

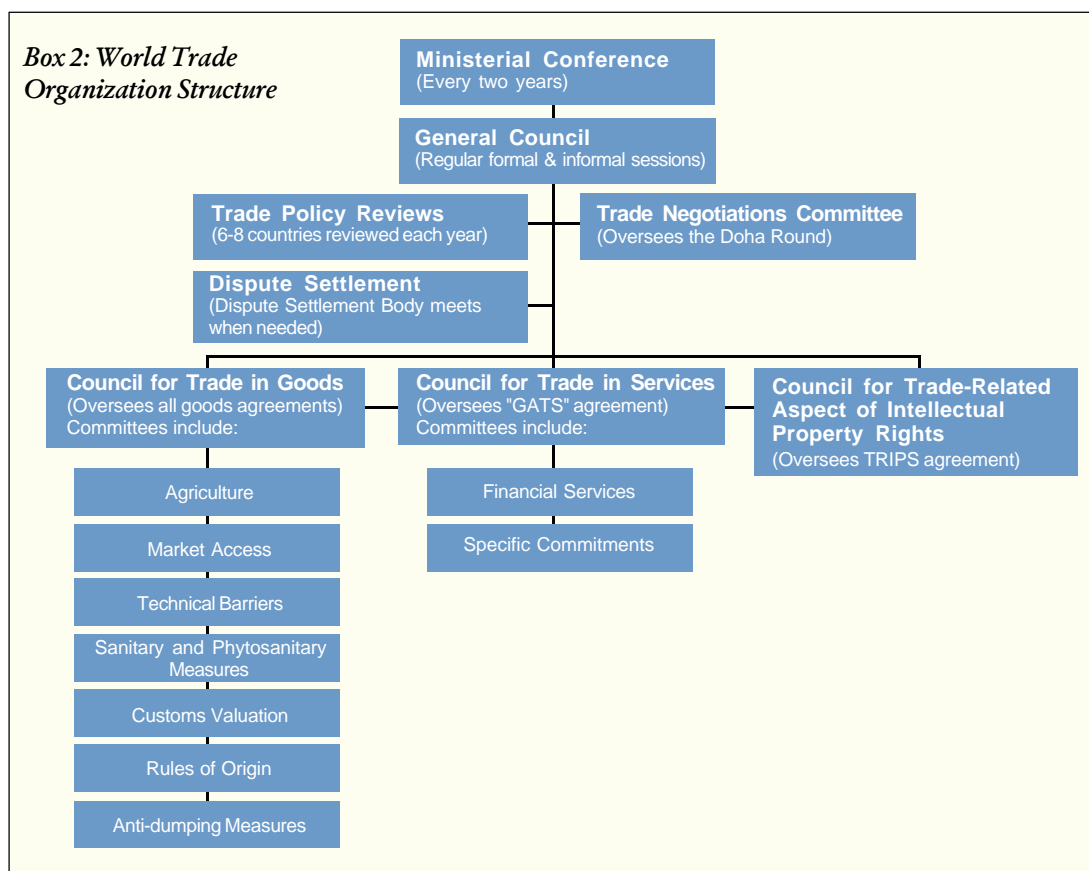
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Chapter

# WTO Origin and Principles

The WTO is the successor to a previous trade agreement called the General Agreement on Tariffs and Trade (GATT), which was created in 1948. The WTO has a larger membership than GATT, and covers more subjects. Nevertheless, it was GATT that established, multilaterally, the principles underlying this trading system. Box 3, on the next page, summarizes the history of GATT and the WTO.

The WTO is both an institution and a set of rules, called the “WTO law”. Each of the almost 150 WTO members are required to implement these rules, and to provide other members with the specific trade benefits to which they have committed themselves.

The main body of WTO law is composed of over sixty individual agreements and decisions. All of these are overseen by councils and committees at the WTO’s headquarters in Geneva; the WTO doesn’t have any local or regional offices. Large-scale negotiations, like the Doha Round, require their own special negotiating forum. At least once every two years, WTO members meet at the ministerial level. For the rest of the time, national delegates, who are usually diplomats and national trade officials, conduct the day-to-day work. Box 2, below, shows the basic structure of WTO representative bodies.



**Box 3: A brief history of the WTO**

- 1946-47** Negotiations among 50 countries, sponsored by the United Nations, to establish an International Trade Organization (ITO) alongside the World Bank and International Monetary Fund. A draft ITO Charter is drawn up.
- In parallel, 23 countries decide to negotiate a set of tariff reductions among themselves and to adopt some of the draft ITO trade rules. The tariff concessions and rules together are called the General Agreement on Tariffs and Trade (GATT).
- 1948** January 1: GATT enters into effect on a provisional basis. Of the 23 original members, 11 are developing countries.
- March: the UN Conference on Trade and Employment, in Havana Cuba, adopts the ITO Charter, but it remains subject to ratification by national legislatures.
- 1950** United States government announces that it will not seek ratification of the ITO Charter because of opposition in Congress. The ITO is therefore dead.
- 1948-95** GATT remains in place as a “provisional” agreement.
- 1948-86** Seven completed trade rounds under GATT

Year	Place/name	Subjects covered	No. Countries
1947	Geneva	Tariffs	23
1949	Annecy (France)	Tariffs	13
1951	Torquay (UK)	Tariffs	38
1956	Geneva	Tariffs	26
1960-61	Geneva (“Dillon Round”)	Tariffs	26
1964-67	Geneva (“Kennedy Round”)	Tariffs and anti-dumping rules	62
1973-79	Geneva (“Tokyo Round”)	Tariffs, rules on non-tariff barriers, etc.	102

- 1964** “Part IV” of the GATT is added to provide more favourable treatment for developing countries, in particular, that could receive tariff benefits in trade negotiations without necessarily making a reciprocal offer.
- 1973** The “enabling clause” is added to the GATT to make legal preference schemes for developing countries. These schemes, like the GSP, would otherwise be contrary to the MFN rule.
- 1986** The Uruguay Round is launched in Punta del Este, Uruguay. Its mandate is the biggest ever, covering tariffs and non-tariff rules, but also extending the trading system into the new areas of services trade and intellectual property rights. In addition, it was to completely re-design the dispute settlement system and establish a new trade organization to replace the “provisional” GATT.
- 1993** December 20: agreement is reached on all Uruguay Round dossiers. Approximately 23,000 pages of legal texts and national commitments on goods and services.
- 1995** The “Marrakesh Agreement” establishing the World Trade Organization comes into effect.
- 1995-2005** Implementation of most Uruguay Round agreements, including those on agriculture, textiles, intellectual property, customs valuation and other non-tariff barriers.
- 1997** Additional agreements are reached covering financial services and basic telecommunications services.
- 1999** Seattle ministerial meeting of the WTO fails to launch a new trade round.
- 2001** China becomes a WTO member after 15 years of negotiations.
- 2001** WTO ministerial conference launches the Doha Round.
- 2004** Cambodia becomes the 148<sup>th</sup> member of the WTO.

All this amounts to a heavy burden for many small and poor WTO members. To help lighten the load and ensure effective participation, technical assistance is available from the WTO and other international agencies, including training courses for national trade officials. The assistance available, however, is insufficient for a country like Cambodia to contribute actively in every area of the WTO. Cambodia will need to prioritize its objectives in WTO membership, and the issues it raises before the organization.

Occasionally Cambodia may join a group, with other countries leading the negotiations. The group of least-developed country WTO members<sup>1</sup> works together when they have similar objectives. One recent example involved seeking to make the WTO rules on special and differential treatment for developing countries more concrete (see the section on non-discrimination on page 19). Additionally, a much larger group (the “G90”) of least-developed and other relatively poor WTO members have worked together in the Doha Round negotiations, particularly on agriculture.

## GOVERNMENT INVOLVEMENT

Only governments take an active part in the work of the WTO, as it is the governments that agree to the contractual responsibilities of their WTO membership. The private sector, however, must decide how its interests can be pursued in Geneva, and make the appropriate requests to government departments in Phnom Penh. The government should take positions in the WTO that reflect the broad public interest. However, if it is not, above all, representing the needs of those private companies that seek to grow, trade, and invest, then WTO membership will have little value.

WTO decisions are based on consensus, which means a decision can be adopted as long as no member or group of members opposes it. Securing consensus can be a long and difficult process.

However, no WTO member, no matter how small, can be ignored if its government believes a crucial national interest is threatened. This also means that once a decision is made, it has great influence in capitals and national legislatures. This would probably not be the case if decisions were reached by majority voting.

## PRIMARY WTO PRINCIPLES

A small number of relatively simple principles underlie the rules of the WTO as they affect Cambodia and, all other members:

### 1. LAWS AND REGULATIONS MUST BE TRANSPARENT

*Transparency* is the primary principle of the WTO. Nothing is more important to business people than knowing and having confidence in the regulatory environment in which they operate, at home and overseas. WTO agreements usually have some form of transparency requirement included that requires governments and other authorities to publish all laws, regulations, and practices that can impact trade or investment. This is discussed in more detail in the next chapter.

Such provisions are as important to companies operating within the domestic economy as those seeking to enter it. All firms operating in Cambodia should experience an opening of the regulatory framework for business. Without these changes, hidden costs and informal payments would increasingly hinder development, particularly if large international companies, who are traditionally unwilling to accept such practices, plan to increase their presence in Cambodia. Open markets within the WTO require open regulation and the rule of law.

As a WTO member, Cambodia has committed itself to provide at least 30 days for comment on all proposed new measures affecting trade in goods, services, or the protection of IP. New measures will not become effective until they have appeared in the

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<sup>1</sup> 32 of the 50 countries named by the United Nations as “least-developed” are WTO Members: Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Congo, Djibouti, Gambia, Guinea, Guinea Bissau, Haiti, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Senegal, Sierra Leone, Solomon Islands, Tanzania, Togo, Uganda, Zambia.

Official Journal. The body of all current laws, regulations, and decrees, as well as administrative and judicial rulings, relating to trade must be available on official websites: [ww.moc.gov.kh](http://ww.moc.gov.kh) (trade regulations) and [www.cambodia.gov.kh](http://www.cambodia.gov.kh) (general laws and regulations).

Three WTO agreements require specific enquiry points to be established by Cambodia in order that overseas suppliers, or domestic firms, can seek information on current laws, regulations and practices. These are for regulations affecting services, TBT (see Box 13 in chapter 8), and food safety (see Box A1.1 in Annex A1).

Cambodia is required to notify the WTO directly of measures that fall within WTO agreements. These, and the notifications of all other WTO members, can often be found on the WTO website: [www.wto.org](http://www.wto.org).

## 2. NON-DISCRIMINATION

A second key principle of the WTO rulebook is *non-discrimination*. The principle applies at two levels. At the first level, non-discrimination means that Cambodian goods cannot be discriminated against in export markets with respect to the same goods arriving from competing countries. At the second level, once they enter those export markets, Cambodian goods cannot be treated differently than the same goods produced locally.

The first form of non-discrimination is referred to as “most favoured nation” (MFN) treatment. In other words, Cambodian goods must be treated no differently in the markets of a WTO member than the best treatment available to any other member. This principle is often breached, however, through regional and preferential trade deals (see Box 4)

The second form of non-discrimination is known as “national treatment”. It is an important safeguard against situations in which goods can enter a market, but are then made uncompetitive because they are subjected to special taxes, charges, or administrative practices that are not applied to locally produced products of the same kind. The guarantee of national treatment will help Cambodian goods succeed in export markets. At the same time, national treatment must operate within Cambodia too, which might restrict domestic businesses’ ability to cope with import competition.

## 3. PROGRESSIVE TRADE LIBERALIZATION

A third principle is *progressive trade liberalization* through negotiation. The WTO is not a free-trade agreement. As the following chapters will outline, there is scope for the legal protection of markets from import competition. However, the underlying goal of the WTO is to create trade and investment through increasingly open markets.

Governments are free to open their markets independently of the WTO. After accession, Cambodia can liberalize further to the extent, and at the speed, the government thinks is appropriate.

Roughly once every ten years, GATT and WTO have traditionally launched multilateral trade rounds in which member countries engage in broad, general negotiations to open each other’s markets or extend the coverage of the rules. The WTO was established as a result of the Uruguay Round, which lasted from 1986 until 1994.

Cambodia will have the opportunity to participate fully in the current Doha Round, which has a broad agenda for negotiations. It is continuing the process of liberalizing markets for industrial and agricultural goods, as well as services. It is expected to lead to a new WTO agreement on trade facilitation. This may be of particular interest to Cambodia, especially if funding is made available to support the customs reforms that are the main objective of the initiative. The Doha Round may also lead to further additions to WTO rules (see the issue of fish subsidies in Annex B for an example), and to strengthening of the conditions applied to developing countries.

The Doha Round has been severely delayed because of differences over agriculture. It is most likely to be concluded in 2006/2007. This means that the private sector in Cambodia still has a chance to determine objectives for negotiation, or, at least, to consult with the government on the strategy being pursued.

## 4. SPECIAL AND DIFFERENTIAL TREATMENT

A fourth principle is of “*special and differential treatment*” for developing countries. In practice, this permits easier conditions for poorer countries. This can mean not applying certain provisions of new agreements to developing countries. It can also mean

***Box 4: Regional and preferential trade arrangements – a challenge for the WTO***

When GATT was negotiated in the 1940s, it was always expected that some countries would want to get together to break down trade barriers among themselves. The European Union is the principal example. The calculation was that in reducing trade barriers among groups of similar countries, their economies would collectively grow stronger, and they would take in more imports than ever. Thus, even if there were discrimination against those outside the group, everyone would benefit.

In allowing for regional trade agreements, GATT, and then the WTO, set some conditions. For example, the agreements should apply to substantially all trade among the parties, and should not lead to increased trade barriers to other WTO members.

Unfortunately, the conditions have seldom been met, largely because of the challenges due to agricultural trade. In the past ten years or so, these regional pacts have proliferated to the point where almost every WTO member has an interest in one or more, and it is doubtful that many meet the WTO conditions.

For Cambodia, the key regional trade agreement, in the foreseeable future, is likely to be AFTA, the ASEAN Free Trade Area. There is no reason to believe that AFTA will be more or less acceptable in the WTO than any of the similar existing arrangements, like Mercosur in Latin America, or NAFTA (US, Canada and Mexico).

Most regional trade agreements involve reduction of most tariffs to zero, over time. Some, however, involve only one side opening its market to goods or services from a developing country. These are preferential agreements. Both the United States and the European Union offer preferential access through GSP (Generalized System of Preferences) schemes (see Chapter 7). Other developed countries operate similar systems, and it seems likely that developing countries will increasingly offer them among themselves.

Preferences of this kind are also allowed for within the WTO. They may discriminate, but by providing favourable market conditions to poor countries, the expectation is that those countries will eventually grow and become worthwhile markets themselves; again, everyone should benefit.

There is much doubt, however, about the long-term benefit of preferences. One drawback to these schemes is that they are essentially voluntary on the part of the importing country. Benefits can be withdrawn without the possibility of effective recourse to the WTO. Further, as the general levels of tariffs in major markets fall, the competitive advantage of preferences becomes less. There is also concern that investment is distorted towards sectors where preferences are available and away from sectors with better long-term prospects. Diversification is discouraged. In the long term, poor countries should not rely wholly on preferential agreements to fuel their export trade.

providing poorer nations with more time to implement such provisions than for developed countries. This is an important aspect of the Doha Round.

As an LDC, Cambodia will find itself covered by many special treatment provisions. For example, it may be relieved of the need to implement some future WTO provisions, or given much more time to implement them than is the case for other

members. Additionally, in trade negotiations Cambodia will normally not be required to make a major contribution in offering new market access benefits to other members. The issue for private firms in Cambodia will be whether such conditions, over the long term, help or hinder the development of strong and competitive agricultural, manufacturing, and services sectors.