

The WTO Contract

In September 2003, ministers from 147 member countries of the WTO accepted the terms of the Kingdom of Cambodia's accession to the global trade body. Nine years after the original application, all the requirements had been met by Cambodia and actual membership required only ratification of the agreement by the Cambodian National Assembly. This was achieved on 13 September 2004, and membership became official 30 days later on 13 October 2004.

The process for acceding to the WTO is long and complex for any nation. The WTO is not a club that governments can join by paying a fee. It is a legally binding contract between all existing members and the new member. The contract details the conditions of trade between members, and understandings on many domestic aspects of regulation, legislation, judicial process, and investment conditions.

The contract offers Cambodia all the advantages and security of the rules and disciplines that make up the WTO's legal system, which govern the actions of all its members. It offers firm and predictable treatment for Cambodia's products and services in the markets of all other members.

COMMITMENTS TO FURTHER REFORM

For existing WTO members, Cambodia's contract provides assurances of its continued commitment to economic reform, the implementation, over time, of WTO rules and disciplines, and predictable terms

of market access and investment. In other words, traders and investors on both sides should see a more open and secure environment in which to do business.

The WTO contract is binding and enforceable. Cambodian companies may, in the future, believe another WTO member is breaking the contract in their treatment of Cambodian exports. If that happens, they are entitled to ask the government to seek redress through bilateral contacts, and, ultimately, to obtain a judgment through the dispute settlement system of the WTO (see Box 1 on the next page).

Several regional trading partners are already WTO members, including Thailand, China, and the other large ASEAN markets. Not all of Cambodia's neighboring markets are subject to the WTO's enforceable trade contract, however; both Vietnam and Laos are in the process of acceding.

As a new member, Cambodia must demonstrate over the next few years that it is implementing the commitments made to other WTO members. This will be a challenge. Despite its status as an LDC, Cambodia's negotiators were pushed very hard in the final stages of the accession process to take on relatively demanding commitments.

It is difficult to predict the affect of WTO membership on Cambodia. The commitments may impose a competitive strain in some sectors or limit flexibility in creating new policies. The commitments should, however, spur the government to pursue business-friendly reform measures (see Chapter 5).

Box 1: Cambodia's right to challenge other WTO members

The WTO contract applies to all members. To enforce its rights under the contract, procedures are available to Cambodia, just as they are available to Cambodia's WTO trading partners. In the future, if Cambodian exporters believe their products are not being treated correctly under WTO rules, they can take action.

Although only the government can make formal representations at the WTO in Geneva, firms can request MoC to address their complaints on their behalf. Initially, this is normally done through direct, but informal, contacts between governments, sometimes through local diplomatic missions.

If such contacts do not achieve results, then the government can present the issue at the WTO. One course of action is to raise the issue informally with the Geneva diplomatic mission of the WTO member concerned. Another is to put the issue on the agenda of the appropriate committee overseeing the relevant WTO agreement or provision. For example, a problem relating to a technical standard that is blocking specific Cambodian exports in a WTO market could be raised in the Committee on Technical Barriers to Trade. An issue concerning the operation of a quota on an agricultural product could be raised in the Committee on Agriculture.

If these approaches do not work, or the problem is especially severe and urgent, Cambodia can go to the formal dispute settlement system of the WTO. This is the WTO's court system and its procedures are set out in the Dispute Settlement Understanding (DSU).

The first step is to request formal bilateral consultations with the member concerned by notifying the WTO of the complaint. If these consultations do not provide results within 60 days, then Cambodia can call for a panel, normally of three independent WTO experts, to look into the complaint and make a judgment. Such judgments are largely made on the basis of an interpretation of WTO legal provisions, and usually take six to nine months.

Once the findings of the panel are announced, there is an option for either side to appeal through the WTO Appellate Body. This can take an additional 60-90 days, and both sides must accept the verdict of the appeal. If a complaint by Cambodia was found to be justified, for example, then the losing member would have to implement the verdict, usually by removing the conflicting trade measure. If this is not feasible, there are other DSU provisions that result in an offer of compensatory trade benefits, or for the right of Cambodia to withdraw trade concessions from the other party.

This entire process can take too much time, often up to 18 months, for exporters. Nevertheless, the dispute can be resolved, by mutual agreement, at any time during the procedure. This is often the case, and it is the intention of the DSU.

Pursuing a DSU case, rather than taking a less formal approach, requires careful consideration. In addition to being time consuming, it can also be expensive, since experienced legal representation is usually necessary. Legal counsel for LDCs, however, can be secured without a heavy financial burden, through the Geneva based Advisory Centre on WTO Law.

Governments cannot pursue every trade grievance in this way. In ten years, the WTO has dealt with over 300 DSU cases. Most cases have been resolved without going through all the procedures; only approximately 130 panels have been formed.

The Cambodian government, and primarily the Ministry of Commerce, will have to decide which problems to pursue and how. Complaints made by entire manufacturing or farming sectors will carry the most weight in Phnom Penh. This is one reason why the formation of trade associations will be especially important for the private sector to recognize the full potential of WTO membership.

Enquiries about possible WTO-related actions, in response to export difficulties, should be addressed to: Ministry of Commerce, ASEAN & IOs Department, WTO Affairs Office, 20A Norodom Blvd. Phnom Penh. Tel. 855 12 638 686 Fax: 855 23 210 728.

CAMBODIA IS A PIONEER IN THE WTO

Cambodia was the first LDC to conclude an accession negotiation in the WTO. Other poor countries entered the WTO more easily because they had been members of the WTO's predecessor, the General Agreement on Tariffs and Trade (GATT). GATT members had the right to become founding members of the new WTO in 1995.

Cambodia's difficult road to accession means it cannot be regarded as a country taking the benefits of WTO membership without making its own contribution. Even if it is a minor player in world trade, Cambodia has earned the right to be heard and to influence WTO decisions, especially in trade negotiations like the current Doha Round.

Some of the commitments made in Cambodia's WTO agreement are set out in the following chapters. In broad terms, three kinds of commitment were made. First, Cambodia detailed the current state

of its trade and economic policies, and developed a program for reforms. This program will move the country towards complete conformity with the WTO in the next few years. Second, the negotiations resulted in a package of "bound" tariffs on imports of goods. (Chapter 7 explains the difference between bound, applied and preferential tariff rates). This package is part of the contract and is attached to the terms of membership as a tariff "schedule". Third, another schedule sets out the conditions for the supply of services to Cambodia, including the terms for investment and establishment by foreign-owned service providers.

WTO accession is not a guarantee of success in world trade. It is a tool, to be used by governments, the private sector, and other stakeholders, that provides opportunities and safeguards. Now Cambodia must uphold the commitments and obligations it made, while maximizing opportunities.