



CAMBODIA

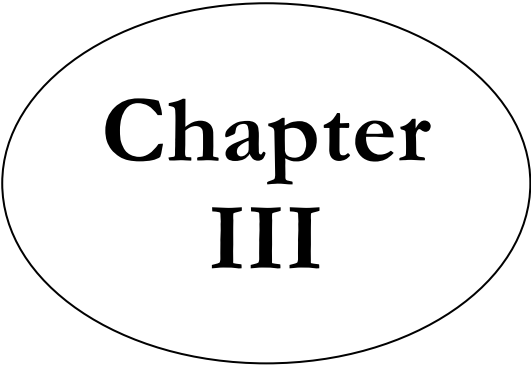
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Chapter III

INTEGRATING CAMBODIA'S ECONOMY INTO THE WORLD

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This paper was widely presented in workshops and conferences, especially those organized by The Asia Foundation and EIC during 2004. Section related to the implications for public health of Cambodia's accession to WTO was also published in the Yale Journal of Health Policy, Law, and Ethics, No IV:2, 2004.

Introduction

The decision to integrate Cambodia into the world, particularly its economy, was made and implemented in early 1990's, after decades of war and disorder.

On 30 April 1999, Cambodia became the tenth member of the Association of Southeast Asian Nations (ASEAN), which aims to accelerate the economic growth, social progress and cultural development in the region and to promote regional peace and stability through abiding respect for justice and the rule of law in the relationships among countries in the region. In 1992, ASEAN launched a trade scheme toward an ASEAN Free Trade Area (AFTA) with a strategic objective to increase the region's competitive advantage as a single production unit. The elimination of tariff and non-tariff barriers among member countries is expected to promote greater economic efficiency, productivity, and competitiveness. In 1995, ASEAN decided in its Agenda for Greater Economic Integration to accelerate the timetable for the realization of AFTA from the original 15-year timeframe to 10 years. Subsequent meetings, such as a 1997 meeting in which a "ASEAN Vision 2020" plan was developed, and a 1998 session in Hanoi during which The Hanoi Plan of Action was developed, have further clarified the economic integration goals of ASEAN members. Cambodia has effectively acted to take advantage of such regional economic integration; for example, by agreeing to eliminate tariffs on essentially all ASEAN products by 2015.

Another significant economic integration, with perhaps even more far-reaching implications, will be undertaken when Cambodia completes its anticipated accession to the World Trade Organisation (WTO). Cambodia began in 1994 to apply for the WTO membership, and its application was approved in September 2003.

Cambodia's memberships in WTO and ASEAN/AFTA mean that most external trade barriers will eventually be removed. This economic integration may be very beneficial for the country, but it also poses a great challenge: how to be competitive? The debate on the opportunities and costs of joining WTO has just started in Cambodia, as the negotiations of accession were conducted between the Cambodian government and WTO, without adequate participation of other stakeholders. The objective of this Chapter is thus to contribute

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to the current debate. It will identify major substances of the WTO membership agreements, and discuss opportunities and challenges facing Cambodia. Implications of the major WTO agreements on Cambodia's services sector and health care will be analysed. And the Chapter also will explore some measures the government can take to ensure that the benefits of the membership will outweigh any impeding costs.

Background for WTO Accession

Cambodia's ... main engine of economic growth and job creation during the past seven years, the garment industry, is facing uncertainty in the advent of export quotas removal at the end of 2004 and the benefits of the tourism industry boom have remained limited.

Cambodia's economic development prospects do not seem to be very promising, at least in the foreseeable future. Its main engine of economic growth and job creation during the past seven years, the garment industry, is facing uncertainty in the advent of export quotas removal at the end of 2004. The benefits of the tourism industry boom have remained limited, as Cambodians do not own major capital assets in the industry such as airlines, hotels, and even airports. The private sector is not competitive due to weak governance and widespread corruption. Therefore, the main question is: can the WTO membership help improve Cambodia's socio-economic conditions?

Indeed, the primary objective of Cambodia in becoming a member of WTO is to protect its fledgling garment industry after the removal of export quotas at the end of 2004 under the Multi-Fibre Agreement (MFA) arrangements, which will be applicable to all members of WTO. After the removal, all exports, especially those to the U.S. market, will be subject to a high import tariff. The WTO membership is expected to help sustain the industry in terms of securing an unlimited export volume and a lower tariff rate, which could be as low as zero for a least developed country like Cambodia.

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Without the WTO membership, it would be difficult for the Cambodian garment export industry to cope competitively with the normal U.S. tariff regime after the quota system is removed. The industry has become a significant part of the Cambodian economy that needs to be sustained. It is estimated that the industry employs about 200,000 workers, and indirectly contributes to the livelihoods of more than 1 million people in rural Cambodia. In 2002, garment exports grew up to 96 percent of the total country's exports of goods, from about nil six years ago. About 70 percent of the garment exports have gone to the U.S. herefore, a high import tariff imposed by the U.S.,

without the WTO membership, would almost ensure a quick collapse of the Cambodian garment industry. Cambodia's garment industry is competitive in terms of labour cost compared to that of China; however, overall, it is not competitive due to higher level of widespread local corruption.³⁵

Another reason for joining WTO is that Cambodia could fully benefit from the rights accorded to all members under the WTO agreements, such as non-discrimination by other WTO members known as MFN treatment, the access to the WTO dispute settlement procedure, and a potential increase in foreign direct investment. In effect, as a small country, Cambodia should benefit from the protection of the WTO's Goods Dispute Settlement Mechanisms, which will support small and vulnerable economies from being violated by large ones. In addition, developed countries are committed to providing market opportunities for goods from least developed countries, such as Cambodia, with better terms and zero percent tariff rate. This policy could promote more investment in the least developed countries, and thus create more local employment.

Cambodia's WTO Commitments – Fair or Unfair?

It seems there is room for each member to negotiate with the WTO for its own specific terms within the general framework of free trade and globalisation. It has thus been questioned if the “deal” Cambodia has succeeded in securing is fair and manageable for the country, even though the Cambodian government seems to think so.

According to some international media, Cambodia has been pressured by members of the WTO into making concessions that go far beyond the level of commitments made by other least developed WTO-member countries. The Cambodian government seems to agree.³⁶ According to Oxfam, some of the requirements imposed on Cambodia go far beyond what the United States and the European Union are willing to commit themselves to in the present round of negotiations.

According to some international media, Cambodia has been pressured by members of the WTO into making concessions that go far beyond the level of commitments made by other least developed countries. In areas such as tariff ceiling subsidizing its agricultural exports and implementation of TRIPS.

³⁵ Touk Khy, Removing Trade Constraints to Improve Competitiveness and Reduce Poverty, EIC Economic Review, Vol 1 No 2, 2003.

³⁶ Cham Prasidh, Minister of Commerce and Chief Negotiator for Cambodia reportedly said, "This is a package of concessions and commitments that goes far beyond what is commensurate with the level of development of a least developed country like Cambodia. Nonetheless, we do accept the challenges, because we see the benefits of joining the world trading system", EIC Economic Review, Vol 1, No 1, September-October 2004, Economic Institute of Cambodia.

Tariff ceiling is a case in point. Cambodia, which has an agricultural sector employing almost 80 percent of its population, has been asked to provide less protection to this sensitive sector than the economic giants. The maximum tariff for Cambodia is set at 60 percent, while those for the U.S., E.U., and Canada stretch from 120 percent to 250 percent. On average, the Cambodian government has committed itself to limiting its tariff to about 30 percent for agriculture produce, and 20 percent for industrial products.

Cambodia also has agreed to deprive itself of one of the most popular protection measures among the developed economies – subsidizing its agricultural exports. It is noted that under the Agreement on Agriculture (AoA), other least developed countries are not required to undertake such commitment. Critics say that this provision will effectively seal off Cambodia's right under the AoA to introduce export subsidies on any agricultural product in the future when necessary to protect the livelihood of poor farmers, or to effect development priorities. However, the Cambodian government argues that the AoA will not affect agricultural development. Cambodia has never had any export subsidies on agriculture; and, if necessary, the government can always increase its import tariffs on agricultural products to protect local producers.

Cambodia has committed itself to a free trade policy that involves drastic local institutional reforms.

One of the most critical issues the Cambodian government has committed itself to concerns “Trade-related Aspects of Intellectual Property Rights” (TRIPS), which has a wider implication. Under terms of the Doha Declaration, least developed countries have the right to delay the implementation of TRIPS related to pharmaceutical patents until 2016. This means Cambodia, as a least developed country, would be allowed to benefit from affordable generic versions of new expensive medicines until 2016. However, Cambodia has been asked to shorten this deadline to 2007. According to the WTO Secretariat, the early deadline is generous. Nevertheless, international observers note that Cambodia will gain nothing by shortening this grace period; instead, the Cambodian people will have to pay the cost of this early deadline in terms of higher prices for newly invented drugs nine years earlier than they otherwise would have to. The issue will be discussed in more detail later.

In summary, Cambodia has committed itself to a free trade policy that involves drastic local institutional reforms. It seems to have taken on commitments that many WTO members would rather forgo.

It has a transitional period of five years under the Doha agreement for a least developed country accession. Given the current weak administration and institutions in Cambodia, however, it is highly doubtful if those reforms will ever be achieved without a genuinely strong political will.

Implications of Major WTO Agreements

There are two major sets of agreements in the WTO membership that will have far-reaching implications for Cambodia – the General Agreement on Trade in Services (GATS) and the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS). The former deals with trade in a wide range of services, while the latter has a major impact in particular on the health sector in Cambodia. The following analysis will, therefore, focus on implications of these two agreements on the services sector and health care.

Worldwide, the services sector has expanded rapidly over the past two decades, playing an increasing role in the international economy. Services represent 60 percent of the global economy, 40 percent of total employment, and 20 percent of global trade. The increase services' share in the economy has happened not only in developed countries, but also in developing and least developed countries. In some least developed countries, such as Cambodia, services constitute more than 50 percent of economic activity, significantly more than traditional sectors, such as agriculture. Therefore, the internationalization of trade in services is inevitably the heart of the economic globalization process.

The Service Industry in Cambodia

Generally, Cambodia's services sector is de facto liberalised. Empirical evidence shows this is particularly true for the industries that have experienced high growth, such as business services, air transportation, health, and education.³⁷ It seems, therefore, that the GATS has come to regulate an already-opened market. The Agreement covers a wide range of services from business to legal to technology to social issues, and potentially affects every individual and organization.

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³⁷ Cambodia's Commitments Under GATS, EIC Economic Review, Vol. 1, No. 4, April-June 2004.

Due to many reforms implemented by the government after the first general elections in 1993, Cambodia's economy was in a position to quickly to absorb the foreign direct investment (FDI) that flowed into the region. As a result, foreign investment has boosted a rapid development of some emerging industries, such as garment, wood processing, telecommunications, and tourism. The services sector – including tourism, transportation, and telecommunications – absorbed about 40 percent of FDI in the country. Cambodia's services sector has grown very fast during the decade. Its share of the total GDP increased from about 35 percent in early 1990s to about 50 percent in 2003. The services sector is estimated to employ about 1.2 million people, representing 20 percent of the total labor force. This shows a very high economic value added of the sector, compared to agriculture sector that employs about 80 percent of the total labor force but can only manage an annual output of less than 30 percent of the GDP.

Despite its recent high growth, the services sector largely remains very informal, and dominated by private entities. There is a significant share of foreign interests ...

Despite its recent high growth, the services sector largely remains very informal, and dominated by private entities. There is a significant share of foreign interests in formal, large-scale operations, such as air transportation, courier, and banking services.

The structure of the services, however, has been changing toward tourist-related economic activities. Services by hotels and restaurants increased dramatically from 1 percent in 1990 to 8 percent in 2003, while other service industries increased only slightly, on average, by 1 or 2 percentage points. In the same period, there was a slight increase in new and dynamic areas such as technology and telecommunications. The tourism industry makes up the country's biggest share in services export, and its trade surplus represents almost the same amount as that of the garment industry. However, the entire services export is only a small part of total exports, which are dominated by garment products.

By a given standard of trade practices, the services sector in Cambodia has already been privatised and liberalised in many way.³⁸ The country is basically open for cross-border supplies and consumption abroad, which are quite difficult to regulate anyhow. Cambodia prefers foreign services in a number of important fields, such as health, education, and banking; it can easily acquire these services through the

³⁸ There are four major modes of supplies: cross border, consumption abroad, services by foreign corporation suppliers in the country, and supplies by foreign natural persons in the country.

border crossing. Indeed, there is effectively nothing to prevent consumers from accessing the services abroad or cross border supplies. One example is the desire of many Cambodian students to study abroad in countries such as France, the United States, Australia, Japan, New Zealand, Singapore, and Thailand. Only difficulty in obtaining student visas prevents even more Cambodian students from seeking an education overseas.

Locally, foreigners are free to bring their own investment monies for business operations in certain service industries, such as private hospitals, schools, hotels, restaurants, airlines and banks. For example, in the telecommunications industry, multinational corporations operate their branches or subsidiaries in Cambodia. In the early 1990s, the Ministry of Post and Telecommunications (MPTC) received approval from the Government to establish joint ventures with foreign companies to provide and operate mobile cellular services.

The movement of natural persons across borders is, however, the most restrictive, which distorts the liberalisation all over the world. There are also foreigners who work in different industries with different backgrounds. Many experts work on contracts with multinational organizations, non-government organizations, and donor countries. There are many low-skilled workers employed in the construction services, food processing, and commercial sex. Most of them come to Cambodia illegally.

Potential Gain of Liberalisation for Services Sector

The motive for trade in services is not different from that in goods. Trade allows Cambodia to increase its exports of services, and to gain access to services that are not available domestically. To some extent, Cambodia has been seen as a supplier of specific services such as tourism and related services; it will gain from the access to a larger market and perhaps better prices. In general, domestic producers may gain access to more efficient and diversified services in world markets. It may expose them to better transparency and competitiveness that will help Cambodian business learn and understand how better to operate. For example, this exposure may bring to the attention of Cambodia's business community how the high cost of power, transportation, capital and unofficial fees undermine the competitiveness of country's exports. In addition, services providers in transport, finance, and communications

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will play a vital infrastructure role in the economy and may have significant spillover effects on competitiveness in both goods and services. With rapid advances in information technology, knowledge-based services have become increasingly important for international competitiveness and for Cambodia's ability to adopt, acquire, and use new technologies.

As consumers, Cambodians also will benefit from access to more efficient and diversified services, especially new and emerging service industries. Cambodia will gain from access to both a wider variety of services and imported services at competitive price.

Prices are likely to go down, when trade in services is liberalised, for two reasons. First, the GATS Agreement calls for a gradual reduction of tariff barriers and an elimination of the non-tariff barrier which are embedded in price of the services; one of them will help reduce the retail price. Second, the competition after the liberalisation will ensure a price drop, even if the reduction or the removal of the tariff and non-tariff barriers may or may not do the trick. After the country is opened up, the demand may remain constant, but the supply will increase as foreign supplies enter the market. This will lead to competition among the service suppliers, which should drive the price down, unless the suppliers engage in anti-competition practices. The drop in price, hence, is due to the reduction in trade barriers and/or the subsequent competition.

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Liberalisation of trade in services under the WTO may help improve competition within some parts of the Cambodian services sector that only seem to be de facto liberalised. Based on an open-sky policy, Cambodia's air transportation industry has appeared to be "liberalised" as there have been a number of foreign airline companies operating in this country. Currently, Cambodia has four major direct air routes for Bangkok, Hong Kong, Singapore, and Hanoi. Most of the flights to Phnom Penh and Siem Reap are through Bangkok. However, the industry is so concentrated that consumers are unlikely to benefit from any competition in terms of prices and service quality. Each flight route is serviced by only one or two airliners with similar retail price structures. With the WTO liberalisation, Cambodia's liberalised air service industry may begin to experience some degree of real competition for the benefit of the consumers.

The liberalisation of the trade in services may also facilitate the movement of natural persons across the border that could help reduce unemployment pressure on the domestic economy. According to the investment climate report of the World Bank, 250,000 Cambodian young people enter the job market each year. Currently, the Cambodian economy cannot create enough jobs to absorb the new entrants, creating unemployment problem that especially affects low-skilled workers. In fact, some Cambodian workers have already been, legally and illegally, exported to Malaysia, Thailand, and Korea. Cambodia can reduce its unemployment rate and the gap in income distribution by sending its workers abroad. The movement of natural persons not only increases the revenue in their home country when they send back their incomes, but will transfer know-how upon their return home at the end of their work contract.

Potential Costs of Liberalisation for the Services Sector

While the GATS may contribute to increased competitiveness and efficiency, there are concerns about its implications in the areas of equity, costs, distribution, availability of services, human development, and the sovereignty of government objective, and priorities in the services sector. These concerns predominantly relate to social services such as health and education where there are recognised market failures closely associated with the government in its role as regulator, provider, and/or distributor of such services.

It seems Cambodia has yet to be ready to benefit from the liberalisation of trade in services – it does not have sufficient resources to hold onto benefits that come its way. For instance, Cambodia neither owns nor controls strategic assets in the tourism industry that can retain profit in the local economy. As most of the major capital assets including airlines, hotels, resorts, and restaurants are foreign-owned, the benefit to the local economy from tourism growth in the past few years has been limited. Foreign companies have taken more than 80 percent of tourist revenues back to their home countries, leaving only a small balance for local workers and businesses.

Overall, Cambodia does not have sufficient capacity in the sector to export its services in a significant magnitude, especially the new dynamic and emerging service industries such as new technology, software, telecommunications, distribution, and transportation. Hence, a major concern of trade liberalization under such circumstances is

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that there will be no reciprocity of benefits for some time, even though some industries may continue to grow in the foreseeable future.

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Moreover, the trade liberalization in services will open the local market for foreign competition that may just suffocate local small and medium enterprises. There will always be industries in which foreign competitors are more efficient than domestic producers. When the import barrier is lowered, foreign producers will be able to attract domestic consumers with lower prices and better quality. Domestic competing firms in those markets will face pressure on their sales and profits, which could lead to downsizing, lower wages, job losses, and perhaps even bankruptcy. Even in the tourism and related services – hospitality, restaurant, tour operators, guide, etc – where service experiences and skills have been improving in the last few years, the locals may not be able to match foreign companies that have decades of experiences.

Trade Liberalization's Impact on Health Care

The potential for inequality is particularly worrisome in the area of health care.

Globalization and economic liberalization have huge impacts on the health sector, both private and public, in Cambodia. The EIC study shows that these processes can positively contribute to economic growth and promote private sector development. But if private sector development occurs in a vacuum, without concurrent government's provisions for adequate public sector services, poor people will be increasingly worse off as measured by growing income inequality.³⁹ The potential for inequality is particularly worrisome in the area of health care.

Although Cambodia has made much progress in the past ten years in opening up its economic policies and fostering growth and development, income distribution to the citizenry has been uneven. According to estimates by the Economic Institute of Cambodia (EIC), income disparity between rich and poor is growing, and the income gap is also growing among various provinces.⁴⁰ Up to this point, trade

³⁹ Hach Sok, *Addressing Social Justice for Economic Development and Democracy*, EIC Economic Review, Dec. 2003, at 12-15, available at <http://www.eicambodia.org/publications/publication>.

⁴⁰ See Phalla Kim, *Cambodia's Economy in the Election Year 2003*, EIC Economic Review, Sept. 2003, at 13-15, available at <http://www.eicambodia.org/publications/publication.htm>

liberalisation⁴¹ is primarily benefiting higher-income people in urban areas. Rural Cambodians, who are traditionally poorer than urban residents anyways, are not only seeing fewer benefits, but are in a larger sense being left behind as liberalisation continues.

The fear is that Cambodia's WTO membership – which will reinforce liberalisation and globalisation – will widen instead of narrow the growing gap in income inequality unless there are clear economic and institutional reforms. According to a recent EIC study on the impact of foreign investment on human development, the poor likely will not be able to seize the opportunities provided by liberalized trade without government protection and support.⁴² The poor are often uneducated and lacking in the resources needed to “fight” for their share. Trade liberalization, thus, may lead to a laissez-faire where only the fittest will survive and prosper, further deepening the poor's vulnerability to exploitation.

What does this mean in the health sector? It means that the current lack of government funding and physical equipment for the public health sector has led large numbers of health professionals to flee the public sector for jobs at private health institutions. Quite simply, government-determined wages for public sector health professionals, about US\$25 per month, are not enough when the minimum cost of living is estimated to reach at least three times higher.⁴³ Consequently, the public sector health professionals spend only the bare minimum of time in their official positions, and do the bulk of their work in private clinics. In addition to wage issues, public sector health institutions suffer from outdated equipment and

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⁴¹ See Hach Sok, Cambodia Development Resource Institute, *The Economic Development and Reform Policy in Cambodia: Challenges and Prospects in the Integration Process* (2001).

⁴² Hach Sok, *Cambodia: Investment Policies and Human Development* 7-11, UNDP, Trade Initiative Project, February 2004.

⁴³ EIC has undertaken a study to assess the poverty line and income distribution in Cambodia. The first estimation drawn from this study showed that the minimum cost of living (including basic education for children and health care) of a Cambodian household—composed of husband, wife, and three children—is about US\$150 per month in the rural areas and US\$300 in the urban areas. Therefore, the minimum monthly salary or income of both husband and wife should be at least US\$75 each in the rural areas and US\$150 each in the urban areas. It is noted that, actually, the Cambodian poverty line definition is fifty cents per day per person, while the World Bank definition is twice as high (still only about US\$30 per person per month). Critics say that fifty cents per day per person is an extreme poverty line existence—that amount might buy a minimum to eat and to clothe oneself, but would not be insufficient for sending children to school or paying for health care when needed.

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To reverse this trend, the Cambodian government must carry out its commitments to social and health spending; it must adequately motivate public health staff in order to promote efficiency and dependability. The government has consistently made pledges to substantially increase the public health budget; but in fact, the actual disbursement has been less than the pledged amount, and extremely irregular. The government routinely spends less than half the public health budget it has allocated for a fiscal year; and during extraordinary periods, such as an election year, some public health expenditures can drop to as low as 20 percent of budgeted amounts.⁴⁴ The ministries and public institutions responsible for public health do not have sufficient political clout to consistently wrest its budget from a system of internal government financing that is ruled by patronage and kickbacks.

The Impact of TRIPS on the Pharmaceutical Industry

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Unless there is an effective intervention, it is likely that the WTO membership will induce further deterioration in the health care services in Cambodia; the TRIPS agreement could put additional pressure, at least in the short run, on the health services. TRIPS deals with intellectual property rights that affect, among others, health care in terms of medical supplies and the local pharmaceutical industry in Cambodia.

Drugs produced in Cambodian factories are much cheaper than foreign products; yet many Cambodians cannot even afford these local versions.

The Cambodian drug market is very small, perhaps due to the public's lack of income necessary to purchase drugs it needs. According to figures published by the Ministry of Health, drug consumption in Cambodia reached only about US\$35 million in 2001, which was less than US\$3 per capita. The relatively low expenditure on drugs does not necessarily reflect a healthy Cambodia.⁴⁵ Of that total expenditure, 43 percent was provided free of charge by the government and donors; the remaining 57 percent was paid for by individual consumers.⁴⁶

⁴⁴ Ministry of Finance, State Budget Implementation of Cambodia for 1998 to 2003, annual publication

⁴⁵ the child mortality rate was the highest in the region and the average life expectancy is only 52 years

⁴⁶ World Health Org., Country Health Information Profile: Cambodia, <http://www.wpro.who.int/chips/chip02/cam.htm>

On the supply side, Cambodia's pharmaceutical industry consists of four small manufacturers producing drugs without any patent or license. One of them produces generic drugs for HIV/AIDS. Drugs produced in Cambodian factories are much cheaper than foreign products; yet many Cambodians cannot even afford these local versions. Those who can often prefer more expensive imported drugs for reason of confidence in quality.

Initially, Cambodia could take advantage of the flexibility of the TRIPS Agreement and special treatment for least developed countries, and encourage the growth of its small drug-producing industry. In June 2002, a WTO council responsible for intellectual property approved a decision to extend until 2016 the transition period during which least developed countries would not have to provide patent protection for pharmaceuticals. In the international arena, discussions leading to this decision focused on the need to balance intellectual property protection with the need to tackle serious public health problems of developing countries, especially HIV/AIDS, tuberculosis, malaria, and other epidemics.

Even after the 2016 deadline, there is still some flexibility in TRIPS that would allow least developed countries, like Cambodia, to implement the Agreement's provisions related to pharmaceuticals in ways that would continue to benefit their own emerging pharmaceutical industries. Under the original TRIPS Agreement, products made under compulsory licensing that allows the least developed countries to produce generic versions of the medicines under license, must be "predominantly for the supply of the domestic market".⁴⁷

However, a recent change in the WTO attitude has raised serious doubt if the Cambodian pharmaceutical industry will be commercially viable in the long run. In August 2003, WTO member governments reached a new agreement over intellectual property protection and public health that would allow producers under compulsory licence to export their pharmaceutical products to foreign markets under certain conditions aimed at safeguarding the legitimate interests of the patent holder.⁴⁸ Questions to be answered include the

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⁴⁷ TRIPS Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, at art. 31(f), available at http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm.

⁴⁸ World Trade Org., General Council, *Implementation of Paragraph 6 of the Doha*

cost of obtaining this licence and whether Cambodian manufacturers could comply with safeguard clauses imposed by patent holders.

It is highly uncertain if Cambodia's health care – Cambodia is expected to enforce from 2016 the intellectual property requirements mandated by TRIPS – will benefit from the TRIPS Agreement in the long run. First, the TRIPS enforcement will increase local production costs and hence the retail prices for drugs. The costs of licensing and safeguard measures required by the patent holders to protect their legitimate interests may have adverse impact on the local manufacturers and their small economy of scale. They will pass on the costs to consumers who are likely to be poor. Under the licensing arrangement, the local producers may perhaps export their products; but they need to be sufficiently competitive in terms of price and quality. Given the current scenario, the likely outcome is that the local consumers would pay more for their drug supplies, or find alternatives. The local producers would go bankrupt unless they become competitive or their consumers could afford the higher prices.

Second, one of the alternatives for the Cambodian poor is being content with smuggled or counterfeit products, which are generally cheap and affordable. They will, however, send the local producers underground or to bankruptcy soon after 2016 unless they can improve their efficiency and competitiveness from now on.

Third, unless there are major changes in TRIPS for the benefit of the least developed countries, the Cambodian government has up to 2016 to increase incomes of the poor, to find lawful alternatives to maintain the current relatively cheap local drugs, and/or to encourage a more efficient local production of drug suppliers.

There are strong doubts if Cambodia has, or will ever have, necessary resources for research and development to stay abreast of new technology and inventions to take advantage of the TRIPS provisions that accord protection for patent holders. Even after the WTO's transitional period, Cambodia will likely lag behind in the area

Declaration on the TRIPS Agreement and Public Health, WT/L/540 (Sept. 1, 2003), available at http://www.wto.org/english/tratop_e/trips_e/implem_para6_e.htm. Technically all WTO member countries are eligible to import under this decision, but twenty-three developed countries are listed in the decision as announcing voluntarily that they will not use the system to import. *See* Press Release, WTO News, Decision Removes Final Patent Obstacle to Cheap Drug Imports (Aug. 30, 2003).

of pharmaceutical advancement and remain basically a drug user, rather than an inventor. Therefore, the implementation of the patent system under the revised TRIPS will not only increase the price of drugs, but may also limit drug supplies in the country as Cambodia does not have access to the technological means to develop or manufacture newer drugs.

Nevertheless, between now and 2016, there are a number of measures Cambodia could take, individually, jointly, or severally with other least developed WTO member countries to ensure that, at best they can benefit from the TRIPS, and at worst, the negative impact of the Agreement in Cambodia will be minimal.

First, it may be of benefit to Cambodia and other least developed WTO members to strengthen the Doha Declaration that relates to TRIPS and public health for the least developed countries, and to seek future concessions to ensure cheap access to new medicines.⁴⁹ In the Doha Declaration of November 2001, the WTO ministers stress that it is important to implement and interpret the TRIPS Agreement in a way that supports public health—by promoting both access to existing medicines and the creation of new medicines. They also issued a declaration on how to help poorer countries that were unable to produce medicines domestically to access cheaper generics made under compulsory licensing.⁵⁰

Second, Cambodia should advocate an extension of the transition period far beyond 2016 and seek special licensing prices for least developed members. In the meantime, the Cambodian government must promote, with the assistance of developed countries, national research and development institutions, especially in the area of pharmaceuticals.

Third, on the supply side, Cambodia has a lot of potential for development since it is situated in the heart of a fast-growing region of Southeast Asia. As a least developed country member, Cambodia could, depending on the laws of the importing country, export most of its products, including drugs, tariff-free to other WTO members. But

The implementation of the patent system under the revised TRIPS will not only increase the price of drugs, but may also limit drug supplies in the country as Cambodia does not have access to the technological means to develop or manufacture newer drugs.

Cambodia should advocate an extension of the transition period far beyond 2016 and seek special licensing prices for least developed members.

⁴⁹ World Trade Org., Doha WTO Ministerial 2001, *Declaration on the TRIPS Agreement and Public Health*, WT/MIN(01)/DEC/2 (Nov. 20, 2001), available at http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm.

⁵⁰ Idem

these opportunities will become benefits only if Cambodian industry is competitive and can meet international demands on price and quality.

The TRIPS provisions could also facilitate a technology transfer that might attract more investment to the Cambodian pharmaceutical industry. An increase in the supply capacity could further reduce the price of drugs – making them more affordable for poorer consumers, while also making Cambodia more competitive in the export market. To achieve this transfer, however, Cambodia must work to develop its research and development capabilities in high tech, medicine, and biotechnology. Only if these efforts are made and successful will Cambodia fully benefit from the TRIPS Agreement.

Finally, tangible benefits in better health care would be possible under the WTO membership agreements. Cambodia is required to implement a large number of reforms to strengthen its institutions, particularly legal reforms. Specifically, the WTO requires Cambodia to legislate national intellectual property laws that would conform to the TRIPS Agreement. If these new laws are implemented, Cambodia could create a new environment that is conducive to trade, while still respecting intellectual property. For example, a reduction in the amount of counterfeit medicine on the local market would have a strongly positive effect on public health.

Tough Challenges Ahead

The schedule for implementing legal reforms for the WTO membership appears to be so tight that an early revision would be most advisable.

Besides the opportunities, Cambodia's membership in the WTO will also bring challenges. Apart from having to deal specifically with the undesirable aspects of the revised TRIPS, Cambodia has made – as part of its accession to the WTO – a large number of commitments for legal and judicial system reforms, including the enforcement of the rule of law, and the establishment of a specialised commercial court. If carried out, these commitments would stimulate other related economic reforms that will be conducive to improving investor confidence.

The schedule for implementing those legal reforms for the WTO membership appears to be so tight that an early revision would be most advisable. According to a government source, 47 laws and regulations are needed to fulfill WTO membership requirements. Fourteen laws and regulations have already been adopted, while the other 33 are scheduled to be passed by early 2006. Effectively, the schedule imposes passing

more than two laws and regulations per legislative working month. Based on past experience, however, the Cambodian Parliament is not likely to meet this deadline; it has, on average, taken three months to adopt a single piece of legislation. Furthermore, the political deadlock after the July 2003 elections has already delayed this ambitious schedule by about one year.

On the business front, improving competitiveness of the private sector will be a prime challenge for Cambodia. The WTO membership will open foreign markets for Cambodian exports as well as opening the local market for imports. To survive, and perhaps prosper, in one or both markets, the Cambodian private sector will need to be competitive. The current indication is that the local production sector may have difficulty competing with foreign producers. Business people have consistently cited increasing corruption and lack of available credit as the two most important constraints preventing the private sector from being more competitive and attracting appropriate long-term investment. Cambodia does, indeed, have a steep learning curve.

The current indication is that the local production sector may have difficulty competing with foreign producers.

Concluding Remarks

It appears that the WTO membership will bring to consumers in Cambodia the significant benefits of a wider range of goods and services at competitive prices and better quality. But, will consumers be in a position to enjoy such benefits? While their income per capita is a mere US\$280 a year and 36 percent of the population lives on less than 50 U.S. cents per person/day, how a wider array of consumer choices will benefit the majority of the population is a question that needs addressing.

As far as the economy is concerned, competitiveness and production efficiency will be keys to the long term survival and prosperity of the private sector. It has been well documented that Cambodia's primary engine of growth, the garment industry, is relatively uncompetitive and inefficient compared to its competitors in the international market. It has been prospering for seven years on the back of favourable commercial treatments, which about to end.

Competitiveness and production efficiency will be keys to the long term survival and prosperity of the private sector.

But it is not impossible to overcome the steep learning curve. While consumers and industries will face stiff challenges from terms of the WTO membership, Cambodia's government can help by taking the

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lead in ensuring that Cambodia will benefit overall from integrating its economy into the world's. The fact that Cambodia's government applied for WTO membership in 1994, almost immediately after the Peace Accord, may be a good sign that Cambodia has the political will to make necessary reforms in the regulatory environment and to develop human and physical capitals as required by the membership.

In any case, the WTO membership will impose obligations on the Cambodian government to improve governance and credibility. Cambodia has made a large number of commitments relating to the institutional reforms as part of its terms of accession to WTO, especially to speed up its legal and judicial system reforms, in order to transform itself into a rule of law country. The WTO membership may be the panacea Cambodia needs. Perhaps being “thrown in the deep end” of world market economic integration will force Cambodia to learn how to swim quickly, whether it likes it or not.

References

- Hach Sok. 2004. *Interim Report on Investment Policies and Human Development in Cambodia*, UNDP Trade Initiative Project, February, pages 7-11.
- . 2003. *Addressing Social Justice for Economic Development and Democracy*, EIC Economic Review, December, pages 12-15, Available at <http://www.eicambodia.org/publications/publication.htm>.
- . 2001. *Economic Development and Reforms Policy in Cambodia*, CDRI Annual Economic Review.
- Ministry of Finance. 2004. *State Budget Implementation of Cambodia for 1997 to 2003*, annual publication.
- Phalla Kim. 2003. *Cambodia's Economy in the Election Year 2003*, EIC Economic Review, September, pages 13-15, Available at <http://www.eicambodia.org/publications/publication.htm>.
- Samnang Chea, Dorina Sarin, and Hach Sok. 2004. *Cambodia's Commitments Under GATS*, EIC Economic Review, Vol. 1, No. 4, April-June
- Touk Khy. 2003. *Removing Trade Constraints to Improve Competitiveness and Reduce Poverty*, EIC Economic Review, Vol 1 No 2.
- TRIPS Agreement on Trade-Related Aspects of Intellectual Property Rights, April 15, 1994, at article 31(f), available at http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm.
- World Trade Organization, General Council. 2003. *Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health*, WT/L/540, September 1, available at http://www.wto.org/english/tratop_e/trips_e/implem_para6_e.htm.
- . Doha WTO Ministerial 2001. Declaration on the TRIPS Agreement and Public Health, WT/MIN(01)/DEC/2, November 20, available at http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm.