



ព្រះរាជាណាចក្រកម្ពុជា  
KINGDOM OF CAMBODIA



អង្គការពាណិជ្ជកម្មពិភពលោក  
WORLD TRADE ORGANIZATION

# កម្ពុជា និង អង្គការពាណិជ្ជកម្មពិភពលោក Cambodia and the World Trade Organization

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ភ្នំពេញ ខែ សីហា ឆ្នាំ ២០០៤  
Phnom Penh, August 2004

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# **Cambodia and the World Trade Organization**

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The World Trade Organization is, along with the World Bank and the International Monetary Fund, one of the three key international organizations governing the world economy. Until now, the WTO was the only one of the three-and indeed the only major international organization-that Cambodia had not joined. Now, that is about to change. On 11 September, 2003, WTO Ministers, meeting in Cancun, Mexico, invited Cambodia to become a member of WTO on terms spelled out in the Protocol of Accession that had been agreed between Cambodia and the WTO Members. This protocol is the result of detailed negotiations between Cambodia and members of WTO, which began in mid 1999, when Cambodia first submitted to WTO a description of its laws, regulations and policies governing international trade. Ratification of this Protocol will be one of the first issues that the new National Assembly will have to address when it meets. In accordance with WTO procedures, Cambodia will become a member of WTO thirty days after notifying WTO that the National Assembly has ratified the protocol.

**What is contained in this Protocol? How will it affect Cambodia? What is the significance for Cambodia of joining WTO?**

**Before addressing these key questions, let me describe briefly the functions of the World Trade Organization and the process a non-member country must go through to become a member of WTO.**

## **The WTO**

The World Trade Organization has 147 members, including all major trading countries except Russia, which is in the final stages of accession. WTO members presently account for 96 percent of total world trade in goods and services. All of Cambodia's ASEAN partners are members of WTO, except for Laos and Vietnam, which are now in the accession process. In all 31 Least Developed Countries are members of the WTO.

### **The World Trade Organization has three 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. 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.

These rules are detailed and complex, and are contained in 25 formal agreements and understandings. The text of these legal requirements runs to some 300 pages.

The second function is to provide a means for resolving disagreements between trading countries with regard to the rules. Given their complexity, it is natural that there should sometimes be disagreement on the way the rules are to be applied in particular circumstances. The WTO dispute settlement mechanism provides 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.

The third principal function of WTO is to serve as a forum for the progressive liberalization of international trade. 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.

There is no official description of what a country has to do in order to join WTO. The Agreement establishing the WTO states simply that a country that is not a member may become a member "on terms to be agreed between it and the WTO." Nonetheless, certain practices have evolved over time that provide reasonable guidance as

regards what an acceding country will have to do. Basically, a country seeking to join WTO must take on commitments in four areas related to the functions spelled out above:

- It must negotiate with members a set of "bindings" or maximum levels of tariffs that it will apply on its imports of goods;
- It must negotiate with members conditions for access by foreign services suppliers to its services market;
- It must agree to limitations on those forms of support to agriculture that have an effect on international trade;
- It must bring its laws and regulations governing international trade into conformity with WTO rules before it joins WTO.

It should be noted, however, that the Members of WTO have agreed that when the country seeking to join WTO is a Least Developed Country, flexibility should be shown in all of the above four areas. In a decision taken by the General Council in December 2002, Members agreed that they would be bound by certain restraints in dealing with LDCs seeking to join WTO. In particular, they agreed that they would :

1) exercise restraint in seeking concession and commitments on trade in goods and services, taking into account the level of concessions and commitments undertaken by existing LDC Members of WTO; and 2) 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 workplan for achieving compliance in the years immediately following accession, and committed itself to executing fully that program.

Because Cambodia is a Least Developed Country, we expected to benefit from the flexibility established by this decision..

## **Cambodia's Approach to the Accession Negotiations**

### **Trade, development and employment**

Cambodia's strategy for promoting growth, development and poverty reduction has many elements, and these have been spelled out in our Poverty Reduction Strategy Paper and in the articulation of our Millennium Development Goals. Within this context, we understand that international trade can play a pivotal role, and that Cambodia will greatly benefit from following a trade-centered approach to development. From the outset, Cambodia recognized that joining WTO could significantly advance such a trade-centered approach. To achieve this outcome, however, we needed a negotiating strategy that would help us sort out the enormous detail and complexity of WTO rules and practices, and keep us focussed on those WTO accession issues that were critical for us. In formulating such a negotiating strategy, we started with the fundamental realities of present day Cambodia.

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 thus a major challenge facing Cambodia. 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 alleviate poverty. Our garment industry now employs directly some 240,000 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.

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 Cambodia, foreign investment has an important role to play in bringing about the necessary expansion. Foreign direct investment 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 engage successfully in exporting.



Again, Cambodia's experience with its garment industry provides a concrete illustration of the way in which foreign direct investment can be used to expand exports rapidly. Garment exports rose from \$26 million in 1995 to \$650 million in 1999 and 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 allowing this rapid expansion of exports.

This emphasis on exports and foreign direct investment must not, however, imply any neglect of the important role of micro, small and medium sized enterprises in Cambodia's development. These enterprises produce almost exclusively for the domestic market, and are an important breeding ground for the development of indigenous entrepreneurship. Their role is especially important in rural areas, where they are a major source of employment and employment growth, based on adding value to agricultural production, fisheries, handicrafts, and small manufacturing.

The third fundamental reality of Cambodia is that it is a rural society and economy, with most Cambodians depending directly or indirectly on agriculture for their livelihood. Cambodia is competitive or potentially competitive across a fairly wide range of agricultural sectors. Much remains to be done, however, to realize the full potential of this competitiveness and prospective competitiveness. Achieving this will require, among other things, very large investments in rural infrastructure, in agricultural extension services to improve producer skills, and improved processing of food products, for example the milling and grading of rice to international standards. Here, Government programs, the donor community and foreign direct investment 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 Cambodian agriculture that is competitive has access to markets abroad.

In addition to these fundamental realities regarding Cambodia's own situation, an important reality of the international trading regime needs to be mentioned. In accordance with the WTO Agreement on Textiles and Clothing, the special regime governing trade in garments comes 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 United States. Cambodia's garment exports have also been subject to quotas. On 1 January 2005, however, WTO members are obliged to eliminate quotas on clothing imports from other WTO members. As of that date, access to world markets will be unrestrained for WTO members. If Cambodia is not a member on that date, countries will be free to continue to impose quotas on Cambodia's exports, and will undoubtedly do so. Thus, failure to join WTO by 1 January 2005 would put Cambodia's garment industry at a significant disadvantage relative to its competitors.

### **Formulating an Accession Strategy**

The considerations outlined above allowed the WTO negotiating team to formulate some broad guidelines for our negotiations with WTO

members. These guidelines were designed to ensure that our negotiating strategy at WTO was fully consistent with our view of the important role that international trade is playing, and can continue to play, in Cambodia's economic development. The six main building blocks around which our strategy was constructed were as follows.

1. **Timing.** We targeted a rapid accession to WTO. The need for a rapid accession was driven mainly by the 1 January 2005 deadline facing our garment industry, as explained above. But we also believed that it was in Cambodia's interests to achieve quickly the assured access to all export markets that is guaranteed by WTO membership. Moreover, we believed that the decision by the WTO General Council on the accession of Least Developed Countries, described above, made a rapid accession feasible. We understood that we would need to draft and adopt a large number of laws so as to create a trade regime that was consistent with WTO rules. But we also knew that the decision by the General Council would allow us 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.

In short, we saw a number of reasons for going forward rapidly, and no arguments in favor of a slower accession.

2.     **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 tariff "bands" from 12 to 4, so that after the reform all goods were charged a duty of either 0, 7, 15, or 35 per cent. In the process, we eliminated some higher tariff rates that had previously been applied. We were persuaded that these reductions and simplifications had met our needs and also contributed to the over-all liberalization of world trade. We were also mindful of the need to keep some protection in place for our micro, small and medium sized enterprises and for agriculture. Finally, tariffs contributed an important part of our budget revenue. For all of these reasons, we were determined during the WTO negotiations to avoid any commitment to reduce tariffs further.

3.     **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 raw materials. The way in which Cambodia does this, however, is not fully compatible with WTO rules.

Nevertheless, we understood that maintaining these privileges was essential to our garment industry, and to our future ability to attract other export oriented industries. We were thus determined to maintain our capacity to offer such advantages, despite WTO rules.

**4. Improving the investment climate and fostering foreign direct investment.** As mentioned earlier, increased exports and jobs will depend on increased investment, in particular foreign direct investment. We understood, therefore, the central importance of using our accession to WTO as a means to increase the attractiveness of Cambodia as a place to invest. 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. This is called Most Favored Nation 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, this will be 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.

**Second**, WTO membership requires an intensified effort by Cambodia to put in place the legal framework required by business. The Royal 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 concerning international trade and activities related to trade. We understood from the outset that this would be necessary, and welcomed the requirement as a way of ordering and accelerating our efforts to create a proper legal framework for business that fully reflects international norms.

**Third**, we understood from the outset that our attractiveness to investors depends on the availability of the infrastructure required by businesses. 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 labor force. We 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 our over-all environment for business. Likewise, foreign participation in adult education and training would help develop the skilled work force that is necessary to attract skill-based industries and to allow for increased wages.

For these reasons, we understood that our negotiations on services could advance our over-all strategy of improving the business environment. We were aware that the decision of the WTO General Council (see above) called for members to limit the scope of negotiations on services. However, rather than seeking to limit our commitments to the bare minimum referred to by the General Council, we preferred to address services issues on a case-by-case basis, and when we were convinced that agreeing to liberalization in a particular services sector would help move us toward our broader development objectives, we were prepared to engage in negotiations and take on commitments.

**5. Retaining policy options and flexibility on agriculture.** Market access (point 1, above) and improvements in the investment environment (point 4, above) will benefit agriculture as well as manufacturing and services. We knew, however, that there were special rules in WTO regarding the way governments can support their agricultural sector. These rules are designed to insure 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. We 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, we understood that we

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 our accession strategy.

**6. Securing LDC benefits with regard to public health.**

At its Ministerial Conference in Doha in 2001, WTO adopted a Declaration granting Least Developed Countries 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 we have difficult public health issues as regards HIV AIDS, tuberculosis, malaria, and other major diseases. At the same time, we are dependent on imports of drugs to fight these diseases, and the financial resources available are limited. It is therefore of great importance that we 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 our negotiations.

These, then, were the pillars of the negotiating strategy that guided us throughout our discussions with WTO Members.



## **The Negotiations**

### **Setting the Process in Motion**

Cambodia first applied for membership in WTO in 1994. It was not until 1997, however, that we were in a position to undertake the very complex tasks required to set the process of accession in motion.

The first step in the accession process is for the candidate country to prepare a "Memorandum on the Trade Regime". 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 included:

- 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;
- pre-shipment inspection;

- anti-dumping, countervailing duties and safeguards;
- export regulation;
- product standards and technical regulations;
- sanitary and phyto-sanitary regulations;
- investment measures related to trade;
- state trading;
- free zones and special economic zones;
- government procurement;
- agricultural policies;
- the protection of intellectual property;
- policies affecting trade in services.

The Royal Government was aware that the complex task of preparing such a memorandum and of managing the negotiations that would follow required new and special governmental 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 that was 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 governments priorities related to foreign trade policies; (v) ensure coordination among Ministries; (vi) report to the Prime Minister on issues related to WTO accession.

With this machinery in place, the Government's WTO team proceeded to begin work on the Memorandum on the Trade Regime. A first draft was completed in early 1999, and after extensive review the final draft was submitted to WTO in mid 1999. The memorandum consisted of over 100 pages of description of Cambodia'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 the usual WTO practice, submitted some 75 follow-up questions designed to clarify further aspects of Cambodia's trade regime. We provided answers to these questions, thus setting the stage for the first meeting of the Working Party, and the onset of negotiations.

### **The Geneva Process**

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. Some time before this meeting took place, we were fortunate in being able to arrange for technical assistance to be provided by the United Nations Conference on Trade and Development (UNCTAD). UNCTAD experts have long experience in WTO accessions and other development-related trade policy issues, and were able to brief us on the way the negotiations were usually conducted, thus helping us better understand what to expect. They also were able to help us put the accession process in a

development perspective. They continued to assist us until the end of the negotiations, and this was a big advantage for us.

The first meeting consisted of an examination of Cambodia's Memorandum on the Trade Regime, 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. At the end of this meeting we were 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 sanitary and phyto-sanitary regulations. We were also requested to prepare offers of the concessions we would be prepared to make on import tariffs and services.

During the months following this first meeting, the WTO team addressed these tasks.

In drawing up the tariff offer, we had to take account of the fact that Members required an acceding country to "bind" all of its tariff lines. This meant that we would have to propose a "bound" rate for each of Cambodia's 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.

Our strategy in drawing up this initial offer was to set our bound rates well above current applied rates, i.e. well above the tariff rates we were actually using. As mentioned above, our objective in the negotiation was to avoid any commitment to reduce applied tariff rates, and we needed ample space to respond to requests to lower our bindings while keeping that objective intact.

Formulating our 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, as mentioned above, in the case of Least Developed Countries Members had agreed that they would require "reasonable" commitments, which we understood as meaning commitments on relatively few services sectors. Still, the WTO classifier for services contains 12 broad headings and 155 services sectors and sub-sectors, and we needed to choose among them in making our initial offer. Further, the WTO has identified four different ways in which any given service can be imported. These include cross-border supply (for example, ordering a set of computer generated inputs for architect drawings from Thailand, thus importing architect services); consumption abroad (for example, sailing a Mekong ferry boat to a Vietnamese shipyard for repairs, so that when the ferry returns to Cambodia it imports repair services); commercial presence (for example, allowing a foreign architectural firm to establish itself in Cambodia, thus importing the architectural services of the firm); and presence of natural persons (for example, allowing the foreign architectural firm established in Cambodia to employ foreign

architects, thus importing the services of those individuals). Finally, for each of the service sectors or subsectors that we chose to include, we were required to indicate, for each of the four ways the service can be imported, the degree of market access that would be allowed, and the extent to which we would regulate foreign services providers in the same way as we regulate 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.

Once all 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. This second meeting took place in early 2002, and established the format that would be used in all the subsequent meetings that were held in 2002 and 2003. In fact, three separate types of activity took place every time we went to Geneva.

First, there was the Working Party proper. All WTO members that wished to do so attended this meeting. The purpose of the 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. The discussion in the Working Party also helped us understand more fully the steps that we still had to take to bring our laws and regulations into compliance with WTO rules. Throughout this period the Government was making maximum

efforts to draft and pass through the National Assembly those laws required of a WTO member. For example, drafting of a new Customs Law and of a new Civil Code was completed during this period, and the National Assembly adopted laws on Trade Marks and Copyrights. As the discussion in the Working Party progressed into 2003, we were able to judge the extent to which these internal efforts would allow us to be in compliance at the time we joined WTO, and where we would need more time to put in place the necessary laws.

Second, in the days just before and after each meeting of the Working Party we met individually with some Members. These bilateral meetings were scheduled at the request of the individual Member, and allowed the Member to make requests for changes in the initial offers we 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. We had to examine each of these requests and determine if we could accommodate it within the over-all strategy that we had for the negotiations.

During the course of the accession process Cambodia met bilaterally with 9 Member countries (Australia, Canada, European Communities, India, Japan, Republic of Korea, Panama, Chinese Taipei and the United States). At the end of this process, all of the changes to our initial offer agreed with these countries were brought together in a consolidated schedule of commitments on tariffs, and a

consolidated schedule of commitments on services. These two schedules are part of our accession protocol, and will be part of our legal obligations as a WTO member.

Third, during the week of each Working Party meeting we met with a small number of interested Members to explore Cambodia's programs that benefit agriculture. These plurilateral meetings had the purpose of allowing Members to understand whether any of these programs are of a sort that distort international trade. While WTO rules do not limit the overall support that a government may provide to its agricultural sector, they do impose limits on specific forms of support that distort trade. It was thus important to us and to Members to have a common understanding of which Cambodian programs, if any, would fall into the category subject to limits.

### **The Outcome**

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 terms and conditions are the result of the negotiations described above. The following summarizes the main characteristics of this outcome.

**Import tariffs on goods.** Cambodia will bind all of its tariff lines. 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 will be required because



of WTO membership. The overall average bound duty rate that we have agreed to is 19.9 per cent. This compares with the average rate of duty actually applied by Cambodia in 2003 of 16.5 per cent. As regards agricultural products, our average bound rate of duty is 29.4 per cent, as compared with the average of rates actually applied in 2003 of 19.4 per cent. For manufactured goods, the average bound rate is 18.4 per cent, and the average rate applied in 2003 is 16.0 per cent.

**Imports of services.** Cambodia has undertaken market access commitments in at least one sub-sector under each of 11 different services headings. 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.

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

First, following our strategy for services, as described above, we centered our negotiations on areas that would contribute most to improving those services required by businesses, thus improving the environment for investment. For example, we have committed ourselves to allowing foreign firms to operate in the areas of legal services (with some exceptions), accounting, auditing , bookkeeping, banking , management consulting, telecommunications and transport. However, important conditions were attached to market access in areas such as

financial services (banking and insurance) and in telecommunication services. These conditions will allow us the flexibility we need to develop policy further and promote market development.

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

Finally, we undertook commitments in areas that we felt would contribute to improvements in health care and in the provision of sanitary , refuse disposal and sewerage treatment services. We believe that these can all contribute to improvements in public health in Cambodia.

A number of other considerations entered into our decisions to agree or not agree to requests. Firstly, we felt particularly comfortable in taking on commitments in sectors where we have long had an open policy regarding foreign participation and where that policy has served us well. This is the case, for example, in banking, tourism and courier services. We also felt particularly comfortable in opening up some sectors where we knew Cambodians could compete successfully with foreigners, for example in tourist guide services. Where, however, we saw an advantage for Cambodia in reserving part of a market for Cambodian small and medium sized enterprises, we did so. For example, we committed to opening our 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. Cambodia has also reserved the right to maintain and benefit from preferences in some services areas, such as audiovisual services.

Overall, we believe that we came out of the negotiations on services with a set of commitments that fully reflects our strategy and that will contribute to the future development of Cambodia. It is important, however, that these commitments should be supported by policy and legislative development in each of the services sectors, focusing on standard setting, ensuring the quality of the services supplied, and promoting competition.

**Support to Agriculture.** The examination by WTO members of Cambodia's support for agriculture revealed that Cambodia 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, Cambodia has the future option of providing assistance that distorts trade up to a limit equal to 10 per cent of the value of its agricultural output (in the case of support measures of a general character) and 10 per cent 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 agricultural 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.

Cambodia did make a commitment not to subsidize agricultural exports. Cambodia has never considered providing such subsidies, and the Government does not believe that it would be sound policy. Certainly there are current features of the Cambodian economy that reduce the competitiveness of our 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.

**Conforming to WTO Trade Rules Cambodia's protocol of accession contains,**

by reference, 29 separate and sometimes detailed statements describing the way in which Cambodia will fulfill its commitment to abide by WTO rules. As mentioned above, the Government and the National Assembly have been actively engaged in preparing and passing the legislation needed to bring Cambodia into compliance with those rules. However, at the time when our accession negotiations were concluded, that task had not been completed, and the 29 statements reflect the fact that in some areas our legislative reform was still a "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 governmental 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 include:

- 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 (except for pesticides and fertilizer, see below);
- 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;
- free-trade agreements.

This leaves 12 areas in which Cambodia was not in compliance with WTO rules, or in which we committed to policies or actions that we are not presently pursuing.

In three of the 12 areas, legislation bringing Cambodia into full compliance with WTO rules had been submitted to the National Assembly. When we were concluding our negotiations in July 2003, we believed that the National Assembly would be able to adopt these draft laws soon. We therefore committed to having a WTO compliant Customs Law in place by mid-2004, and to have in place a law on judicial organization and to establish a commercial court system by January 2005. The political difficulties that have so far prevented the National Assembly from being constituted cast doubt on our ability to meet these deadlines.

In four other areas of central importance to the WTO regime, Cambodia has 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 Cambodia could not complete quickly the actions required to achieve full compliance. However, WTO members agreed to Cambodia's request that the special arrangements for Least Developed Countries, referred to earlier, should apply to these areas. This meant that Cambodia's accession could go forward, even though Cambodia would not be in a position to apply the relevant rules as soon as it joined WTO, or soon thereafter.

As required by the special arrangements for LDCs, Cambodia worked out "Action Plans" in each of the four areas, and has taken on a commitment to execute these plans. The Action Plans spell out the specific steps that Cambodia will take to bring itself into full conformity with the rules, and the time frame for these steps. Concretely, when it joins WTO, Cambodia will not be required to be in compliance with all WTO rules on customs valuation, but to implement a series of steps leading to full compliance no later than 1 January 2009. As regards technical barriers to trade (product standards and technical regulations ensuring the safety of products), full compliance is to be achieved by 1 January 2007. Likewise, the Action Plan for Sanitary and Phyto-Sanitary Measures (measures to protect the health of people, plants and animals) requires full compliance with WTO rules by 1 January 2008. Finally, our commitment on the protection of intellectual property requires us to take a series of steps that will bring us into full compliance with WTO rules by 1 January 2007.

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 through both WTO mechanisms, such as the LDC Trust Fund, and through bilateral assistance programs.

These "Action Plans" allowing compliance to be achieved after joining WTO were a key element of flexibility in our accession process. The inclusion of such plans in our accession commitments was made possible because of the diplomatic activity and political pressure applied in Geneva by the Group of Least Developed Countries. This Group 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.

A special comment is required regarding our commitments in the area of protection of intellectual property. Questions have been 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 we could benefit from the Declaration was one of our major objectives in the negotiation.

We believe that this objective has been fully achieved. Some observers have commented on two sentences in our 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 our ability to benefit from the Doha Declaration. However, it should be noted that Cambodia's own Law on Patents contains provisions allowing us to apply fully the Doha Declaration. 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 Doha Declaration. 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 have thus made their intent very clear, and we understand the two sentences in question in this context and will apply them accordingly.

The remaining five areas in which we took commitments cover a variety of topics. The most important of these is the commitment allowing us to continue to waive customs duties on imported inputs used by our export industries. This is extremely important for our garment industry, which needs to be able to secure imported inputs at the most favorable 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, our commitment allows us to continue this practice until 2013. This

introduces for us an important element of flexibility in the usual WTO rules. After 2013 Cambodia will need to choose among other, WTO consistent, means for ensuring that its export industries can secure inputs at competitive prices.

In addition, Cambodia undertook commitments to provide information to WTO members on its privatization program, to set up a mechanism to accept and act on complaints from traders and governments about customs practices, and to allow any registered business to be the importer of record of pharmaceuticals and veterinary medicines. These latter two commitments come into force in 2005. Cambodia also took on a commitment not to use anti-dumping, countervailing or safeguard measures until we had passed WTO-compliant laws governing our actions in these areas.

All in all, the outcome as regards Cambodia's conformity with WTO rules was positive. First, because of our work before and during the accession process, a large part of our trade regime was judged by Members to be in conformity with WTO rules. In the areas in which conformity has not yet been achieved, we secured the flexibility necessary to complete the job. Of course, this leaves us with important tasks for the future, a topic that will be discussed below.

## **WTO Accession: Accomplishments and Challenges**

Cambodia is about to join the worldwide family of trading nations, and to take its rightful place as a member of WTO. Cambodia restored relations with the IMF and World Bank more than a decade ago, and joined ASEAN in 1999. Joining WTO will mark the final step in bringing Cambodia into the major regional and international organizations that govern international economic relations.

But joining WTO also has concrete significance. It will shape in very practical terms the way in which business is done in Cambodia. First and foremost, it will protect our garment industry from having quotas imposed on their exports in 2005 and beyond. In the process, of course, Cambodian employment has also been protected. More generally, each of the six main negotiating objectives mentioned earlier was fully achieved: we have avoided any obligation to lower tariffs; we have retained the ability to offer exporters duty-free access to imported inputs; we 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; we will retain ample flexibility to develop appropriate

policies to support the agricultural sector; and we will benefit fully from the Doha Declaration on TRIPS and public health. We have thus succeeded in harnessing WTO accession in a way that advances and reinforces Cambodia's outward looking and trade-centered development strategy. This is a very important accomplishment.

The full significance of this accomplishment will depend, however, on what happens next. Joining WTO opens up a new range of possibilities for Cambodia. But 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 months and years ahead.

The first, and most obvious, challenge is to fulfill the obligations for legislative and administrative change that we have agreed to in the protocol of accession. In a decision taken in 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. 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, our trade regime will come progressively into full compliance with WTO rules, and the legal environment for businesses will approach international norms. This will be a significant benefit from joining WTO.

The responsibility for meeting the deadlines incorporated in our protocol of accession, and in particular in the individual "action plans" is ours. The unanticipated delays in ratifying the protocol of accession mean that some of the deadlines as regards the passage of legislation are now very tight. Moreover, we have always been clear that some of the tasks can be accomplished in accordance with the agreed timetable only if appropriate technical assistance is forthcoming in a timely manner. If, for any of these reasons, it turns out to be impossible to meet a few of our deadlines, we will so inform WTO and seek a re-scheduling of the commitment in question.

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. We are at the very earliest stages in developing a properly functioning judicial system. We must push ahead with this as a matter of urgency, and, in the meantime, ensure that measures such as arbitration and administrative enforcement are used to the fullest to ensure that laws are implemented and obeyed.

Finally, we must address aggressively certain shortcomings in the way our governmental institutions are functioning on a daily basis. The complaints of businesses regarding over-lapping and time-consuming governmental procedures need to be thoroughly examined, and, when these complaints are justified, corrected. Corruption needs

to be attacked, and not just verbally. These, of course, are but specific instances of the broader need to ensure good governance through transparency, predictability, accountability and the rule of law in all aspects of governmental activity. Our membership in WTO provides us with another good reason for moving forward quickly in this area and to reinforce the activities that we are undertaking in the context of the ongoing project on governance that is supported by the World Bank and other donors.

In addition to these steps of a general character affecting the overall business climate, we need to develop trade policy further in a number of areas.

Cambodia clearly needs to diversify its export base. We believe that establishing special economic zones along our borders is one way to do this. Such zones will help us to be more attractive to some foreign direct investors, in particular those interested in taking advantage of our GSP status, in securing privileged access to ASEAN markets, and, eventually, privileged access to the markets with which Cambodia has or will have free-trade arrangements, such as Australia, China, India and New Zealand. We also need to pursue opportunities to expand South-South trade outside of our ASEAN neighborhood, and are exploring the possibility of joining the Global System of Tariff Preferences among developing countries, which fosters such trade.

We also believe that Cambodia can secure a competitive advantage in world markets by developing further its image as a country that is free from sweatshops and practices such as forced overtime and child labor. We are therefore seeking to establish a mechanism for putting an internationally agreed "good labor practices" label on Cambodian export goods, including those that will be produced in our special economic zones. We believe that this will make them more attractive to consumers who are concerned to buy products that are made in countries where international labor norms are observed. We need to move quickly on this front, so as to provide such an advantage to our garment industry in 2005 and beyond. International trade in garments will be much more competitive after 2005, and it is our duty to provide our industry with all legitimate means for coping successfully with the changes that lie ahead.

The vigorous pursuit of the multiple tasks referred to above will improve the competitiveness of our firms and create an environment that will be more attractive to new investors. WTO provides an internationally recognized framework in which we can organize and carry out the necessary development of our legal and institutional structures and pursue a trade-centered development strategy. If we rise to this challenge-and we will-WTO accession will be seen by future historians as a major turning point leading to the acceleration of Cambodia's development.

## SPECIAL ACKNOWLEDGEMENT

I would like to express my deepest thanks to Samdech Hun Sen, the Prime Minister of the Royal Government of Cambodia, for his strong leadership in bringing Cambodia to accede to the WTO and his confidence in entrusting me with the most difficult tasks of leading the negotiations.

A special note of thanks to my able deputy, Commerce Secretary of State Sok Siphana, to CDC Secretary General Sok Chenda Sophea, and to Ambassador Suos Someth for their years of perseverance in the accession preparation and negotiations.

On the international side my thanks go to several international agencies and their leadership without whose help we would not have made it in such a records time, namely: Dr. Supachai Panitchpakdi, WTO Director General; Mr. Mike Moore, former WTO Director General; H.E. Ambassador Andrea Meloni, Chairman of Cambodia Working Party; the WTO Secretariat, in particular Messrs. Arif Hussain, Renzo Franco and Mr. Cato Adrian; Dr. Rubens Ricupero, UNCTAD Secretary General; Mr. Denis Beslile, ITC Executive Director; and Dr. Esperanza Duran, AITIC Executive Director. My thanks also go to Mr. Mark Malloch



Brown, UNDP Administrator; Dr. Kim Hak-Su, ESCAP Executive Secretary; and Carlos A. Magarinos, UNIDO Director General.

Many ambassadors based in Geneva were of great help to our team, in particular H.E. M. Supperamanian, Ambassador of Malaysia, H.E. Mrs. Puangrad Asavapisit, Ambassador of Thailand, and all the other ASEAN Ambassadors; H.E. Henrik Rée Iversen, Ambassador of Denmark and Chairman of the Integrated Framework Steering Committee; and H.E. Toufiq Ali, Ambassador of Bangladesh.

The knowledge and know-how acquired through the assistance of UNCTAD's expert team have enabled us to get quick results for our negotiations. This team whose angel voice's guidance has helped us surfed through tough and hot water till we reach a safe port. This team deserves our special thanks, especially: Mr. Victor Ognivtsev, Mr. Roger Lawrence, Ms. Jolita Butkeviciene, Mrs. Eila Jounela, Mrs. Miho Shirotori.

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Other deserving names are H.E. Krirk-Krai Jirapaet from Thailand; Messrs. John Burley, Alphaize Xavier, Sven Callebaut, and Stefano Inama. From UNCTAD; Mrs. Susan Prowse from DFID; Richard Carry and Mrs. Ebba Dohlman from OECD; and Mr. Tan Song Chuan from ITIS.

Last but not least, my huge Cambodian Think Tank for the preparation of the WTO Accession which has helped the groundwork for our negotiations without which we can not impose ourselves in the negotiations.

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Mr. Kun Nhem



Events in Cancun, Mexico, 11-12 September 2003

**Canada Trade Minister**



**USTR**



**EU Trade Commissioner**



**Events in Cancun Mexico, September 11-12, 2003**

**Malaysia  
Ambassador**



**Amb. Meloni,  
Chairman of  
Cambodia  
Working Party**







Scenes of Cambodia Working Party Meetings in Geneva





**Sr. Minister and Commerce Minister Cham Prasidh, Cambodian Ambassador Suos Someth and WTO DG Dr. Supachai Panitpakdi (top) and Former WTO DG Mr. Mike Moore (Bottom)**









**Sr. Minister and Commerce Minister Cham Prasidh, Cambodian Ambassador Suos Someth and WTO DG Dr. Supachai Panitpakdi (top) and Former WTO DG Mr. Mike Moore (Bottom)**





Signing of bilateral agreement with Panama



Signing of bilateral agreement with Panama



Signing of bilateral agreement with India



Signing of bilateral agreement with Canada



Signing of  
bilateral  
agreement  
with  
Australia

**Signing of bilateral  
agreement with  
Separate Customs  
Territory of Taiwan,  
Penghu, Kinmen and  
Matsu**



**Conclusion of bilateral agreement with EC**



**Negotiations with Korea**



**Negotiations with Separate  
Customs Territory of Taiwan,  
Penghu, Kinmen and Matsu**



**Negotiations  
with India**



**Plurilateral meetings on  
Agriculture**



**Negotiations with Panama**





**Sr. Minister and  
Commerce  
Minister Cham  
Prasidh and  
Cambodian  
negotiating team  
with UNCTAD  
Sec. Gen. Dr.  
Rubens Ricupero  
(top and left),  
and UNCTAD  
advisors (bot-  
tom)**





Preparing for negotiations....





Intensive preparations for negotiation by the Cambodian WTO Think Tank.





Moments to remember....



Cheers...



## **CORRIGENDUM**

Page 2 of the Khmer Text, add the following sentence to read as "Before addressing these key questions, let me describe briefly the functions of the World Trade Organization and the process a non-member country must go through to become a member of WTO".

Page 4 of the English text, first line of the last paragraph the sentence "are contained in 25 formal agreements" should be corrected as "are contained in 18 formal agreements".

Page 8 of the English text, second line of the first paragraph, second line the words "supplies" should be corrected as "suppliers".

Page 14 of the English text, fifth line of the first paragraph the number "\$1.3 billion" should be corrected as "\$1.5 billion".

Page 30 of the English text, second line of the second paragraph the sentence "Memorandum of the Trade Regime" should be corrected as "Memorandum of the Foreign Trade Regime".

Page 34 of the English text, second line of the first paragraph the sentence "Memorandum of the Trade Regime" should be corrected as "Memorandum of the Foreign Trade Regime".

Page 36 of the English text, second line of the first paragraph the sentence "Memorandum of the Trade Regime" should be corrected as "Memorandum of the Foreign Trade Regime".

Page 42 of the English text, second line of the last paragraph the words "9 Member countries (Australia, Canada, European Communities, India, Japan, Republic of Korea, Panama, Chinese Taipei and the United States)" should be corrected as "9 WTO members".

Page 49 of the Khmer Text, add the following sentence to read as "However, important conditions were attached to market access in areas such as financial services (banking and insurance) and in telecommunication services. These conditions will allow us the flexibility we need to develop policy further and promote market development".

Page 49 of the Khmer Text, add the following sentence to read as "It is important, however, that these commitments should be supported by policy and legislative development in each of the services sectors, focusing on standard setting, ensuring the quality of the services supplied, and promoting competition".

Page 52 of the English text, third line of the first paragraph the sentence "it would be sound policy" should be corrected as "it would be a sound policy".

Page 52 of the English text, first, second and third line of the second paragraph the sentence there is no spacing in between the second and the third line.