh, chilled, frozen, salted, in brine, dried or smoked; Skins and other parts of birds, with their feathers or down, feathers and parts of feathers; Bones and horn-cores, unworked, defatted, simply prepared; Products of fish or crustaceans, molluscs or other aquatic invertebrates.	15	20

HS Head.	Description of Goods	Applied rate	Final bound rate
06	Chicory plants and roots; Bulbs, tubers, tuberous roots, corms, crowns and rhizomes.	15	20
07	Potatoes, manioc, onions, shallots, garlic, leeks and other alliaceous and leguminous vegetables, cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas; fresh or chilled.	7	20
22	Vinegar and substitutes for vinegar obtained from acetic acid.	7	20
01	Asses, mules and hinnies; Fighting cocks.	15	15
04	Milk and cream of a fat content, by weight, exceeding 1% but not exceeding 6%.	7	15
05	Coral and similar materials unworked; Shells of molluscs, crustaceans or echinoderms and cuttle-bone; Coral and similar material; Natural sponges of animal origin.	15	15
06	Other live plants, (including their roots), cuttings and slips; Mushroom spawn; Orchid cuttings and slips.	15	15
08	Grapes, fresh or dried; Apples, pears and quinces; Apricots, cherries, peaches (including nectarines), plums and sloes; Fruit and nuts, provisionally preserved, but unsuitable in that state for immediate consumption; Cherries fruit; dried apricots.	7	15
10	Wheat and meslin fit for human consumption; Grain sorghum; Buckwheat, millet and canary seed; other cereals.	7	15
11	Cereal grains otherwise worked of barley, malt, whether or not roasted.	7	15
12	Linseed, Rape or colza seeds, whether or not broken. Hop cones, fresh or dried, whether or not ground, powdered or in the form of pellets; Plants and parts of plants, of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes, fresh or dried, whether or not cut, crushed or powdered; Licorice roots; Sandalwood; Sugar Beet.	15	15
13	Lac; natural gums, resins, gum-resins and oleoresins.	15	15
14	Vegetable materials of a kind used primarily for plaiting (for example, bamboos, rattans, reeds, rushes, osier, raffia, cleaned, bleached or dyed cereal straw, and lime bark); Vegetable materials of a kind used primarily as stuffing or as padding (for example, kapok, vegetable hair and eel-grass), whether or not put up as a layer with or without supporting material.	15	15
15	Pig fat (including lard) and poultry fat; Fats of bovine animals, sheep or goats; Lard oil, oleo-oil and tallow oil, not emulsified or mixed or otherwise prepared; Fish liver oils fit for human consumption; Wool grease and fatty substances; Soya-bean, ground-nut, olive oil; Colza or mustard oil and its fractions, whether or not refined, but not chemically modified.	7	15
16	Herrings.	7	15
17	Molasses resulting from the extraction or refining of sugar; Sugar	7	15

HS Head.	Description of Goods	Applied rate	Final bound rate
18	confectionery (including white chocolate), not containing cocoa. Chewing gum, whether or not sugar-coated.	15	15
19	Cocoa beans, whole or broken, raw or roasted; Cocoa shells, husks, skins and other cocoa waste.	15	15
23	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni; Uncooked pasta, not stuffed or otherwise prepared.	7	15
41	Flours, meals and pellets, of meat or meat offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption; Residues of starch manufacture and similar residues; Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soya-bean oil.	15	15
10	Whole hides and skins of bovine animals, of a weight per skin not exceeding 8 kg when simply dried, 10 kg when dry-salted, or 14 kg when fresh, wet-salted or otherwise preserved.	7	10
21	Wheat and meslin; Durum wheat; Rye; Barley; Oats.	7	10
38	Dried bean curd and bean curd sticks.	7	10
50	Finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries.	7	7
51	Silk-worm cocoons suitable for reeling; Raw silk (not thrown); Silk waste (including cocoons unsuitable for reeling, yarn waste and garnetted stock).	7	7
52	Wool, not carded or combed; Fine or coarse animal hair, not carded or combed.	7	7
53	Cotton, not carded or combed. Cotton waste (including yarn waste and garnetted stock).	7	7
01	Flax, raw or processed but not spun; flax tow and waste (including yarn waste and garnetted stock).	7	7
10	Live bovine animals, swine, sheep and goats; Pure-bred breeding animals.	0	5
12	Maize (corn) seed; Rice in the husk (paddy or rough), seed.	0	5
12	Seeds, fruit and spores, of a kind used for sowing; Sugar beet seed.	0	5

## ANNEX IV: CAMBODIA TARIFF OFFER

### Part II – Other Products

HS Head	Description of Goods	Applied rate	Final bound rate
87	Motor cars and other motor vehicles principally designed for the transport of not more than 8 persons.	35	60
03	Live fish.	35	50
27	Petroleum coke, petroleum bitumen and other residues of petroleum.	35	40
33	Beauty or make-up, soap, preparations for use on the hair.	35	40
40	Retreaded or used pneumatic tyres of rubber; Vulcanised hygienic or pharmaceutical articles; Ambulances of a cylinder capacity exceeding 1,500 cc but not exceeding 3,000 cc; For the transport of not more than 8 persons, including the driver.	15	40
87	Bodies (including cabs), for the motor vehicles; Concrete-mixer lorries of 6t or more but not exceeding 18t.	35	40
03	Fish, dried, salted or in brine; Smoked fish.	35	35
25	Asbestos; Gypsum; Anhydrite; Plasters; Table salt.	15	35
29	Cyclic alcohols.	35	35
32	Artists', students' or signboard painters' colours.	35	35
34	Prepared glues and other prepared adhesives; Matches.	35	35
36	Combustible materials.		
38	Photographic plates and film in the flat, prepared paint or varnish removers.	35	35
39	Natural rubber; New pneumatic tyres; Inner tubes of rubber.	35	35
40	Articles of vulcanised rubber other than hard rubber; Mats, boat or dock fenders; Trunks, suit-cases, vanity-cases, executive-cases, brief-cases.	35	35
42	School satchels; Fuel wood, in logs, in billets, in twigs.	35	35
44	Railway or tramway sleepers (cross-ties) of wood; Agglomerated cork (with or without a binding substance).	35	35
47	Newsprint, in rolls or sheets.	35	35
56	Knotted netting of twine, cordage or rope; made up fishing nets; Textile fabrics coated with gum or amylaceous substances.	35	35
59	Textile hosepiping and similar textile tubing.	35	35
61	Babies' garments and clothing accessories, knitted or crocheted.	35	35
62	Track suits, ski suits swimwear; Brassieres, girdles, corsets, braces, suspenders, garters and similar articles.	35	35
63	Sacks and bags, of a kind used for the packing of goods of cotton.	35	35
64	Footwear with outer soles of rubber.	35	35
68	Slag wool, rock wool and similar mineral wools; Worked mica and articles of mica.	35	35



HS Head.	Description of Goods	Applied rate	Final bound rate
69	Glass, bent, edge-worked, engraved.	35	35
70	Glass mirrors, including rear-view mirrors; Signalling glassware and optical elements of glass.	35	35
71	Pearls, natural or cultured, rubies, sapphires and emeralds; Base metals clad with silver; Articles of jewelry of silver; Nails, tacks, drawing pins, staples.	35	35
73	Springs and leaves for springs, of iron or steel; Table, kitchen or other household articles; Cloth, grill and netting, of copper wire.	35	35
75	Aluminium reservoirs, tanks, vats and similar containers.	35	35
79	Tin, not alloyed.	35	35
83	Bells, gongs and the like, non-electric, of base metal; statuettes; Aircraft engines of a power not exceeding 18.65kW.	35	35
84	Dish washing machines; Machinery for cleaning or drying bottles; Harvesting or threshing machinery.	35	35
85	Electrical transformers, static converters; Electro-magnets, electric accumulators; Leadacid, of a kind used for starting piston engines; Electrical ignition used for spark-ignition; Electric instantaneous or storage water heaters; Audio frequency electric amplifiers, ultraviolet or infra-red lamps.		
87	Ambulances of a cylinder capacity exceeding 1500 cc but not exceeding 2,000 cc; Motor vehicles for the transport of ten or more persons, including the driver; Gross vehicle weight exceeding 6t but not exceeding 18t, not fully assembled.	35	35
89	Yachts and other vessels for pleasure or sports; Rowing boats and canoes.	35	35
92	Other furniture and parts thereof.	35	35
94	Articles for funfair, table or parlour games, including pin-tables, billiards.	35	35
95	Roundabouts, swings, shooting galleries and other fairground amusements.	35	35
96	Brooms, brushes; Smoking pipes and cigar or cigarette holders.	35	35
27	Petroleum gases; Other light petroleum spirits, including solvents.	15	30
42	School satchels.		
64	Footwear with outer soles of leather, and uppers.	15	30
70	Clock or watch glasses and similar glasses.	7	30
73	Cast articles of iron or steel.	15	30
75	Thermal equipment.	15	30
82	Hand saws; Blades for saws of all kinds.	15	30
83	Armoured or reinforced safes , strong-boxes.	15	30
84	Generators.	15	30
85	Turntables (record-decks), record-players, cassette-players and other sound reproduction apparatus; Dictating machines; Telephone answering machines; Radar apparatus, Reception apparatus for	15	30

HS Head.	Description of Goods	Applied rate	Final bound rate
	radio-telephony, radio-telegraphy; Electrical apparatus for switching or protecting electrical circuits; Smoke switches; Lamp-holders, boards, panels, consoles, desks, cabinets.		
87	Road tractors for semi-trailers; Special purpose motor vehicles; Fire fighting vehicles; Works trucks, self-propelled, not fitted with lifting or handling, equipment; Tanks and other armoured fighting vehicles; Trailers and semi trailers of the caravan type, for housing or camping.	15	30
89	Fishing vessels; factory ships and other vessels for processing or preserving fishery products.	15	30
90	Cameras, direction finding compasses; Other navigational instruments and appliances; Surveying hydrographic machines and appliances for testing the hardness, strength compressibility; Instruments and apparatus for physical or chemical analysis.	15	30
94	Wheeled toys designed to be ridden by children (for example, tricycles).	7	30
95	Articles and equipment for general physical exercise, gymnastics, athletics.	0	30
	Fishing rods.	15	30
96	Date, sealing or numbering stamps.	15	30
87	Track-laying tractors for the transport of not more than 8 persons, including the driver.	0	25
87	Motor vehicles for the transport of goods.	15	22.5
03	Crustaceans, live, fresh, chilled, frozen, dried.	15	20
03	Molluscs, live, fresh chilled, frozen, dried, salted.	15	20
25	Portland cement, aluminous cement, marble, travertine.	7	20
27	Spirit type (gasoline type) jet fuel; Medium oils and preparations: Bitumen and asphalt; Enzymes.	7	20
33	Preparations for oral or dental hygiene.	15	20
34	Lubricating preparations.	7	20
36	Ferro-cerium and other pyrophoric alloys in all forms.	7	20
38	Prepared binders for foundry moulds or cores.	7	20
39	Tableware, kitchenware, other household articles and toilet; Articles, of plastics; Office supplies; Fittings for furniture, coachwork or the like.	15	20
40	Articles of apparel and clothing accessories (including gloves), for surgical, cellular rubber; Erasers.	7	20
47	Uncoated paper and paperboard, of a kind used for writing; Printed books, brochures, leaflets and similar printed matter; Children's picture, drawing or colouring books; Unused postage.	7	20
49	Silk yarn (other than yarn spun from silk waste) not put up for retail sale; Fabricated asbestos fibres; Articles of stone or of other mineral; Bricks, blocks, tiles and other ceramic goods of siliceous fossil.	7	20

HS Head.	Description of Goods	Applied rate	Final bound rate
64	Other footwear with outer soles and uppers of rubber or plastics.	7	20
66	Walking-sticks, seat-sticks, whips, riding-crops and the like.	7	20
68	Millstones, grindstones, grinding wheels and the like.	7	20
69	Unglazed ceramic flags and paving, hearth or wall tiles.	7	20
70	Multiple-walled insulating units of glass – Rear-view mirrors for vehicles; Clock or watch glasses; Paving blocks, slabs, bricks, squares, tiles.	7	20
78	Zinc, not alloyed.	7	20
79	Ships' or boats' propellers and blades.	7	20
85	Primary cells and primary batteries; Portable electric lamps designed to function by their own source of energy; Printed circuit boards, assembled, for cinematographic sound recorders and reproducers; Radar apparatus, radio navigational aid apparatus; Pocket-size radio cassette-players; Electrical signalling, safety or traffic control equipment for railways; Cables for electric accumulators.	7	20
87	Chassis fitted with engines, for the motor vehicles of headings Nos. 87.01; Parts and accessories of the motor vehicles of headings nos. 87.01 to 87.05; Motorcycles (including mopeds) and cycles fitted with auxiliary motors; Bicycles and other cycles (including delivery tricycles), not motorized.	15	20
90	Other breathing appliances and gas masks, excluding protective masks; Artificial joints; Artificial teeth and dental fittings.	7	20
96	Tooth Brushes, including dental-plate brushes; Buttons, press-fasteners, snap fasteners and press-studs, button moulds; Cigarette lighters and other lighter; Vacuum flasks and other vacuum vessels, complete with cases.	7	20
61	Garments, made up of knitted or crocheted fabrics of heading; made up of fabrics of heading No. 56.02, 56.03, 59.03, 59.06 or 59.07.	7	17.5
03	Atlantic salmon ( <i>Salmo salar</i> ) and Danube salmon ( <i>Hucho hucho</i> ).	15	15
25	Unroasted iron pyrites; Natural magnesium carbonate (magnesite); Limestone flux; Mica, including splittings; Mineral substances not elsewhere specified or included.	15	15
27	Tar distilled from coal, from lignite or from peat, and other mineral tars; Petroleum oils and oils obtained from bituminous minerals; Petroleum jelly; Pre-shave, shaving or after-shave preparations, personal deodorants.	0	15
37	Photographic film in rolls; Artificial graphite.	15	15
40	Conveyor or transmission belts or belting, of vulcanised rubber; Stoppers for pharmaceutical use.	7	15
44	Wood in the rough; Hoopwood; split poles; piles, pickets and stakes of wood; Wood sawn or chipped lengthwise.	15	15
49	Dictionaries and encyclopedias, and serial installments.	0	15

HS Head.	Description of Goods	Applied rate	Final bound rate
68	Natural or artificial abrasive powder or grain, on a base of textile.	15	15
69	Refractory bricks, blocks, tiles and similar refractory ceramic; Silver (including silver plated with gold or platinum).	7	15
71	Pig iron and spiegeleisen in pigs, blocks or and other primary forms.	7	15
72	Iron and non-alloy steel in ingots or other primary forms.	7	15
73	Stranded wire, ropes, cables, plaited bands, slings and the like, of iron; Locked coil, flattened strands and non-rotating wire ropes; Barbed wire of iron or steel; Chain, anchors, grapnels and parts thereof, of iron or steel; Sewing needles, knitting needles; Stoves, ranges, grates, cookers; Radiators for central heating; Sanitary ware and parts thereof, of iron or steel; Copper mattes; cement copper (precipitated copper).	7	15
74	Nickel mattes, nickel oxide sinters and other intermediate products of nickel metallurgy.	7	15
76	Unwrought lead.	7	15
78	Other articles of lead; Unwrought zinc.	7	15
79	Unwrought tin.	7	15
80	Other articles of tin; Tungsten (wolfram) and articles thereof, including waste and scrap; Hand tools, the following: spades, shovels, mattocks.	0	15
82	Hand saws; Padlocks and locks; lockers for strong-rooms; Bells, gongs and the like.	7	15
83	Stoppers, caps and lids.	7	15
84	Steam turbines and other vapour turbines; Turbines for marine propulsion; Spark-ignition; Machinery for cleaning or drying bottles or other containers; Mechanical appliances; Spray guns and similar appliances for agricultural or horticultural and drip irrigation system; Agricultural, horticultural or forestry machinery for soil preparation; Ploughs; Other mowers, including cutter bars for tractor mounting; Milking machines and dairy machinery; Presses, crushers and similar machinery used in the manufacture of wine, cider, fruit juices or similar beverages; Sewing machines of the household type; Machinery parts.	7	15
85	Industrial or laboratory electric furnaces; Electrical apparatus for line telephony or line telegraphy; Microphones and stands; loudspeakers; headphones, earphones; Video tapes; Transmission apparatus for radio-telephony, radio-telegraphy; Aerials and aerial reflectors of all kinds; Satellite discs/dishes; Electric sound or visual signalling apparatus; Sealed beam lamp units; Reflector lamp bulbs; special purpose bulbs for medical equipment; Rail locomotives powered from an external source of electricity.		
86	Tractors (other than tractors of heading No.8709).	0	15
87	Ambulances for the transport of not more than 8 persons; Crane lorries; Tanker trailers and tanker semi- trailers; Self loading or self unloading trailers and semi trailers for agricultural purposes; Balloons and dirigibles; gliders, hang gliders and other non-powered aircraft.	0	15

HS Head.	Description of Goods	Applied rate	Final bound rate
88	Aircraft launching gear; deck-arrestor or similar gear; Cruise ships, excursion boats, ferry-boats, cargo ships, barges and similar; Tugs or pusher craft	15	15
90	Cinematographic cameras and projectors; Photo-copying apparatus incorporating an optical system of the contact type; Stereoscopic microscopes; Instruments and appliances used in medical, surgical, dental or veterinary; Orthopaedic appliances including crutches, surgical belts, and trusses; Instruments and apparatus for measuring or checking the flow level of pressures; Chromatographs and electrophoresis instruments; Measuring or checking instruments, appliances and machines; Upright pianos; Metal furniture of a kind used in offices; Fluorescent lighting fittings.	15	15
95	Scooters, pedal cars; Dolls' carriages; Video games of a kind used with a television receiver; Fishing rods, fish-hooks and other line fishing tackle; fish landing nets; Worked vegetable or mineral carving material; Gelatin capsules for pharmaceutical products.		
96	Ball point pens; Felt tipped and other porous-tipped pens and markers; Pencils, crayons, pencil leads; displays used for shop window dressing; Paintings, drawings and pastels, executed entirely by hand.	0	15
42	School satchels.	35	12.5
59	Rubberised textile fabrics, other than those of heading No. 59.02.	7	12.5
63	Knitted or crocheted of cotton; Worn clothing and other worn articles; Waterproof footwear with outer soles and uppers of rubber or of other organic compounds.	7	12.5
30	Animal or vegetable fertilizers.	0	10
50	Garnetted stock of wool or of fine or coarse animal hair.	7	10
51	Woven fabrics of coarse animal hair or of horsehair.	7	10
52	Jute and other textile bast fibres.	7	10
53	Sewing thread of man-made filaments.	7	10
54	Woven fabrics of synthetic filament yarn, including woven fabrics.		
55	Wadding of textile materials; Sanitary towels and tampons, napkins and napkin liners for babies; Men's or boys' overcoats, car-coats, capes, cloaks, anoraks.	7	10
29	Glands and other organs for organo-therapeutic uses; Ethers, ether-alcohols; Provitamins and vitamins; Vegetable alkaloids; Antibiotics.	7	7
31	Mineral or chemical fertilisers, nitrogenous; Tanning extracts of vegetable origin; tannins and their salts, ethers.	0	7
32	Paints and varnishes; Perfumes and toilet waters.	7	7
33	Bath preparations, depilatories and other perfumery.		
34	Artificial waxes and prepared waxes.	7	7
37	Instant print film.	7	7

HS Head.	Description of Goods	Applied rate	Final bound rate
38	Insecticides, rodenticides, fungicides, herbicides, anti-sprouting; Hydraulic brake fluids; Prepared culture media for development of micro-organisms; Industrial fatty alcohols.	7	7
40	Conveyor belts or belting; Teats for feeding bottles.		
42	Articles of apparel and clothing accessories, of leather or of composition leather.	7	7
49	Woven fabrics of silk or of silk waste.	7	7
50	Woven fabrics of carded wool or of carded fine animal hair.	7	7
51	Woven fabrics of cotton, containing 85 % or more by weight; Jute and other textile bast fibres, raw or retted.	7	7
52	Woven fabrics of flax.	7	7
59	Linoleum, whether or not cut to shape; floor coverings consisting lining, armour or accessories of other materials; Laboratory, hygienic or pharmaceutical glassware.	7	7
70	Glass beads, imitation pearls, imitation precious or semi-precious stones.		
85	Burglar alarms; Printed circuits; Electronic integrated circuits and micro-assemblies; Telephone, telegraph and radio relay cables, submarine.	7	7
90	Compound optical microscopes, including those for microphotography.	7	7
96	Paintings, drawings and pastels.	7	7

## **ANNEX V: SUMMARY OF WTO REFERENCE PAPER ON BASIC COMMUNICATIONS**

**(Annex to Fourth Protocol of General Agreement on Trade in Services [GATS], Agreement on Basic Telecommunications, Effective January 1, 1998)**

The paper provides for a pro-competitive environment of policy and regulation.

### ***Competitive Safeguards***

*Prevention of Anticompetitive Practices in Telecommunications:* Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anticompetitive practices.

*Safeguards:* Anticompetitive practices include, in particular, engaging in anticompetitive cross-subsidization, using information obtained from competitors with anticompetitive results, and not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

### ***Interconnection***

Interconnection is to be provided under nondiscriminatory terms, conditions, and rates, and in a timely fashion, and, upon request, at points in addition to the network termination points offered to the majority of uses. The procedures applicable for interconnection to a major supplier will be made publicly available, and a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer. An independent domestic body will resolve interconnection disputes.

### ***Universal Service***

Any Member has a right to define the kind of universal service obligation it wishes to maintain. Such obligations would not be considered anticompetitive as long as they are administered in a transparent, nondiscriminatory, and competitively neutral manner.

### ***Licensing Criteria***

The following should be made publicly available: all licensing criteria and the period of time required to reach a decision on a license application, the terms and conditions of individual licenses, and the reasons for denial of a license.

### ***Independent Regulators***

The regulatory body should be separate from and not accountable to any supplier of basic telecommunications services. The decisions of and procedures used by regulators shall be impartial to all market participants.

### ***Allocation and Use of Scarce Resources***

Allocation of scarce resources such as frequencies numbers, and rights of way will be carried out in an objective, timely, transparent, and non discriminatory way. The current state of allocated frequency bands will be made publicly available.



## ANNEX VI: LAWS, REGULATIONS AND OTHER INFORMATION PROVIDED TO THE WORKING PARTY BY CAMBODIA

1. Financial Blueprint of the Royal Government of Cambodia (2001–2010);
2. “Law on Taxation” of 8 January 1997;
3. *Preah Reach Kram* on the “Law on Foreign Exchange”, No. CS/RKM/0897/03 of 22 August 1997;
4. *Preah Reach Kram* (Royal Decree) on the “Law on the Organisation and Functioning of the National Bank of Cambodia”, No. 0196/27 of 26 January 1996;
5. National Bank of Cambodia *Prakas* on the “Accounting Process for Foreign Currency Transactions”, No. NBC/B700/50 of 17 February 2000;
6. Draft Law on Negotiable Instruments and Payment Transactions dated September 2002;
7. “Law on the Investment of the Kingdom of Cambodia” of 4 August 1994;
8. Draft Amendment of the Law on Investment dated 29 March 2002;
9. *Anu-Kret* on the “Implementation of the Law on Investment of the Kingdom of Cambodia”, No. 88/ANK/BK of 29 December 1997;
10. *Anu-Kret* (Sub-Decree) on the “Organization and Functioning of the Council for Development of Cambodia (CDC)” of 26 June 1995;
11. *Anu-Kret* on the “Amendment of Anu-Kret No. 51/ANK/BK on the Organization and Functioning of the Council for the Development of Cambodia”, No. 048/ANK/BK of 21 May 1999;
12. Council for the Development of Cambodia (CDC), Cambodian Investment Board (CIB) and Department of Investment Procedures and Law “Document Required to Apply for the Cancellation of an Investment Enterprise from the CIB Investment List”, “Document Required for an Investment Enterprise Application for Shares Transfer and Deposit of a New Memorandum and Articles of Association”, “Document Required to Apply for Name Change of an Investment Enterprise”, “Document Required to Apply for Location Change of the Investment Enterprise” of 21 August 1998;
13. Council for the Development of Cambodia *Sechdkey Chun Damneng* (Notice) on the “Obligations to Provide Information Regarding the Import and Export Activities of Investment Enterprises”, No. 1538/99 CDC of 1 July 1999;
14. *Anu-Kret* on “Measures Restricting Certain Investment Sectors”, No. 80/ANK/BK of 27 August 1999;

15. Council for the Development of Cambodia “Notification on Requirement to all Foreign Entities Accompany with Evidence of Innocence for Filling Application Form”, No. 2736/99 CDC of 19 November 1999;
16. *Sarachor Nernoam* (Instructing Circular) of the Council for the Development of Cambodia on the “Management and Usage of CDC/CIB Investment Incentives by Investment Enterprises”, No. 165/00 CDC of 20 January 2000;
17. Draft Insolvency Law;
18. Revised Draft Insolvency Law dated July 2002;
19. *Sechdey Chun Damneng* (Notice) of the Council for the Development of Cambodia on the “Payment of Tax Debt Owed by Investment Enterprises in the Kingdom of Cambodia”, No. 538/00 CDC of 22 February 2000;
20. *Sarachor Nernoam* (Circular) of the Council for the Development of Cambodia on “Procedures for Non-Performing Investment Enterprises”, No. 748/00 CDC of 15 March 2000;
21. *Schdey Chun Damneng* (Notification) of the Council for the Development of Cambodia on “Investment Enterprises”, No. 822/00 CDC of 23 March 2000;
22. Land Law (Unofficial English Translation);
23. Draft Law of Personal Property Leasing;
24. Explanatory Notes to the Law of Commercial Contracts of April 2001.
25. “Law on the Chambers of Commerce” of 16 May 1995;
26. National Bank of Cambodia *Prakas* on the “Management of Gemstone and Valuable Metal Businesses”, No. NBC/999/100 of 10 September 1999;
27. *Anu-Kret* on the “Creation of a National Permanent Commission for Coordinating the Privatization and the Promotion of Rubber Plantations”, No. 52/ANK/BK of 6 September 1994;
28. *Anu-Kret* on “Build-Operate-Transfer (BOT) Contract”, No. 11/ANK/BK of 13 February 1998;
29. Draft Civil Code;
30. Draft Civil Code dated 3 September 2002;
31. Draft Code of Civil Procedure of Cambodia;
32. “Law on the Bar” of 15 June 1995;
33. “Law on Criminal Procedure” of 28 January 1993;
34. Decision on the “Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period” of 10 September 1992;

35. "Law Bearing Upon Commercial Regulations and the Commercial Register" of 3 May 1995;
36. *Preah Reach Kram* "Law on the Amendments of Articles 10, 11, 14, 16, 17, 21, 22, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 42 and 44 of Chapter 2, Articles 54, 57 and 58 of Chapter 4 and Articles 59 and 60 of Chapter 5 of the Law on the Commercial Rules and Commerce Register", No. NS/RKM/1199/12 of 18 November 1999;
37. Ministry of Commerce *Prakas* on "Trading Activities of Commercial Companies", No. 017/PRK/MoC of 25 January 2000;
38. Draft Law on Customs dated 15 August 2002;
39. Cambodia's Customs Tariff 2001;
40. *Prakas* of the Council for Development of Cambodia on the "Provision of Customs Duty Exemption Incentives for Support Industries in Subsequent Years and Authorization for Shares Transfer", No. 2895/99/CDC of 9 December 1999;
41. "Law on the Management of Pharmaceuticals" of 9 May 1996;
42. *Prakas* on the "Implementation of the Pre-Shipment Inspection Service" of 31 August 2000.
43. Ministry of Commerce *Prakas* (Declaration) on the "Issuance of the Certificate of Origin, Commercial Invoice and Export Licence for Garments", No. 1437/MOC/PRK of 21 June 1999;
44. Ministry of Commerce *Prakas* "Amending and Supplementing the Issuance of Certificates of Origin, Commercial Invoices and Export Licenses for Exported Garments", No. 3414/MOC of 29 October 1999;
45. *Preah Reach Kram* on the "Law on the Management of Quality and Safety Products and Services", No. NS/RKM/0600/001 of 2 June 2000;
46. *Anu-Kret* on "Standards and Management of Agricultural Materials", No. 69/ANK/BK of 28 October 1998;
47. Draft Sub-Decree on Plant Quarantine;
48. Draft Sub-decree on Sanitary Inspection of Animal and Animal Products dated 11 June 2002;
49. *Anu-Kret* on "Forest Management Concessions", No. 05/ANK/BK of 7 February 2000;
50. Law on Forestry dated August 2002;
51. *Sechdey Samrech* on the "Establishment of Joint Inter-Ministerial Committee for the Prevention of Illegal Fisheries Infractions on Cambodian Territorial Seas", No. 18/SSR/RGC of 3 April 2000;

52. Draft Law on Fisheries;
53. Draft Water Supply Law;
54. Draft Water Supply and Sanitation Regulatory Law;
55. Draft Law on Water Resources Management;
56. Draft Law on Copyright and Related Rights;
57. Revised Draft Law on Copyright and Related Rights dated May 2002;
58. Draft Patent Utility Law;
59. Draft Law on the Protection of Patents, Utility Model Certificates and Industrial Designs dated 12 October 2001;
60. Decision on the Establishment of the Inquiry Points for (1) Services, (2) SPS, (3) TBT, and (4) Legal compliance with WTO agreements dated 26 July 2002;
61. Law on Corporate Accounts, Their Audit and The Accounting Profession;
62. National Bank of Cambodia *Prakas* on "Banking License Incorporated Under Domestic Law", No. Thor.796-153 Bis Pra.Kar of 25 October 1996;
63. *Preah Reach Kram* on the "Law on Banking and Financial Institutions", No. NS/RKM/1199/13 of 19 October 1999;
64. National Bank of Cambodia *Prakas* on the "Structure of the Foreign Trade Bank of Cambodia and Roles/Duties of its Subordinated Offices", No. B8/99/140 of 21 December 1999;
65. National Bank of Cambodia *Prakas* on "Licensing of Rural Credit Specialized Banks" No. NBC/B700/05 of 1 January 2000;
66. National Bank of Cambodia *Prakas* on "the Licensing of Banks", No. NBC/B700/04 of 10 January 2000;
67. National Bank of Cambodia *Prakas* on the "Licensing of Micro-Financing Institutions", No. NBC/B700/06 of 11 January 2000;
68. National Bank of Cambodia *Prakas* on "Liquidity for Banks and Micro Financing Institutions", No. NBC/B700-08 of 9 February 2000;
69. National Bank of Cambodia *Prakas* on "Banks' Minimum Capital", No. NBC/B700/39 of 9 February 2000;
70. National Bank of Cambodia *Prakas* on "Banks' Solvency Ratio", No. NBC/B700/46 of 16 February 2000;
71. National Bank of Cambodia *Prakas* on the "Banks' Net Worth Calculation", No. NBC/B700/47 of 16 February 2000;

72. National Bank of Cambodia *Prakas* on the "Classification of and Provisioning for Bad and Doubtful Debts, Including Interest in Suspense", No. NBC/B700/51 of 17 February 2000;
73. National Bank of Cambodia *Prakas* on "Controlling Bank's Large Exposures", No. NBC/B700/52 of 17 February 2000;
74. "Insurance Law" No. NS/RKM/0700/02 of 20 June 2000;
75. Draft Sub-Decree on Insurance dated 21 September 2002;
76. Draft Telecom Act;
77. Draft Tourism Law;
78. Revised Draft Tourism Law dated 23 May 2002;
79. "Law on Nationality" of 20 August 1996;
80. "Law on Immigration" of 26 August 1994;
81. "Labour Law" of 13 March 1997;
82. "Law on the Press" of 18 July 1995;
83. Draft Law of Secured Transactions;
84. Draft Highway Code; and
85. Royal Decree on the "Law on the Suppression of Gambling", No. NS/R. Decr/0196/28 of 26 January 1996.

**ANNEX VII:****TABLE 1: ACTION PLAN FOR IMPLEMENTATION OF THE AGREEMENT ON CUSTOMS VALUATION**

Action	Deadline
WP review of Draft Law on Customs	Prior to accession
Creation of a WTO VA implementation project team and preparation of a departmental plan to implement the VA transition plan.	No later than December 2003
– If decision to retain PSI mechanism, new contract will be in compliance with WTO Valuation Agreement rules.	No later than 1 January 2004
Parliamentary consideration and enactment of legislation for WTO-consistent valuation rules.	No later than 1 July 2004
Transaction valuation to apply to: <ol style="list-style-type: none"> <li>1. imports by large multinational and Cambodian companies having a well established compliance record with the Customs and Excise Department and being considered low risk importers.</li> <li>2. imports by firms other than large, multinational and Cambodian companies which import goods that are identical or similar to goods imported by these large firms, based on their compliance records.</li> <li>3. imports by investment companies and other importers entitled to exemption (NGOs, foreign missions, etc).</li> </ol>	No later than 1 January 2005
Technical training and preparation of departmental valuation technical manuals Launching of Post Clearance Audit program Launching of automated customs processing system project.	No later than 1 January 2006
Transaction valuation to apply to: <ol style="list-style-type: none"> <li>4. imports, by selected low risk importers and sectors, of low value goods subject to relatively low rates of duty and representing limited revenue risk.</li> <li>5. imports of identical or similar goods by other importers</li> </ol>	No later than 1 January 2007
Transaction valuation to apply to: <ol style="list-style-type: none"> <li>6. remaining imports of low value goods subject to relatively low rates of duty.</li> </ol>	No later than 1 January 2008
Transaction valuation to apply to: <ol style="list-style-type: none"> <li>7. all imports, including highly taxed and sensitive goods</li> </ol>	No later than 1 January 2009
Full implementation of the Agreement on the Implementation of Article VII of the GATT 1994	No later than 1 January 2009

**TABLE 2: ACTION PLAN FOR IMPLEMENTATION OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE**

Action	Deadline
Adoption of Sub-Decree on Industrial Standards NO. 42/ANK/BK	1999-2002
Adoption of Sub-Decree on Metrology	
Implementation of Revised Notice on Registration of Industrial Products	
Identification of the Department of Industrial Standards of Cambodia (ISC) as the authority responsible for notifications and publications required by the TBT Agreement.	2003
Establishment of the TBT Enquiry Point in ISC:  Department of Industrial Standards of Cambodia (ISC) Ministry of Industry, Mines and Energy #45, Norodom Blvd. Phnom Penh, Cambodia. Fax: 855-23-216086 E-mail: discinfo@camnet.com.kh	
Establishment of TBT/Standards Library in ISC	
Installation, testing, and calibration of equipment in ISC laboratories	
Capacity building for key standards personnel in the field of standardization, management, methods and procedures for sampling and inspection, auditing, inspection and surveillance, and for auditors, assessors, inspectors, and staff responsible for testing and calibration and for issuing certificates and licenses.	
WP review of legislation	
Submission of Statement on Implementation to WTO (per G/TBT/1)	Prior to accession
Enactment of Law on Industrial Standards and adoption of the Sub-Decree and Regulations for its implementation	Upon accession
Compliance with the Code of Good Practice	No later than 1 July 2004
Development Technical Regulations and Conformity Assessment Procedures for Implementation of TBT Agreement (per list in WT/ACC/KHM/14/Rev.1)	
Publication of a periodic Standards Bulletin or Gazette by the ISC covering activities relating to technical regulations, standards and conformity assessment procedures.	
	No later than 1 January 2005

Training of standards staff on international trade and TBT implementation	2005-2006
Review and adjustment of technical regulations and procedures in accordance with new scientific discoveries and approaches.	
Full implementation of the WTO Agreement on Technical Barriers to Trade	No later than 1 January 2007

**TABLE 3: ACTION PLAN FOR IMPLEMENTATION OF THE AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES**

Action	Deadline
<p>Enactment of basic legal and operational framework for implementation of Articles 2–8 of the SPS Agreement:</p> <ul style="list-style-type: none"> <li>– Sub-Decree on Sanitary Inspection of Animal and Animal Products of 29 July 1988 (No.14AR.NOR.KRAR), as revised on 14 February 2003</li> <li>– Sub-Decree on Plant Quarantine of 8 October 1983 (No.98AR NOR KRO), as revised on 14 February 2003</li> <li>– Sub-Decree on Standards and Management of Agricultural Materials of 28 October 1998 (No.69 AR NOR KRA/BARKAR)</li> <li>– Law on the Management of Quality and Safety of Products and Services of 21 June 2000.</li> <li>– Sub-decree No. 5 dated 3 February 1998 on the establishment of the Inter-ministerial Committee for coordinating the control of quality and safety of products and services.</li> <li>– Law on the Management of Quality and Safety of Products and Services (promulgated by Reach Kram No. NS/RKM/0600/001 dated 21 June 2000).</li> <li>– Sub-decree No. 28 dated 9 March 2001 on the establishment of the National Codex Committee (NCC) and its Secretariat.</li> <li>– Prakas No. 357/MOC dated 31 December 2001 on the establishment of the Technical Working Groups (TWG) for the National Codex Committee.</li> </ul>	Completed
<ul style="list-style-type: none"> <li>– Enactment of further legal provisions for implementation of the SPS Agreement: program, e.g., Drafting a sub-decree on Food Hygiene, including storage requirement and microbiological requirements, per WT/ACC/KHM/15/Rev.1.</li> <li>– Establishment of the SPS Enquiry Point, training of personnel, and procurement of necessary equipment (Decision of the</li> </ul>	2003



<p>Council of Ministers —notification letter No. 1093 dated 26 July 2002):</p> <p>National Codex Committee Cambodia Import-Export and Fraud Repression Department (CAMCONTROL) Ministry of Commerce (acting as Secretariat) Fax: (855) 23-426 166 Email: camcontrol@camnet.com.kh</p> <ul style="list-style-type: none"> <li>– Establishment of Codex Library</li> <li>– Implementing specific technical training programs in SPS, per WT/ACC/SPEC/KHM/15/Rev.1</li> <li>– Drafting of additional regulations and sub-decrees to implement the SPS Agreement and provide for necessary application of sanitary and phytosanitary measures, per WT/ACC/SPEC/KHM/15/Rev.1</li> <li>– Proficiency testing for food: microbiological and hygiene, and food chemical analysis toward MRA'S in the region.</li> <li>– Capacity building for key Camcontrol, MAFF and MoH personnel on the implementation of the above regulations.</li> </ul>	
WP review of legislation	Prior to accession
<ul style="list-style-type: none"> <li>– Drafting additional regulations on food safety and guidelines for food products certification (for exports), per WT/ACC/SPEC/KHM/15/Rev.1.</li> <li>– Capacity building for key Camcontrol, NCC, and TWGs personnel on the implementation of 2004-2005 the above regulations.</li> <li>– Updating the Codex Library.</li> </ul>	2004-2005
<ul style="list-style-type: none"> <li>– Readjustment of technical regulations, standards and procedures in accordance with new scientific discoveries and approaches.</li> <li>– Working toward accreditation of inspection bodies and testing laboratories.</li> <li>– Capacity building for key Camcontrol, NCC, and TWGs personnel on the implementation of 2006-2007 the above regulations.</li> <li>– Updating the Codex Library.</li> </ul>	2006-2007
<ul style="list-style-type: none"> <li>– Full implementation of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures</li> </ul>	Not later than 1 January 2008

**TABLE 4: ACTION PLAN FOR IMPLEMENTATION OF THE AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS**

Action	Deadline
<ul style="list-style-type: none"> <li>– Promulgation of the Law on Marks, Trade Name and Acts of Unfair Competition of 7 February 2002</li> <li>– Law on the Management of Pharmaceuticals</li> <li>– Membership in: WIPO (since 1995), the Paris Convention (since 1998)</li> </ul>	2002 or before
<p>Promulgation of :</p> <ul style="list-style-type: none"> <li>– Law on Patents, Utility Models and Industrial Designs of 22 January 2003</li> <li>– Law on Copyright &amp; Related Rights.</li> </ul> <p>Membership in:</p> <ul style="list-style-type: none"> <li>– the Berne Convention</li> <li>– Geneva Phonogram Convention</li> <li>– Brussels Satellite Convention 2003</li> <li>– the Patent Cooperation Treaty</li> </ul> <p>Implementation of the Sub-Decree and implementing regulations for Laws on Marks, Trade Name and Acts of Unfair Competition</p> <p>Capacity building for key IP personnel in the field of trademarks</p>	2003
Review of all relevant texts by Working Party	Prior to date of accession
<p>Promulgation of</p> <ul style="list-style-type: none"> <li>– Law on Geographical Indications</li> <li>– Civil Code</li> </ul> <p>Implementation of Sub-Decree and implementing regulations for Laws on Copyrights &amp; Related Rights; Patents, Utility Models and Industrial Designs.</p> <p>Capacity building for key IP personnel in the field of copyrights; Patents, Utility Models and Industrial Designs.</p>	Not later than 1 January 2005
<p>Promulgation of :</p> <ul style="list-style-type: none"> <li>– Law on Layout Design of Integrated Circuits.</li> <li>– Laws on Protection of Undisclosed Information and Trade Secret</li> <li>– Law on Plant Variety Protection.</li> <li>– Civil Procedure Code</li> <li>– Criminal Code</li> </ul> <p>Membership in the International Convention for the Protection of New Varieties of Plants</p>	Not later than 1 January 2006

<p>Implementation of Sub-Decree and implementing regulations for :</p> <ul style="list-style-type: none"> <li>– Law on Geographical Indications</li> <li>– Law on Protection of Undisclosed Information and Trade Secret.</li> </ul> <p>Capacity building for key IP personnel in the fields of Geographical Indications, and Protection of Undisclosed Information and Trade Secret</p>	
<p>Implementation of Sub-Decree and implementing regulations for:</p> <ul style="list-style-type: none"> <li>– Law on Layout Design of Integrated Circuits</li> <li>– Law on Plant Variety Protection.</li> </ul> <p>Capacity building for key IP personnel in the fields of trademarks; copyrights; patents, utility models, and industrial design; geographical indications; protection of undisclosed information and trade secret; layout design of integrated circuits; and plant variety protection.</p> <p>Establishment of any necessary additional legislation and regulations to provide a legal basis for enforcement mechanisms.</p>	<p>No later than 1 January 2007</p>
<p>Full implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights</p>	<p>No later than 1 January 2007</p>

## ANNEX VIII: WTO WORK PLAN 2004-5

Topic	WTO Reference	Tasks	Deadline	Technical Assistance
<b>COUNCIL OF MINISTERS</b>				
Interministerial machinery	WP Report Para 39	Re-define the Inter-Ministerial Coordinating Committee	Asap	Not needed
Transparency	WP Report para 216, 217	Post contents of Official Journal on the Government website and keep them current	Asap	TA needed. More TA needed
Transparency	WP Report para 217	Establish or designate Official Journal or website dedicated to the publication of regulations etc. affecting trade	1 January 2004	
Education	Services schedule; educational services	Establish independent accrediting process	Asap	TA needed
Refuse disposal, sanitation	Services schedule; environmental services	Issue sub-decree requiring Governors and Mayors to observe non-discrimination in granting contracts	2004	Not needed
<b>MINISTRY OF COMMERCE</b>				
Commercial Court	WP Report para. 35	Pass law establishing the commercial court	June 2005	No TA needed.
Competition Policy	WP Report para. 28	Draft law	Asap	Additional TA needed
Commercial arbitration	WP Report para. 33, 36	Draft law on commercial arbitration	1 January 2005	No TA Needed
Anti-dumping, safeguards and countervailing measures	WP Report para.106, 108	Draft legislation	1 January 2005	No TA needed

Topic	WTO Reference	Tasks	Deadline	Technical Assistance
Anti-dumping, safeguards and countervailing measures	WP Report para. 108	Notify relevant legislation and regulations to WTO	Asap after adoption of laws	No TA needed
Legal framework for business	WP Report Annex I Attachment	Draft Law on Business Enterprises	Early 2004	No TA needed
Special Economic Zones	WP Report para. 151 and Annex I Attachment	Draft Law on Export Processing Zones (with CDC and MOI)	Asap	No TA needed
Legal framework for business	WP Report Annex I Attachment	Draft Insolvency Law	Asap	No TA needed
Legal framework for business	WP Report Annex I Attachment	Draft Secured Transaction Law	Asap	TA is being provided
Legal framework for business	WP Report Annex I Attachment	Draft Commercial Contracts Law	Asap	No TA needed
Legal framework for business	WP Report Annex I Attachment	Draft Commercial Leasing Law	2005	No TA needed
Legal framework for business	WP Report Annex I Attachment	Draft Commercial Agency Law	2005	No TA needed
TRIPS: Marks	WP Report para. 206 and Table 12	Put in force sub-decree implementing the Law on Marks	2004	TA is being provided
TRIPS: IPR border measures	WP Report para. 199	Draft sub-decree implementing special border measures contained in Law on Marks (with MEF)	2004	TA needed
TBT	WP Report para. 127	TBT WP Report para 127 Extend ASEAN conformity assessment agreements to all WTO Members (with MOI)	Asap	No TA needed

TRADING RIGHTS	WP Report para. 44 & 50	Verify and make sure that all registered companies could engage in import and export of all types of goods	Asap	Not needed
<b>MINISTRY OF ECONOMY AND FINANCE</b>				
Privatization and reform	WP Report para. 25	Prepare report on privatization and reform	1 year after accession	No TA needed
Customs valuation	WP Report para. 84, 93	Pass Customs Law and adopt implementing regulations	Early 2004	TA received. Further TA needed
Customs valuation	WP Report para. 84	Submit Customs Law and implementing regulations to WTO	Asap after adoption of law and regulations	No TA needed
Customs valuation	WP Report para. 91	Eliminate valuation of automobiles according to national origin	On date of accession	No TA needed
Customs valuation	WP Report Table 7, para. 93	Prepare Customs team and departmental plan to implement valuation transition plan	December 2003	Some TAs received. More TA required.
Customs valuation	WP Report para. 51	Complete the reform program	2004-2005	Additional TA needed
Customs valuation	WP Report Table 7, para. 93, 105	If PSI continues, adapt new contract to WTO rules	December 2003	Not required
Customs valuation	WP Report Table 7, para. 93	Provide training on new Customs Law and valuation procedures	2004	TA needed
Customs valuation	WP Report Table 7, para. 93	Implement Post Clearance Audit program	2004	TA needed
Customs valuation	WP Report Table 7, para. 93	Prepare and publish <i>Manual on Law on Customs and related Regulations</i>	2004-2005	Not needed
Customs valuation	WP Report Table 7, para. 93	Begin automated customs processing system project (to be completed by end 2005)	2004	TA needed

Topic	WTO Reference	Tasks	Deadline	Technical Assistance
Customs valuation	WP Report Table 7, para. 93	Begin trade outreach program to inform private sector of changes in valuation procedures	2004	TA needed
Customs valuation	WP Report Table 7, para. 93	Apply transactions value to large multinationals, firms importing identical or similar goods, and importers entitled to exemptions	December 2004	No TA needed
Customs valuation	WP Report Table 7, para. 93	Establish data base of compliant valuations to administer and monitor valuation issues	2005	Some TA received. More TA needed
Rules of Origin	WP Report para. 96	Conform to WTO rules of origin	December 2004	No TA needed
Smuggling	WP Report para. 98	Equip enforcement teams	Asap	TA needed
Smuggling and issues of customs administration	WP Report para. 99	Establish dispute settlement mechanism	December 2004	No TA needed
Tariffs on textiles and clothing	WP Report para. 165	Apply all tariffs on an MFN basis	Date of accession	No TA needed
TRIPS border measures	WP Report para. 199	Draft sub-decree implementing special border measures contained in Law on Marks (with MOC)	2004	TA needed
Permit for foreign workers	Services schedule: horizontal commitments	Change fee for work permit to reflect the fact that it will be issued for a period of two years	2004	No TA needed
Insurance and reinsurance	Services schedule: financial services	Revise law on Insurance and prepare regulations	2004-2007	TA is being provided. Further TA needed

Money and capital markets	Services schedule: financial services	Draft laws on government securities and on non-governmental securities, bearing in mind that it will trigger commitments	2005	TA is being provided. Further TA needed
<b>MINISTRY OF AGRICULTURE, FORESTRY AND FISHERIES</b>				
Pesticides assessment	WP Report para. 75 (see also para. 77)	Develop capacity to undertake risk assessment	June 2005	TA needed
QRs on fertilizers, pesticides and other ag. inputs	WP Report para. 77	Eliminate QRs and establish WTO-consistent methods for registration and review	June 2005	TA needed
Fishing	WP Report Annex I Attachment	Draft Fisheries Law	2004	No TA needed
SPS	WP Report Table 11, para. 142	Design plant pest and disease control program and other measures	2004	Some TAs are being provided. More TA needed
<b>MINISTRY OF INDUSTRY, MINE AND ENERGY</b>				
TBT	WP Report Table 10, para. 131	Establish and make operational the TBT Enquiry Point	2004	TA needed
TBT	WP Report para. 127	Extend ASEAN conformity assessment agreements to all WTO members (with MOC)	2004	No TA needed
TBT	WP Report Table 10, para. 131	Submission of statement on implementation (per G/TBT/1)	Date of accession	TA needed
TBT	WP Report Table 10, para. 131	Draft Law on Industrial Standards and implementing regs; compliance with Code of Good Practice	June 2004	TA is being provided. Further TA needed
TBT	WP Report Table 10, para. 131	Development of technical regs and conformity assessment procedures	2004-2005	TA is being provided. Further TA needed



Topic	WTO Reference	Tasks	Deadline	Technical Assistance
TBT	WP Report Table 10, para. 131	Publication of Standards Bulletin	December 2004	TA needed
TBT	WP Report Table 10, para. 131	Staff training on TBT implementation	2004-2005	TA is being provided. Further TA needed
TRIPS	WP Report Table 12 and para. 206	Draft sub-decree implementing the Law on Patents	2004	TA needed
TRIPS	WP Report para. 185	Sub-decree implementing the Law on Patents must specify that computer programs and business methods may be eligible for patent protection	2004	TA needed
<b>MINISTRY OF INTERIOR</b>				
Residency permit	Services schedule: horizontal commitments	Develop and implement residency permits consistent with the horizontal commitments	2004	TA needed
Visa	Services schedule: horizontal commitments	Adapt visa requirements to make them consistent with horizontal commitments	2004	No TA needed
Visa	Services schedule: horizontal commitments	Issue Prakha on procedures for issuing 2-year visa	2004	No TA needed
<b>MINISTRY OF JUSTICE</b>				
Appeals process	WP Report para. 36	Draft Law on Judicial Organization	December 2004	No TA needed
Civil Law	WP Report Annex I Attachment	Draft and implement Civil Code	2004	TA is being provided.
Civil Law	WP Report Annex I Attachment	Draft and implement Civil Procedural Code	2004	TA is being provided.

Criminal Law	WP Report Annex I Attachment	Draft Criminal Code	2005	TA is being provided.
Criminal Law	WP Report Annex I Attachment	Draft Criminal Procedural Code	2005	TA is being provided.
<b>MINISTRY OF SOCIAL AFFAIRS, LABOR AND YOUTH REHABILITATION</b>				
Movement of foreign labor	Services schedule: horizontal commitments	Establish classifications for intra-corporate transferees	2004	TA to be sought from ILO and other donors
Movement of foreign labor	Services schedule: horizontal schedule	Amend Labor Code to allow work permits to be granted for 2 years	2004	No TA needed
Employment agencies	Services schedule: other business services: placement and supply services of personnel	Amend Labor Code so as to allow for the operation of these companies in Cambodia	2004	No TA needed
<b>MINISTRY OF LAND MANAGEMENT, URBANIZATION AND CONSTRUCTION</b>				
Architecture	Services schedule: architectural services	Repeal provision in Royal Decree requiring "signature by Khmer architect for big projects."	2004	TA needed
Architecture	Services schedule: architectural services	Draft Law setting out professional qualifications. Consider establishing a Board of Architects	2005	TA needed
Construction	Services schedule: construction and related engineering services	Draft Law establishing professional qualifications	2005	TA needed
Engineering	Services schedule: engineering services	Draft Law establishing professional qualifications	2005	TA needed
<b>MINISTRY OF HEALTH</b>				
Imports of pharmaceuticals	WP Report para. 49, 50	Amend Law on Drug Management and Prakas No.82 of 31 March 1999 so as to allow any	June 2005	TA needed

Topic	WTO Reference	Tasks	Deadline	Technical Assistance
firm to engage in import activity				
<b>MINISTRY OF POST AND TELECOMMUNICATIONS</b>				
Tele-Communications	Services schedule: tele-communication services	Draft Law on Tele-communication that separates operations from regulation	2004	TA is being provided
Tele-Communications	Services schedule: tele-communication services	Prepare plan of action containing steps necessary to meet commitment in 2008	2004-2005	TA is being provided
Mobile phones	Services schedule: tele-communication services	Develop objective and transparent criteria for issuing licenses in this area	2004	TA is being provided
<b>MINISTRY OF TOURISM</b>				
Hotels	Services schedule: tourism and related travel services	Prepare sub-decree on hotel rating classification	2004	No TA needed
Travel Agencies and Tour Operators	Services schedule: tourism and related travel services	Amend present draft Law on Tourism to bring it into compliance with commitments	2004	No TA needed
Restaurants	Services schedule: tourism and related travel services	Issue Sub-decree or Prakas to establish the criteria for setting up restaurants	2004	No TA needed
<b>MINISTRY OF PUBLIC WORKS AND TRANSPORT</b>				
Access to maritime services	Services schedule: maritime services	Ensure that draft Law on Maritime Transport contains provisions covering "additional commitments"	2004	No TA needed
Road transport	Services schedule: road transport services	Draft Law on Transport regulating sector	2004	TA needed
<b>MINISTRY OF CULTURE AND FINE ARTS</b>				
TRIPS	WP Report 12 and para. 206	Draft regulations implementing Law on Copyright	2004	TA is being provided.

<b>NATIONAL BANK OF CAMBODIA</b>				
Banking	Services schedule: banking and other financial services	Prepare and adopt Law on Negotiable Instruments and Payments Transactions	2004	No TA needed
Banking	Services schedule: banking and other financial services	Consider preparing regulations covering mortgage credit, factoring, charge and debit cards and traveler's checks	2005	TA needed
Banking	Services schedule: banking and other financial services	If Law on Financial leasing is drafted, be aware that it will trigger WTO obligations	None	TA needed
<b>COUNCIL FOR THE DEVELOPMENT OF CAMBODIA</b>				
Investment Law	WP Report para. 143	Draft of implementing Sub-decree of the Law on the Amendment of the LOI, by increasing compliance with TRIMS	2004	TA needed
Investment Law	WP Report para. 119, 120	Notify "subsidies" (waiver of customs duties for some investors) to WTO	Date of accession	TA needed
<b>STATE SECRETARIAT OF CIVIL AVIATION</b>				
Civil aviation	Services schedule: air transport services	Pass Civil Aviation Law and draft implementing regulations	2004	TA needed for drafting implementing regulations
Selling of air transport services	Services schedule: air transport services	Draft economic and technical regulations covering the selling and marketing of air transport services	2004-2005	TA
<b>NATIONAL CODEX COMMITTEE</b>				
SPS	WP Report Table 11, para. 142	Prepare sub-decree on food hygiene and other legal provisions	2004	TA needed
SPS	WP Report Table 11, para. 142	Make Enquiry Point operational	2004-2005	TA is being provided.

Topic	WTO Reference	Tasks	Deadline	Technical Assistance
SPS	WP Report Table 11 para. 142	Establish Codex library; implement training; draft additional regulations;	2004	TA needed
SPS	WP Report Table 11 para. 142	Draft additional regulations on food safety; secure necessary training; update Codex library	2005	TA needed
<b>INTELLECTUAL PROPERTY RIGHTS COORDINATING COMMITTEE</b>				
TRIPS	WP Report Table 12, para. 206	Secure Cambodia's membership in Berne, Geneva Phonogram, and Brussels Satellite Conventions and the Patent Cooperation Treaty	2004-2005	No TA needed
TRIPS	WP Report Table 12, para. 206	Draft Law on Geographical Indications	2004	TA is being provided
TRIPS	WP Report Table 12, para. 206	Draft Laws on Layout Designs, Undisclosed Information and Plant Variety Protection	2005	Further TA needed
TRIPS	WP Report Table 12, para. 206	Put into force implementing regulations for laws on geographic indications and protection of undisclosed information	December 2005	TA needed
TRIPS	WP Report Table 12, para. 206	Join International Convention for the Protection of New Varieties of Plants	December 2005	No TA needed
<b>ALL MINISTRIES AND AGENCIES</b>				
Transparency	WP Report para. 216	Publish draft laws and draft regulations for comment 30 days before they are adopted	2004	No TA needed
<b>GENEVA MISSION</b>				
WTO Committee on TBT	WP Report para. 129	Participate in the meetings of the Committee	Ongoing	No TA needed
WTO Committee on SPS	WP Report para. 141	Participate in the meetings of the Committee	Ongoing	No TA needed

<b>BAR ASSOCIATION</b>			
Legal services	Services schedule: Business services: Legal services	Draft amendments to para 5 and 6, and other articles if any, of the Law on Bar, to bring about conformity with the WTO commitment	2004
			No TA needed



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## *Glossary of Technical Terms*

**Ad valorem tariff:** A tariff rate expressed as a percentage of the value of the goods to be imported or exported. Most tariffs are now expressed in this form.

**AFTA:** ASEAN Free Trade Agreement, entered into force on 1 January 1993. It covers trade in goods among the ASEAN countries. The original aim was to achieve tariff levels ranging from zero to 5% for trade in goods among all member states by 2010. The main mechanism for achieving the tariff reductions is CEPT (Common External preferential Tariff). It consisted originally of an Inclusion List on which the preferential tariff applies immediately and a Temporary Exclusion List. The preferential tariff for products on the latter list will be phased in by 2003 at the latest. Tariff reductions are expected to take rather longer for goods on the relatively small Sensitive List of unprocessed agricultural products. There is also a work program for the elimination of non-tariff measures.

**Applied tariff rates:** The tariff rates actually imposed by a customs administration at the border. These rates are in some cases considerably lower than the WTO bound rates arrived at as a result of trade negotiations or the rates listed in national tariff schedules.

**Average tariff:** A device used to give an informative picture at a glance of a complete tariff schedule, which will usually have troughs and peaks, in a single average rate. It is the unweighted mean of either all applied or all bound rates. Such rates are also used for comparing the treatment of product sectors in different countries.

**Binding commitments:** Binding (sometimes bound) commitments are a legal obligation not to make market access conditions for services more restrictive than described in a country's schedule of commitments on services submitted to the WTO. Bindings are enforceable under WTO rules and may only be breached through negotiation with affected trading partners. A country breaching a binding may have to offer compensation to other trading partners in the form of commitments in other services.

**Binding:** A binding (also called concession) is a legal obligation not to raise tariffs on particular products above the specified rate agreed in GATT negotiations and incorporated in a country's schedule of concessions. Bindings are enforceable through the WTO. Their purpose is to provide greater commercial certainty through a ceiling on tariffs which cannot be breached without an offer of compensation to affected trading partners. These ceilings are often higher than the applied tariff rates.

**Bound tariff rates:** These are customs duties which a government has undertaken not to raise above the levels it has committed itself to in the WTO.

**Ceiling bindings:** The concept in the WTO of binding all, or large sections, of a tariff at a specified level, often with a comfortable cushion above the applied tariff rates. Bindings are normally the result of negotiations. Countries that undertake to bind their tariffs are under a legal obligation not to increase these bound levels.

**Codex Alimentarius:** A program managed jointly by the Food and Agricultural Organisation (FAO) and the World Health Organisation for initiating, preparing, publishing and revising international food standards. The resulting harmonisation of these standards is producing important benefits for the expansion of international trade in food. The program is administered by the Codex Alimentarius Commission, established in 1962.

**Commercial presence:** Any type of business or professional establishment within the territory of a member of the GATS (General Agreement on Trade in Services) for the purpose of supplying a service. This includes juridical persons, branches and representative offices.

**Cultural identity:** An expression denoting that countries have cultural characteristics that set them apart from other countries. There is nothing controversial about this, but it can become contentious in the trade policy context when countries seek trade rules to preserve or enhance their cultural traits. Many suspect that this would give countries the inadvertent right to impose import restrictions, ostensibly for cultural reasons, but in reality to achieve other aims. For example, some may wish to protect a traditional production process and the workforce employed in this way even though more modern technology may produce an identical product more competitively.

**Enabling Clause:** The agreement on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, one of the outcomes of the Tokyo Round. It allows developed WTO members to take action favouring developing countries without according the same treatment to other members. Main measures covered by it include the GSP, non-tariff measures covered by the GATT, regional and global trading arrangements between developing countries and special treatment for the least-developed countries. The Enabling Clause was intended to promote greater participation of developing countries in the world trading system, but there is doubt that it achieved its purpose.

**Enquiry points:** Some of the WTO agreements require members to establish points in their trade administrations where other members can obtain information on the sector covered by the agreement. Sometimes they are called contact points. The exchange of information is at the governmental level. Examples of such agreements are the GATS, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the Agreement on Technical Barriers to Trade. The GATS also requires developed-country members to establish contact points where private firms from developing countries can find out about trade opportunities.

**Export subsidies:** Government payments or other financial contributions by governments provided to domestic producers or exporters if they export their goods or services. They are illegal under the Agreement on Subsidies and Countervailing Measures.

**Financial services:** Banking, general insurance, life insurance, funds management, securities trading and advisory services related to these activities.

**GATS:** General Agreement on Trade in Services. One of the Uruguay Round outcomes. It covers all trade in services except bilateral aviation rights and services purchased or supplied in the exercise of governmental authority, i.e. government procurement. Rights and obligations occur at two levels. First, there are general obligations applying to all services trade and disciplines such as most-favoured-nation treatment, transparency, fairness of domestic regulation, recognition of qualifications, economic integration arrangements, monopolies, business practices, payments and transfers, general exceptions and security exceptions. Second, the GATS also contains specific obligations relating only to commitments made under the Agreement. These include guaranteed market access and national treatment. Negotiations are under way on disciplines concerning government procurement, emergency safeguards and subsidies.

**GATT:** General Agreement on Tariffs and Trade. Entered into force on 1 January 1948 as a provisional agreement and remained so until its provisions became part of the World Trade Organisation (WTO) framework on 1 January 1995. It establishes multilateral obligations for trade in goods, including most-favoured-nation treatment and national treatment, transparency, freedom of transit, anti-dumping and countervailing duties, customs valuation, import and export fees and formalities, marks of origin, quantitative restrictions, balance-of-payments provisions, subsidies, state trading enterprises, emergency action on imports (safeguards), customs unions and free-trade areas, etc. Part IV of the GATT, added in 1964, exempts developing countries from making reciprocal trade concessions.

**GATT 1947:** General Agreement on Tariffs and Trade 1947. This refers to the GATT as adopted at the conclusion in 1947 of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, and as subsequently rectified, amended or modified. The GATT 1947 was in force from 1 January 1948 until the conclusion of the Uruguay Round when it was replaced by the GATT 1994. The two texts are legally distinct in that the GATT 1947 was an international treaty, whereas the GATT 1994 is only a component of one.

**GATT 1994:** General Agreement on Tariffs and Trade 1994. The formal name for the collected amendments, interpretations, additions, etc., made since the entry into force of the GATT 1947 and including it also. It is only one part of the agreement establishing the WTO, and it has no independent legal status. It consists, in addition to the provisions contained in the GATT 1947 (not the GATT 1947 agreement itself), of protocols and certifications relating to tariff concessions, protocols of accession, decisions on waivers still in force and other decisions taken by the GATT

contracting parties, but not the grandfather clause. It also includes six understandings interpreting several GATT articles and the Marrakesh Protocol to GATT 1994 which covers tariff concessions made by members. Countries joining the WTO accept all the rights and obligations contained in the GATT 1994, but they cannot accede separately to it.

**General Council:** This is a body composed of all WTO members. It has general authority to supervise the various agreements under the jurisdiction of the WTO. It exercises authority between the biennial WTO Ministerial Conferences and on behalf of them.

**Initial negotiating right:** INR. The right of a GATT member to ask for tariff concessions by another member in a GATT negotiating round even though it is not the principal supplier. INRs are valuable negotiating tools for countries with important trade interests in a product or commodity.

**Least-developed countries:** Abbreviated either to LDC or LLDC. A group of 49 developing countries so designated by ECOSOC on the basis of the following indicators: per capita GNP, life expectancy at birth, per capita calorie supplies, combined primary and secondary enrolment ratio, adult literacy rate, share of manufacturing in GDP, share of employment in industry, per-capita electricity consumption, and their export concentration ratio.

**Market access:** One of the most basic concepts in international trade. It describes the extent to which a good or a service can compete with locally-made products in another market. In the WTO framework it is a legalistic term outlining the government-imposed conditions under which a product may enter a country under non-discriminatory conditions. Market access in the WTO sense is expressed through border measures, i.e. tariffs and non-tariff measures, in the case of goods, and regulations inside the market in the case of services.

**MFN exemptions:** Under the GATS, permission granted to a member country not to apply most-favoured-nation treatment in a given sector. In most cases, these are necessary because of pre-existing treaty obligations, such as membership of a market-sharing agreement, a preferential arrangement or a cooperation agreement. MFN exemptions are for a maximum of 10 years, and they have to be reviewed after 5 years. Many WTO members took out MFN exemptions when the GATS entered into force. Others have since been granted exemptions upon accession. It is possible for existing members to take out new MFN exemptions, but this can only be done with the agreement of 75% of the WTO membership at a WTO ministerial conference.

**Modes of services delivery:** During the Uruguay Round negotiations on the GATS, participants agreed to divide services trade into four modes: 1. cross-border supply, where the producer remains in one territory and the consumer in another; 2. consumption abroad, where the consumer travels from one country to the country

of the service producer to obtain the service; 3. commercial presence, where services are provided through establishment of an operation in the other country; and 4. presence of natural persons, where the producer travels from one country to another to produce or deliver a service.

**Most-favoured-nation tariff:** The tariff applied by WTO members to goods from other WTO members with which they have not concluded a preferential trade arrangement. In the case of WTO non-members, the application of these rates may be a requirement of a bilateral trade agreement. See also general tariff.

**Most-favoured-nation treatment:** MFN. This is the rule that a country gives each of the trading partners with which it has concluded relevant agreements the best treatment it gives to any of them in a given product. MFN is not in itself an obligation to extend any favourable treatment to another party, nor is it an obligation to negotiate for better treatment. The fundamental point of MFN therefore is equality of treatment, and in some older treaties it is indeed called “foreign parity”. Despite the apparently static nature of MFN, it has acted as a powerful motor for non-discriminatory trade liberalisation. Together with national treatment, MFN makes up the principle of non-discrimination. In the WTO, MFN is the binding general obligation that any concession made to another country must immediately be extended to all other members. There are, however, exceptions to the MFN obligation. Here, we mention only some of the important ones. WTO members satisfying the conditions for membership of preferential free-trade areas or customs unions are not obliged to give countries that are not members of the same preferential trading arrangement the same kind of access. Developed countries may maintain GSP schemes which give preferential treatment to developing country imports.

**Multi-Fibre Arrangement:** MFA, formally Agreement Regarding International Trade in Textiles. This is an agreement between textile-producing and consuming countries first concluded in 1973 and renegotiated periodically afterwards to manage trade in textile products. It seeks to contain what was considered to be “serious damage” to developed country producers by the increasingly competitive developing country textile industries through the concept of market disruption. The MFA was aimed at defined target countries and thus violated the GATT non-discrimination provisions. Apart from raising prices in affected consumer countries, the MFA also had the effect of forcing developing countries into higher-value lines and in this way undermining further the competitiveness of developed countries. The MFA was replaced by the WTO Agreement on Textiles and Clothing under which restrictions are to be phased out over 10 years starting on 1 January 1995.

**National treatment:** This is a principle contained in many bilateral and multilateral trade agreements. It seeks to ensure that foreign products, and sometimes the suppliers of the products, are treated no worse in the domestic market than local products or their suppliers. The basic principle underlying Article III of the GATT, which deals with national treatment for goods, is that of equality of competitive opportunity. In intellectual property, under the Agreement on Trade-Related Aspects of Intellectual

Property Rights a WTO member must, in terms of Article 3, accord to the nationals of other members treatment no less favourable than it accords to its own nationals. For services, national treatment, as described in Article XVII of the GATS, is the obligation to guarantee foreign service providers and their services equivalent treatment to that given to domestic service providers and the services they supply.

**Non-discrimination:** A fundamental concept in the multilateral trade framework. A country may not discriminate among foreign supplier countries, and it may not apply adverse discriminatory treatment to products once they have entered its territory legally. The WTO rules permit some exceptions to this concept under strictly defined conditions. For example, members of a free-trade area or a customs union may discriminate against non-members in the application of tariff rates. WTO members may also maintain preferential tariff schemes for developing countries.

**Non-tariff measures:** Government measures other than tariffs that restrict trade flows. Examples include quantitative restrictions, import licensing, voluntary restraint arrangements and variable levies. They generally now contravene the WTO rules. One of the outcomes of the Uruguay Round was an obligation to convert all non-tariff measures affecting agricultural trade into tariffs.

**Peak tariffs:** If the tariff rates contained in a typical national tariff schedule were represented chapter by chapter as a continuous line in a graph, the result probably would be something like a series of plateaus interspersed with sudden peaks. Each peak would mean that that product, or group of products, is benefiting from higher protection than the products expressed by plateaus. The presence of pronounced peak tariff rates may show only one aspect of the protection available to domestic producers. There are cases where their absence is masked by a range of non-tariff measures with the same or a greater impact.

**Preshipment inspection:** PSI. Inspection of goods by specially appointed firms before they are shipped to other countries. PSI is defined in the WTO Agreement on Preshipment Inspection as all activities imposed by a WTO member relating to the verification of the quality, quantity, price, including currency, exchange rates and financial terms, and/or the customs classification of goods to be exported to its territory.

**Protocol of accession:** The instrument which sets out the terms and conditions under which a country becomes a member of the WTO, or for that matter, some other international organisations. In the WTO, these protocols are largely standardised, but they sometimes reflect particular circumstances of the acceding country. See also accession.

**Regional trade arrangement:** RTA. A free-trade agreement, customs union or common market consisting of two or more countries (e.g. NAFTA or the European Community). Some analysts see RTAs as building blocks for a freer non-discriminatory multilateral trading system, others as agents for its undermining. In

the case of developed countries, duties and other restrictive measures of commerce have to be eliminated on substantially all the trade between the parties. Developing countries may also conclude RTAs under the Enabling Clause, and they have the option of reducing or eliminating tariffs and non-tariff measures.

**Safeguards:** Temporary measures designed to slow imports to enable a particular industry to adjust to heightened competition from foreign suppliers. Most commonly, “safeguards” refers to action taken under Article XIX (Emergency Action on Imports of Particular Products) of the GATT, the so-called escape clause, but safeguards action is possible also under Article XII (Restrictions to Safeguard the Balance of Payments) and Article XVIII (Governmental Assistance to Economic Development).

**Schedules of commitments on services:** A key requirement and component under the GATS. They perform a function similar to the tariff schedules for goods under the GATT. Schedules allow service exporters to examine the extent to which they have guaranteed access to markets and the benefit of national treatment.

**Schedules of concessions:** National schedules negotiated under WTO auspices which set out the terms, conditions and qualifications under which goods may be imported. No additional duties or charges may be imposed at the border other than internal taxes also levied on similar domestic products, anti-dumping measures or countervailing duties or a fee-for-service charge.

**Sectoral commitments:** These are entries covering specific service sectors or sub-sectors in the schedules of commitments under the GATS (General Agreement on Trade in Services). Examples are accountancy, freight-forwarding or life insurance. A sectoral commitment attracts a higher level of GATS rights and obligations in relation to market access and national treatment. Once a commitment has been made, the market access conditions applying to it may not be made more restrictive for at least three years.

**Special and differential treatment:** Often referred to as S+D. It is the concept that exports of developing countries should be given preferential access to markets of developed countries, and that developing countries participating in trade negotiations need not reciprocate fully the concessions they receive. Under S+D developing countries also enjoy longer timeframes for phasing in new rules and lower levels of obligations for adherence to the rules.

**Subsidies:** Financial or in-kind assistance by governments to producers or exporters of commodities, manufactures and services. Subsidies are paid for many reasons, including the need to prop up an inefficient production structure, the wish to raise the income of one sector, e.g. agriculture, the wish to promote regional development, and the aim to develop export markets, etc. Broadly, the WTO Agreement on Subsidies and Countervailing Measures defines subsidies as financial contributions by a government or public body, direct transfer of funds or potential transfer of funds (e.g. grants, loans, equity infusions), government revenue foregone or not collected,



government provision of goods and services other than general infrastructure, payments to a funding mechanism or a private body to perform these functions, income or price support. Agricultural subsidies are covered by the Agreement on Agriculture.

**Unbound commitments:** Commitments under the GATS (General Agreement on Trade in Services) which can be changed unilaterally by the country making them. They give the listing country complete flexibility to change its trading regime in the affected activity without the need to offer compensation.