

WTO Accession for Cambodia: Opportunities and Challenges

It seems Cambodia has just thrown itself into the deep end of the water by becoming a member of the World Trade Organization, a multilateral trading system that aims to foster free and fair international trade.

In September 2003, the World Trade Organisation (WTO) ministerial meeting at Cancun (Mexico) approved Cambodia's membership agreements. If the Cambodian parliament ratifies these agreements before March 2004, Cambodia will become the 147th member of the organisation (Box 1). It will be the first least-developed country (LDC) to join the WTO through a full working party negotiation process. Since the signing of the Paris Peace Accords in 1991, which paved the way for peace, Cambodia has deployed many efforts to reintegrate itself into the international economy. In 1999, Cambodia joined ASEAN, committing to liberalising its external trade under a regional trade agreement called AFTA (ASEAN Free Trade Agreement).

However, being a member of WTO and ASEAN/AFTA means that most of external trade barriers will be removed. This economic integration might be very beneficial for the country, but it also poses a great challenge: how to be competitive? The debate on the opportunities on 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 paper is thus to contribute to the current debate. It will identify major substances of the WTO membership agreements, opportunities and challenges facing Cambodia, and its implication for the country's institutional reforms.

Socio-economic Background

Following the formation of its coalition government in mid-1993, Cambodia intended to re-establish itself as a democracy and a prosperous country. Fundamental rules of human rights were stipulated in the Constitution. Social justice and human development were to be promoted. To support this, a process of market-oriented policy was strengthened, and links were re-established with the international financial community. After the war and devastation, restoring finan-

cial stability, promoting investment for reconstruction and development, and reforming the central institutions of macro-economic management were the most immediate and important tasks.

Although the initial market-oriented reforms have had some positive results in attracting foreign direct investment, they have neither yielded their full benefits nor an equitable distribution of benefits. The economic recovery has largely been confined to urban centres. Little has trickled down to rural areas, where the vast majority of the population resides. Though the overall economic growth has been relatively strong, this growth is from a very low level, narrowly based, very fragile, and unevenly distributed. The gap between rich and poor has dramatically increased. Although overall crop production reaches the level of self-sufficiency, a significant number of the population still has not produced enough for their own consumption. Incomes generated from agricultural production did not improve due to the absence of markets for agricultural produce. As a result, Cambodia's human development index was one of the lowest in the world.

Overall, Cambodia's econo-

mic development prospect does not seem to be very promising. 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 on local livelihood has remained limited, since Cambodians do not own major capital assets such as airlines, hotels, and even airports. Commitments under the General Agreement on Trade and Services (GATS) made by the Cambodian government for its accession to WTO seem to perpetuate this imbalance. The private sector is not competitive due to weak governance and widespread corruption. Therefore, the main question is: could the WTO membership help improve Cambodia's socio-economic conditions?

Reasons for Joining WTO

Indeed, the primary objective of Cambodia in becoming a member of WTO is to protect its fledging garment industry after the removal of export quotas at the end of 2004 under the Multi-Fibre Agreement (MFA) arrangements, which will be applica-

Box 1: Cambodia's Accession Process

In October 1994, Cambodia applied for the membership of the World Trade Organization under Article XII of WTO, and a Working Party was established in December 1994 to consider the application.

In June 1999, a Memorandum on its Foreign Trade Regime was submitted under the technical assistance from UNCTAD and the World Bank.

In January 2001, questions and answers related to the Memorandum and conditions for the accession were circulated.

The Working Party met 16 April 2003 to consider the Memorandum for the first time. The Working Party meeting in Geneva on 22 July 2003 indicated that Cambodia would become member of WTO in September 2003.

On 11 September 2003, WTO ministers approved Cambodia's membership agreement. Cambodia became the WTO's 147th member, and the first least-developed country to join the WTO through a full working party negotiation process. The Cambodia Parliament has to ratify the agreed terms, and inform WTO of the ratification before 10 March 2004. Cambodia will then become a full member 30 days later.

Source: Ministry of Commerce and www.wto.org

ble to all members of WTO. After the removal, all exports, especially those to the US market, will be subject to a high import tariff. The WTO membership will help in terms of securing a lower tariff rate, which could be as low as zero for an LDC like Cambodia, and no ceiling on quantity that can be exported.

Without the WTO membership, it would be difficult for the Cambodian garment export industry to cope competitively with the normal US tariff regime after the quota system is effectively 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 contribute to feed more than 1 million rural lives. 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 US. Therefore, a high import tariff imposed by the US, without the WTO membership, would almost ensure a quick collapse of the non-competitive Cambodian garment industry.

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 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 the large ones. In addition, developed countries are committed to providing market opportunities for goods from LDC, such as Cambodia, with better terms and zero percent tariff rates. This policy could promote more investment in the LDCs, and thus create more local employment.

However, the benefits of the WTO membership are not so clear-cut. First, Oxfam, an international NGO advocating for a global fair trade, contests the above benefit statement (Box 2). Second, the membership, or the effective removal of the current quotas, can stall the social

progress Cambodia has enjoyed so far. The US has, for the past four years, linked the quotas to the improvement in working conditions for workers. Labour rights have subsequently been promoted, and indirectly, democratisation process has also taken place. Third, on the fiscal front, the Cambodian government will lose up to US\$ 30 million it has earned a year through auctioning the garment export quotas.

But all is not lost. The WTO membership may just be a panacea Cambodia needs in order to improve its own 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 Cambo-

dia to a rule of law country. These commitments, if carried out, would stimulate other related economic reforms to improve investor confidence.

What Cambodia Has Promised?

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 LDCs that are already members of the WTO. The Cambodian government seems to agree.

"This is a package of concessions and commitments that goes far beyond what is commensurate with the level of development of an LDC like Cambodia. Nonetheless, we do accept the challenges, because we see

Box 2: Oxfam Perspectives - Will Cambodia really benefit from entering the WTO?

Despite their membership, the existing thirty LDC members of the WTO have not been able to secure trade opportunities for their development needs. Low-income countries account for 40 percent of the world's population, but only 3 percent of world trade.

LDCs have not received any assurance that they can obtain bound, duty-free, and quota-free market access to developed countries, as promised at the United Nations by WTO members. In case of dispute settlement, costs, lack of technical know-how, and political pressures have prevented many LDCs from defending their rights. None of LDCs have made any claims at the Dispute Settlement body so far. The fund for technical assistance remains 22 million dollars in 2002 for 104 LDC members.

The quota restriction will be phased out in December 2004 under the WTO textile agreement. Oxfam fears that entering the WTO will not enlarge market access in this area due to additional fierce competition from highly competitive suppliers, like China and India. The decrease of garment export could lead to a disaster since Cambodia already experienced in 2001 a current account deficit of about - 9.4 percent of GDP.

The bound average tariffs of Cambodia have decreased from its initial offer by 25 percent to a level of 22 percent, which is rather low for an LDC. Cambodia, employing 80 percent of total population in the agricultural sector, has been asked to provide less protection to its sensitive agriculture than the US, the EU, and Canada. The highest tariff on EU agricultural produce tops at 252 percent. For the United States and Canada, they are 121 percent and 120 percent respectively.

TRIPS-plus: Following Doha Conference, all LDCs have the right to delay the implementation of TRIPS Sections 5 and 7 of PT II in relation to pharmaceutical patents until at least 2016. Cambodia asked for a 2009 deadline for TRIPS compliance, including pharmaceuticals, but they were eventually bargained down to 2007. According to Carlos Correa, an internationally renowned intellectual property expert, Cambodia will gain nothing by shortening this period. The Cambodian government and the public will have to pay for the cost of this early deadline in terms of higher prices for drugs. As a result, many people will be deprived of access to medicines they badly need.

Source: Oxfam, Cambodia's accession to the WTO

the benefits of joining the world trading system", said H.E. Mr. Cham Prasidh, Minister of Commerce and Chief Negotiator for Cambodia.

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. Tariff ceiling is a case in point. Cambodia, where 80 percent of the population is employed in the agricultural sector, has been asked to provide less protection to its sensitive agricultural sector (60 percent maximum tariff) than the US, EU, and Canada (from 120 percent to 250 percent). The Cambodian government has committed itself to limiting its tariff to an average rate of about 30 percent for agriculture produce, and 20 percent for industrial products.

Cambodia has also agreed not to subsidise its agricultural exports, though under the Agreement on Agriculture (AoA), other LDCs 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 government argues that the agreement on agriculture will not affect agricultural development, as Cambodia has never had any export subsidies on agriculture, and the government can always increase its import tariffs on agricultural products to protect local producers.

One of the most critical issues the Cambodian government has committed itself to concerns "Trade Related Aspects of Intellectual Property (TRIPS)". Following the Doha Declaration, LDCs have the right to delay the implementation of TRIPS related to the pharmaceutical patents until 2016. This means Cambodia, as an LDC, would benefit from affordable generic versions of new expensive medicines until 2016. However, Cambodia has been asked to shorten this deadline to 2007 (Box 3). According to the WTO Secretariat, the 2007 deadline is generous. Nevertheless, international observers note that Cambodia will gain nothing by shortening this 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 it has to.

Challenges Ahead

Besides opportunities, the membership of WTO will also bring

challenges to Cambodia.

As part of its accession to the WTO, Cambodia has made a large number of commitments in legal and judicial system reforms, including the enforcement of the rule of law, and the establishment of a specialised commercial court. According to a govern-

Box 3: What Cambodia has promised?

Agricultural policies: Cambodia sets its agricultural export subsidies at zero, and will not maintain or apply any export subsidies for agricultural produce.

Textiles regime: Textiles and clothing import quotas that other members apply to imports from Cambodia will have growth rates applicable as provided for in the Agreement on Textiles and Clothing. The growth rates will apply from the date of Cambodia's accession. These growth rates will end when the Agreement on Textiles and Clothing terminates in 2005.

Trade-related aspects of intellectual property rights (TRIPS): Cambodia will apply the TRIPS Agreement no later than 1 January 2007, with some protection provided for in the interim.

Export subsidies: Cambodia will comply with the Subsidies Agreement from the accession. It will 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.

Export restrictions: Cambodia restricts exports of rice, round logs, unprocessed timber, forestry products, antiques more than 100 years old, narcotic drugs and poisons, weapons, explosives, ammunition, and vehicles and machinery for military purposes. From the date of accession, Cambodia will ensure that restrictions comply with WTO agreements.

Industrial policy, including subsidies: Subsidies are to be notified from the date of accession. Standards and Certification: Cambodia will gradually implement the Technical Barriers to Trade Agreement. Full implementation will start from 1 January 2007 without recourse to any further transitional period.

Free zones, special economic areas: Free zones or special economic areas, including special promotion zones established in accordance with the Law on Investment, will be fully subject to the coverage of WTO agreements and its commitments in its Protocol of Accession. Cambodia will ensure enforcement of its WTO obligations in those zones or areas. In addition, from the date of accession goods produced in these zones or areas under tax and tariff provisions that exempt imports and imported inputs from tariffs and certain taxes will be subject to normal customs formalities when entering the rest of Cambodia, including the application of tariffs and taxes.

Anti-dumping, countervailing duties, and safeguard regimes: Cambodia will not apply any anti-dumping, countervailing, or safeguard measure until it has notified and implemented appropriate laws and regulations conforming to the WTO agreements. After that, Cambodia will also only apply any anti-dumping duties, countervailing duties, and safeguard measures in full conformity with the relevant WTO provisions.

Source: Cambodia membership negotiations, Fifth working party, July 22, 2003

ment source, forty-seven laws and regulations are needed to fulfill WTO membership requirements. Fourteen laws and regulations have already been adopted, while the other thirty-three are to be passed by early 2006.

If carried out properly, these commitments would stimulate other related economic reforms that will be conducive to improving investor confidence. However, the political deadlock after the elections of July 2003 will very likely delay this ambitious scheduling (Box 4). Effectively, the schedule imposes a passing of more than two laws and regulations per legislative working month. Based on past experiences, however, the Cambodian Parliament is not likely to meet the deadline; it has, on average, taken three months to adopt a piece of legislation.

In summary, Cambodia has committed itself to drastic institutional reforms that will take place during a transitional period of five years, under the Doha agreement for an LDC accession. Given the current weak administration and institutions, it is highly unlikely those reforms will be achieved unless there are genuinely strong political wills.

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

Policy responses

To fight corruption in Cambodia, promulgation of laws and regulations is necessary, but not sufficient. They need also to be implemented, which requires strong administration and institutions. To this end, it is important to speed up reforms of the civil service, the military, the police,

Box 4: Schedule for Enacting Laws for WTO conformity Expected Approved Date by Parliament

YEAR 2001

1. Ratification of the ICSID Convention
2. Ratification of the New York Convention
3. Land Law
4. Royal Decree on Cooperatives
5. Law on Trademarks and Acts of Unfair Competition

YEAR 2002

6. Sub-Decree on Inquiry Points for Services, SPS, and TBT
7. Forestry Law
8. Postal Services Law
9. Law on Protection of Patent, Utility Models, and Industrial Designs
10. Accounting Law

YEAR 2003

11. Law on Copyrights and Related Rights
12. Amendment of the Law on Investment
13. Sub-decree on Animal Quarantine
14. Sub-decree on Plant Quarantine
15. Law on Business Enterprises
16. Tourism and Entertainment Law
17. Negotiable and Payment Transaction Law
18. Customs Code
19. Land Traffic Law (Highway Code)
20. Water Resources Management Law
21. Water Supply Laws

November 2003
November 2003
December 2003
December 2003
December 2003
December 2003
December 2003
December 2003
December 2003
December 2003
December 2003

YEAR 2004

22. Law on Export Processing Zones (EPZs)
23. Commercial Arbitration Law
24. Civil Aviation Law
25. Insolvency Law
26. Secured Transactions Law
27. Commercial Contracts Law
28. Telecommunications Law
29. Fisheries Law
30. Law on Geographical Indications
31. Law on Rules of Origin
32. Law Establishing the Commercial Court
33. Criminal Procedures Code

January 2004
January 2004
January 2004
January 2004
February 2004
February 2004
June 2004
June 2004
December 2004
December 2004
December 2004
December 2004
December 2004

YEAR 2005

34. Law on Layout Designs of Integrated Circuit
35. Law on Plant Variety Protection
36. Commercial Leasing Law
37. Merchant Shipping Law
38. Law on Protection of Undisclosed Information
39. Law on Anti-dumping Measures
40. Criminal Code
41. Law on Criminal Procedures
42. Commercial Agency Law
43. Civil Procedure Code
44. Civil Code
45. Law on Safeguard Measures

January 2005
January 2005
January 2005
February 2005
March 2005
March 2005
March 2005
April 2005
June 2005
June 2005
June 2005
July 2005

YEAR 2006

46. Competition Law
47. Securities and Exchange Laws

January 2006
January 2006

Source: WT/ACC/SPEC/KHM/4/Rev.3

and the judicial system.

For the availability of credit, the National Bank of Cambodia (NBC) has been making significant progress towards improving the banking system; it has reviewed re-licensing requirement, and increased the required capital of commercial bank operations. The challenge of the NBC now is to make the money available to the most needy domestic investors, such as small and medium enterprises, and to stop the capital outflow. To achieve these goals, a relevant credit policy should promptly be developed, and the rule of law must be enhanced to protect commercial banks from illegal and unethical practices.

The extensive institutional reforms will require significant funding that may come from two main sources: local investment and donors funding. The local source focuses on the ability of the State to place corruption at least initially under some degree of control so that it can begin to increase its revenue that can be used for the reforms. The donors, on the other hand, may systematically review their strategies on how to target their valuable assistance in order to strengthen the reform process, its effectiveness and efficiency. While a large amount of foreign aid has up to now been directed to technical assistance with varying degrees of success, there has been inadequate foreign assistance to facilitate sound structural adjustment and institutional reforms. As it has been increasingly clear that the reforms are core solutions to Cambodia's long-term dire predicament, the foreign assistance should now concentrate on their implementation. Credit allocated to this programme should be strictly earmarked with clear objectives, with guidelines to evaluate periodically and at the end to determine if desired reform outcomes have been achieved. Greater transparency in all financial assistance should also enhance the effectiveness of reforms.

In conclusion, benefits of the Cambodia's accession to WTO will depend on the government's commitment to promptly implement reforms in a concrete manner. The real determination of Cambodian leaders to move their country forward with the rule of law and a consistent economic development strategy, will result in a prosperous export sector.

By Chea Samnang and Sok Hach

Box 5: Deadline to implement the WTO agreements

Trade Related Aspects of Intellectual Property Right (TRIPS)

2004

1. Drafting of the Laws on Layout Design of Integrated Circuits and Plant Variety Protection to be completed and adopted by the Council of Ministers.
2. Adoption and promulgation of the Law on Geographical Indications.
3. Adoption of Law on Protection of Undisclosed Information and Trade Secret.
4. Sub-Decree and implementing regulations on copyrights.
5. Capacity building for key intellectual property personnel in the field of copyrights.

2005

6. Adoption and promulgation of the Law on Layout Design of Integrated Circuits.
7. Ratification and promulgation of the Law on Protection of Undisclosed Information and Trade Secrets, and Plant Variety Protection.
8. Sub-Decree and implementing regulations on Geographical Indications, and on Protection Undisclosed Information and Trade Secrets.
9. Capacity building for key intellectual property (IP) personnel in the fields of Geographical Indications, and Protection of Undisclosed Information and Trade Secrets.

2006

10. Sub-Decree and implementing regulations on Layout Design of Integrated Circuits and Plant Variety Protection
11. Capacity building for key intellectual property (IP) personal in the fields of Layout Design of Integrated Circuits and Plant Variety Protection.

Technical Barriers to Trade

2003

12. Finalization of the draft of the Law on Industrial Standards, and ratification by the Parliament.
13. Installation of testing and calibration equipment in laboratories.
14. Establishment of a TBT and standards library and training of a librarian.

2004

15. Drafting of technical regulations on safety of chemical products, electrical products and toys.

2005-2006

16. Readjustment of technical regulations and procedures in accordance with new scientific discoveries and approaches.
17. Training of standards personnel.

Sanitary and Phytosanitary Measures

2004

18. Drafting of regulations on safety requirements for drinking water and natural mineral water, edible ice, sugar, fat and oil, food products certification for exportation.

2005

19. Drafting of regulations on safety requirement for fresh milk and processed milk products and for frozen food, and regulations for nutrition and food for special dietary uses.
20. Capacity building for key Camcontrol, NCC, and TWGs personnel on the implementation of the above regulations.
21. Update of the Codex Library.

2006-2007

22. Readjustment of technical regulations, standards and discoveries and approaches.

Customs Valuation

2004-2008

23. Implementation of transitional provisions: gradual application of WTO VA agreement without revenue loss due to poor compliance, implementation of the transitional plan.
24. Provision of transitional assistance and guidance to traders: Successful implementation of the transitional plan, and eventually full application of the VA.
25. Full implementation of WTO VA by end of 2008: Successful implementation of the VA.

Source: WTO News, Press/354 11 September 2003.