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## **Cambodia enters the WTO: Lessons learned for Least Developed Countries**

Sok Siphana

Director, Technical Cooperation Coordination Division,  
International Trade Center/UNCTAD/WTO  
Former Secretary of State of the  
Ministry of Commerce, Cambodia

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## **Introduction**

The Government of the Kingdom of Cambodia applied for accession to the World Trade Organization in October 1994. At its meeting on 21 December 1994, the Preparatory Committee for the WTO established a Working Party to examine the application of Cambodia to accede to the World Trade Organization under Article XII of the Marrakech Agreement establishing the WTO. In May 1999 Cambodia submitted its Memorandum on Foreign Trade Regime (MFTR) to the Accessions Division of the WTO and based on this its four main trading partner countries submitted a series of questions. Cambodia's response to these was submitted to the WTO Secretariat in November 2000, opening the way for the detailed accession negotiations, which commenced in May 2001 and which were completed a little more than two years later in July 2003.

On 22 July 2003 Cambodia submitted its acceptance of the terms and conditions of membership set out in the Accession Protocol, which was approved by the Ministerial Conference on 11 September 2003 and signed by Cambodia subject to ratification. The National Assembly and the Senate ratified this Protocol in September 2004 following the formation of the new Royal Government of Cambodia—after a year-long protracted political negotiation. Cambodia became a member of WTO on 13 October 2004 thirty days after it notified WTO that its parliament had ratified the Protocol. Cambodia, along with Nepal, was the first Least Developed Country (LDC) to have succeeded in acceding to the WTO, since WTO's transformation from the GATT in 1995.

Cambodia's accession to the WTO was a defining moment both for the country and the WTO. Cambodia, for its part, had finally been able to join the worldwide family of trading nations. Cambodia restored relations with the IMF and World Bank more than a decade

ago, and joined ASEAN in 1999. Joining WTO has marked the final step in bringing Cambodia back into the major regional and international organizations that govern international economic relations.

For the WTO this was proof that it was able to accept LDCs as new members. It could also be presented as a satisfactory response to the long-standing demand by LDC members that accession procedures for LDCs be simplified and streamlined. At the signing of the first bilateral EU-Cambodia agreement on 19 June 2003, EU Trade Commissioner Pascal Lamy, commented:

*This agreement is a clear demonstration of Europe's commitment to facilitate the accession of least developed countries to the WTO. The least developed countries have asked for this, it is reasonable, and we, the richer members of the WTO, have to deliver.*

Cambodia was the first least-developed country to conclude an accession negotiation in the WTO. Other poor countries entered the WTO's predecessor, the GATT having effectively made no commitments. Thus, Cambodia cannot be regarded as a "free rider" (taking the benefits of WTO membership without making its own contribution).

### **Expected Benefits**

Cambodia targeted a rapid accession to WTO. The need for a rapid accession was driven mainly by the 1st of January 2005 deadline facing the garment industry, when the international quota regime governing trade in garments finally ended. After that date all WTO members in principle should have unrestrained access to the markets of other members. Being outside of the WTO would have meant that Cambodian garment exporters risked facing continued quotas on their exports, something that would have had a strongly negative impact on

FDI into the industry. Another consideration was the holding of the national general elections of July 2003. The negotiators were of the belief that momentum would be lost during and after the elections.

Apart from access to the world garment market on most favored nation (MFN) terms other expected benefits included:

- access to the international rules-based system of trade with MFN terms for all goods extended as a right,
- an improved domestic investment climate due to goods and service liberalization, and
- access to low cost drugs through the WTO Declaration on the easing of patents for LDCs.

More generally, joining the WTO provided Cambodia, with guaranteed market access and a lock-in of earlier trade liberalization. The accession process necessarily forced trade reform in Cambodia away from an incremental approach to one incorporating detailed rules for trade policy. It has shaped in very practical terms the way in which business is done and provides a secure, predictable, and nondiscriminatory access to the markets of 147 trading partners. It also gives the population secure and nondiscriminatory access to the goods and services of these other WTO members.

### **Commitments in Four Main Areas**

Basically, a country seeking to join WTO must take on commitments in four areas (i) it must negotiate with members a set of “bindings” or maximum levels of tariffs that it will apply on its imports of goods; (ii) it must negotiate with members conditions for access by foreign services suppliers to its services market; (iii) it must agree to limitations on those forms of support to agriculture that have an effect on international trade; and (iv) it must bring its laws and regulations

governing international trade into conformity with WTO rules before it joins WTO. These negotiations are carried out bilaterally with the main trading partners of an acceding country.

WTO entry implies the introduction of a more liberal trade policy but not one of complete free trade. Within the rules and disciplines of the WTO, each country has scope as to how restrictive or liberal its trade regime will be. There are no specific rules as to the maximum level at which a country has to bind its tariffs, how many services it will liberalize, whether to establish antidumping legislation, or how fast to liberalize its agricultural trade. Countries thus have a strategic choice during the negotiations phase of how liberal their trade regime will be, consistent with overall WTO discipline. Cambodia chose to opt for a relatively liberal regime and shortly before negotiations with WTO began undertook a reform of its import tariffs. This reduced the number of tariff bands from 12 to 4, so that after the reform most goods were charged a duty of either 0, 7, 15, or 35 per cent. In the process, Cambodia eliminated most of the higher tariff rates that had previously been applied. These revised rates became the actual “applied” rates with which the maximum bound rates would be compared. Sensitive items were subject to high tariffs or “tariff peaks”, which provide support either for infant activities or those in need of transitional support whilst they restructure.

Cambodia agreed to implement its tariff offers largely upon accession. It bound 100 per cent of tariff lines, which effectively set ceilings on the tariff rates of all imported products. The agreed levels of the binding were in virtually all cases equal to or greater than the level of tariffs that were actually applied in 2003. Thus, no significant reductions in tariffs below those set in the unilateral trade reform were required because of WTO membership.

The overall average bound duty rate agreed to by Cambodia was 20 per cent. This compared with the average rate of duty actually applied in 2003 of 16.5 per cent. For agricultural products, Cambodia's simple-average bound rate was 30 per cent, as compared with the average of rates actually applied in 2003 of 19 per cent. Peak bound rates for the most sensitive agricultural products were 50–60 per cent and the lowest bound rates were 5 per cent. For industrial products, the average bound rate was 18 per cent. This compared with the rate applied in 2003 of 16 per cent. Peak bound rates were 50 per cent and minimal rates 0 per cent.

In addition to setting maximum tariffs Cambodia agreed that it would not apply quantitative restrictions or other non-tariff barriers on imports, apart from those that can be justified (for example for balance of payments reasons) under the provisions of the WTO.

In terms of subsidies Cambodia made a commitment to bind export subsidies in agriculture at zero and not to apply such subsidies in the future. This meant that Cambodia chose not to exercise its right to use agricultural export subsidies, as under the WTO Agreement on Agriculture LDC members are able to use this instrument. In principle under WTO rules for LDCs trade distorting measures in agriculture are allowed up to 10% of the value of output. However the government did not feel that the use of export subsidies to support the agricultural sector would be either a desirable or fiscally feasible policy. Cambodia did maintain the right to provide export subsidies for industrial goods, if it chose to exercise it.

The right to ensure access by exporters to imported inputs at world prices was an important negotiating objective for Cambodia, as this was extremely important for the garment industry. Cambodia was able to secure a commitment allowing it to continue to waive customs duties on imported inputs used by its export industries. Although

waiving duties on inputs of export industries is not allowed by WTO rules, the commitment made by Cambodia allows it to continue its existing practice until 2013, after which time it will need to choose among other, WTO-consistent, means of ensuring that its export industries can secure inputs at competitive prices.

### **Phased Implementation for LDCs**

In the light of Cambodia's LDC status the accession agreement allowed for a phased implementation of the main WTO Agreements. Cambodia was granted four transition periods delaying implementation of:

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

The Agreement on Trade-Related Investment Measures (TRIMS) was agreed to be non-applicable as the industrial policy measures it relates to (such as local content or export balancing agreements) do not exist in Cambodia, and are not envisaged as future policy instruments.

In terms of market access in services Cambodia adopted a generally liberal stance welcoming foreign involvement except in a very limited number of areas where local initiatives might be

threatened. The negotiating team focused on areas that would contribute most to the investment climate by improving those services required by business. For example, Cambodia committed itself to allow foreign firms to operate in the areas of legal services (with some exceptions), accounting, auditing, bookkeeping, banking, management consulting, telecommunications and transport. In addition, Cambodia undertook commitments in areas that will help Cambodians develop the skills needed for a modern, competitive economy. Thus, it committed to allowing foreign firms to provide higher education and adult education services. Also Cambodia undertook commitments in areas it felt would contribute to improvements in health care and in the provision of sanitary, refuse and sewerage services, on the grounds that a foreign presence in these activities can contribute to improvements in public health.

A number of other considerations entered into the negotiators' decisions on market access for services. Cambodia felt particularly comfortable in taking on commitments in sectors where it had long had an open policy regarding foreign participation and where that policy had served the country well. This was the case, for example, in the banking, tourism, transport, and courier services. Cambodia also felt particularly comfortable in opening up some sectors, where it knew Cambodians could compete successfully with foreigners, for example in guide services. However in a limited number of cases foreign access was denied by reserving part of a market for local small and medium sized enterprises. For example, Cambodia committed to open its hotel market only for hotels of three stars and higher, and committed to allow foreign supply of retailing services only for a small number of specific items or for very large supermarkets or department stores.

Overall, the government believed that from its negotiations for both goods, and access to the domestic services market, it had made a set of commitments that fully reflected its own liberal strategy on trade and investment and that this policy stance was now “locked-in” through the national commitment to the WTO. It felt that for a small economy relatively high levels of protection make little sense, as the scope for an import substitution trade strategy is very limited. In fact, the tariff reforms that preceded the WTO accession were seen as in the national interest, rather than being an externally imposed requirement for WTO entry.

### **Key Lessons**

Cambodia’s accession may be unique, for both political and economic reasons, and lessons from it have to be drawn with care. If there is an important lesson of experience to draw it is that each accession case involves a different negotiation with different dynamics.

***Lesson 1:*** Cambodia differs from most recently acceding countries in that it is the first least developed country to have concluded its accession under Article XII of the Marrakech Agreement establishing the WTO. Cambodia is a small economy with a *de facto* liberal trade and economic regime, and the small size of its economy may pose fewer market access issues for major WTO members. Unlike the People’s Republic of China, which probably has much more bargaining power than all the recently acceding countries taken together, Cambodia has no current or potential capabilities to become a major player in the world market nor to disrupt powerful WTO members’ domestic markets. It posed no economic threat to any of its trading partners and this should have made the accession negotiations easier.

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

**Lesson 3:** The clear policy direction was translated into clear political commitment and that enabled the Cambodian negotiating team to secure political support at the highest level both from the executive and legislative branches. Political commitment is crucial, if not a *sine qua non* for rapid and successful accession. Without it the lead ministry in charge of WTO negotiations would not have had the mandate to drive aggressively the negotiation process. Political commitment was reflected also in the relative ease in securing budgetary allocations. LDCs by their nature suffer from chronic financial and economic constraints, and Cambodia is no exception. WTO accession demands that the necessary funds in the national budget be allocated for required travel associated with Working Party meetings, missions, and bilateral consultations and negotiations in Geneva. Implementation of laws and policies implies institutional change, and hence requires adequate financial as well as human resources.

**Lesson 4:** Cambodia must demonstrate to its negotiating partners that it has the capacity and political will to implement the commitments made to other WTO members. After all, admitting Cambodia on the promise that it will deliver on the necessary commitments after its accession is also a matter of trust; new commitments are extensive and require new legislation and an appropriate institutional framework to implement policies related to WTO Agreements. Cambodia has for this purpose established a large task force comprising of over 110 senior government officials—at both the

political and technical level—under the chairmanship of the Minister of Commerce.

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

**Lesson 6:** It is clear that difficulties existed, and delays occurred, during Cambodia's accession process. Delays can occur on both sides of the negotiating table. Insufficient knowledge, inadequate experience, limited resources and shallow analytical capacities required for accession negotiations were recurrent sources of delay and procrastination and were complained about often by the Cambodian negotiating team. WTO members, for their part, were also the cause of delays. WTO members have yet to agree on a common approach to the terms of accession, and often express different views on this matter. To illustrate, demands by some members required from Cambodia a higher level of commitment than that made by the original WTO members in the Uruguay Round.

**Lesson 7:** While the process is inherently time consuming and complex, there are a number of steps that acceding countries and

WTO members could take which would facilitate and expedite accession. In the case of Cambodia an aggressive pro-active approach and creative modalities for negotiations were resorted to in order to accelerate the accession process, such as:

- Submission of its National Legislative Action Plan focusing on the requirement for extensive WTO-specific legislation.
- Submission to the WTO secretariat of more than 85 laws, draft laws, and regulatory instruments.
- Establishment of three inquiry points (SPS physically located within the National Codex Committee, TBT within the Ministry of Industry, Mines, and Energy, and Services within the Ministry of Commerce).
- Rectification of obvious contradictions with WTO rules and agreements, especially with respect to the principles of MFN and national treatment, and the readjustment of the trade regime.
- Use of feedback from the Working Party meetings to remove or amend non-compliant legislation and trade practices.
- Working out Action Plans in each of the four areas (TRIPS, TBT, SPS, and Customs Valuation) of the WTO Agreements in which weaknesses in Cambodia's institutional infrastructure required a delay in the implementation of these provisions. The Action Plans spelt out the specific steps that Cambodia would take to bring itself into full conformity with the rules, and the time frame for these steps.
- Fast tracking bilateral negotiations by traveling to capitals of several key WTO members to engage in negotiation and lobbying.
- Pressing WTO members to reaffirm their commitments to the GC Guidelines and requesting them to drop unreasonable demands, or the so-called "WTO-plus" requests.

**Lesson 8:** The process of accession represents a great opportunity for local capacity building. Cambodia made active use of technical assistance and consultancies from international organizations, in particular through the Integrated Framework for Trade-related Technical Assistance for Least Developed Countries (IF). This supported the preparation of the required documentation, as well as local human resource development. Local beneficiaries encompassed both public and private sector decision-makers and civil society stakeholders.

**Lesson 9:** The last and concluding lesson is that Cambodia has used its accession strategy to negotiate and obtain what it judges to be favorable terms of accession, while at the same time protecting its sensitive national interest; for example through retaining the right to allow duty-free imports for exporters and through limited restrictions in the hotel and retail sectors. Indeed, the accession negotiation should be seen as “give and take” rather than “win or lose”. From this perspective the government feels Cambodia has fared relatively well from the process, especially as a small economy, which cannot command much leverage in market access negotiations. However, given that WTO provides an internationally-recognized framework in which Cambodia can organize and carry out the necessary development of its legal and institutional structures and pursue an outward-oriented development strategy, the ultimate test of success rests entirely on Cambodians to rise to the challenge and to turn the accession to the WTO into a potent instrument for accelerated development.