

## The New Trading Environment: Dealing with Non-tariff Barriers

Once favorable customs duties are identified as market opportunities, other obstacles, called “non-tariff barriers,” will affect whether or not Cambodian products succeed. WTO membership should prove especially useful in dealing with these barriers.

In joining the WTO, Cambodia has had to take on the requirements of a series of agreements on non-tariff measures. Some, like customs valuation, import licensing, and PSI, were outlined in Chapter 5, and are important for the regulatory environment within Cambodia. But these rules, and a range of others, also apply to Cambodia’s main trading partners in the WTO. They should all act to restrict the ability of WTO governments to block Cambodian imports unfairly.

The WTO deals with these practices by outlawing the use of quotas on imports and exports. Customs duties are the main legal form of protection, but there are two important exceptions, in the garments and agricultural sectors. Until the end of 2004, quotas on textiles and clothing could be maintained by the US, the EU, and Canada. However, at the end of 2004, the WTO Agreement on Textiles and Clothing put an end to forty years or more of quota restrictions in this sector. The impact of this change on the Cambodian garment sector is discussed in Annex D.

### **AGRICULTURAL MARKET ACCESS AND TARIFF QUOTAS**

The other permitted use of quotas is in the agricultural sector. These are termed “tariff quotas” because they allow a certain volume of access to the market at a low or zero customs duty. All imports outside the tariff quota are subjected to a much higher tariff, usually so high that imports cannot compete.

The system of tariff quotas in the WTO is in place largely to ensure that very high tariffs cannot act to eliminate imports completely. Around 1,400 tariff quotas are currently in place affecting access in about

43 WTO member countries. Cambodia itself does not use tariff quotas under the WTO, but agribusinesses exporters in Cambodia will often encounter them directly or indirectly.

The administration of tariff quotas is complex. Like most quota systems, it is open to abuse; WTO rules seek to prevent such abuse. Issues and complaints related to tariff quotas are regularly discussed in the WTO’s Committee on Agriculture. The current Doha Round negotiations are intended to provide new disciplines.

WTO members have different approaches to using tariff quotas. Nearly half of the WTO tariff quotas do not, in practice, impede imports. They allow for unlimited quantities at the in-tariff quota rate. Others are administered on a first-come, first-served basis in which imports are allowed to enter the market, from all sources, at the in-quota rate, up to the point when the quota is filled. Once that level has been reached, the out-of-quota duty is imposed. A third system involves the issuance of licenses on a first-come, first served basis, while a fourth involves the issuance of licenses on the basis of historical market shares. A fifth approach is to auction import shares or licenses.

Tariff quotas are also commonly used in preferential arrangements and free-trade agreements.

### **TECHNICAL STANDARDS AS A TRADE BARRIER**

The second area in which non-tariff barriers can hit Cambodian exports is the use of technical standards. This is likely to be a big challenge for Cambodia as it seeks to diversify its export base and its markets. Not only can national standards be difficult to meet in themselves, but also the enforcement procedures to which imports are subjected can be onerous. Understanding which standards apply in which markets is the first step; ensuring Cambodian products meet those standards is the second.

International agreements usually recognize a difference between *compulsory* standards and *voluntary* standards. In the WTO, compulsory standards are usually referred to as technical regulations. However, to meet real market needs, Cambodian exporters will usually have to try to meet all relevant standards, whether they are voluntary or compulsory. In doing so, a variety of testing, certification, and conformity assessment procedures, as well as mutual recognition arrangements, need to be understood. (See Appendix 3, The Role of Camcontrol)

The potential for abuse is considerable, which is why the WTO Agreement on Technical Barriers to Trade (TBT) is an important safeguard for Cambodian products. The Agreement sets out rules for imposing and administering standards (see Box 14 on the next page). A similar agreement exists for food safety standards. This is explained in Annex A1 on the agribusiness sector.

The use of rules of origin in foreign markets can be very complicated. They are used principally to identify the tariff treatment, for Cambodia, this is often the preferential rate, to which a consignment of goods should be subject. The problems are multiplied for goods composed of materials and components from different sources, or manufactured in several different countries. This is often the case for Cambodian garments.

The US, EU, and most other large markets operate different rules of origin systems. Negotiations

have been underway for several years in the WTO to harmonize rules of origin. While close to completion, these negotiations have faltered because of differences related to textiles and clothing and some other product sectors. WTO disciplines on Rules of origin are described in Box 13, below.

#### **ORIGIN CERTIFICATE FEES**

A related issue in Cambodia is the issuance by MoC of certificates of origin (C/O). A significant number of local exporters complain of time delays and additional informal fees required to secure such certificates. Formally, certificates of origin are issued, for a fee, for only garments and footwear. C/O Form A (GSP) for over 2000 pieces and over 200 pairs is available for US\$50. C/O Form N (normal MFN) is issued for a US\$30 fee for over 2000 pieces and over 200 pairs. For consignments less than 2000 pieces and 200 pairs, the C/O fee is US\$15 (GSP) and US\$10 (MFN).

Certificates of origin on agricultural goods are issued free of charge. Other products need some certified proof of origin in order to qualify for GSP or other preferential access. However, because there has yet to be any effective harmonization of rules of origin among WTO members, particularly for preferential tariff treatment, there is little uniformity in the standards applied or the proof required.

#### ***Box 13: WTO Agreement on Rules of Origin***

The Agreement was drafted on the assumption that a further agreement would be reached on harmonized rules of origin throughout the WTO membership. This has not yet happened. In the meantime the agreement's disciplines, which do not apply to preferential trade regimes, require, for instance, that rules of origin:

- Must be clearly defined and published promptly;
- Should not disrupt or distort trade;
- Should be administered consistently, impartially and reasonably; and,
- Should be applied without discrimination.

**Box 14: The WTO Agreement on Technical Barriers to Trade (TBT)**

The objective of the TBT Agreement is to ensure that compulsory technical regulations and voluntary standards, as well as the procedures for assessing conformity with them, do not act as unnecessary barriers to trade. This includes packaging, marking, and labelling requirements. The term “technical regulations” refers to mandatory standards, which Cambodian exports *must* meet. A “Code of Good Practice” appended to the Agreement covers voluntary standards.

Where technical regulations use recognized international standards, these are assumed in the Agreement to not create unnecessary obstacles to trade. The standards developed by the following organizations are covered:

- International Organization for Standardization (ISO)
- International Electrotechnical Commission (IEC)
- International Telecommunications Union (ITU)
- Codex Alimentarius Commission (under the UN Food and Agriculture Organization)

Technical regulations that are more demanding than the international standards are acceptable if they meet a series of criteria laid out in the Agreement. Technical regulations and voluntary standards:

- must be applied without discrimination among foreign products;
- must not be applied more stringently to imported products than to domestically produced products; and,
- must be based on scientific and technical information.

The Agreement also sets disciplines on conformity assessment procedures. The procedures must be transparent, with information easily available to foreign suppliers. They should not operate in a manner less favourable to imported goods than domestic products. Fees should be reasonable and testing arrangements should not inconvenience foreign suppliers or importers. It must also be possible for exporters to make and pursue complaints.

WTO members are called on, wherever possible, to accept the conformity assessment results of other members, through mutual recognition agreements, in order to prevent the doubling up of the assessment burden on foreign exporters.

Cambodian exporters can find national contact points, as required under the TBT Agreement, where the details of local technical regulations, voluntary standards, and conformity assessment rules can be sought at the following link: [http://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_e.htm](http://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm).