Cambodia’s Accession to the WTO
How the law of the jungle is applied to one of the world’s poorest countries

Introduction

At the Cancun ministerial conference, Cambodia will be the first LDC (Least Developed Country) to accede to the World Trade Organisation since it was created in 1995. This will be hailed by developed countries as the proof that the WTO can deliver for one of the world’s poorest countries. It will also be presented as a satisfactory outcome to the long standing demand by LDC members that accession procedures for LDCs be simplified and streamlined.

Unfortunately, this rosy picture is far removed from the truth.

"This is a package of concessions and commitments that goes far beyond what is commensurate with the level of development of an LDC like Cambodia. Nonetheless, we do accept the challenges, because we see the benefits of joining the world trading system". H.E. Mr. Cham Prasidh, Minister of Commerce and Chief Negotiator for Cambodia, July 22nd 2003 on the adoption of Cambodia’s accession package

In reality, Cambodia was pressured by members of the WTO into making concessions that go far beyond the level of commitments made by LDCs that are already members of the WTO. For instance, Cambodia has been forced into immediately halting use of affordable generic versions of new medicines, even though the Doha declaration (paragraph 7) allows LDCs to wait until at least 2016 to implement this complicated and far-reaching agreement. Moreover, some of the requirements put upon Cambodia go far beyond what the United States and the European Union are willing to commit to in the present round of negotiations. Tariff peaks are a case in point. Cambodia, a country where 80% of the population is employed in the agricultural sector, has been asked to provide less protection to its sensitive agricultural sectors (60% maximum tariff) than the US, EU and Canada. The EU’s highest tariff peak on agriculture is 252%. In the case of the United States and Canada, it is 121% and 120% respectively.

1 Many LDCs currently members of the WTO entered automatically in 1994 because they were already members of the GATT as ex-colonies. These include; Angola, Bangladesh, Benin, Burkina Faso, Burundi, Central African Republic, Chad, Congo, Democratic Republic of the, Djibouti, Gambia, Guinea, Guinea Bissau, Haiti, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Myanmar, Niger, Rwanda, Senegal, Sierra Leone, Solomon Islands, Tanzania, Togo, Uganda, Zambia
Furthermore, there is a very real risk that Cambodia’s accession will serve as a template model for the accession of other LDCs and developing countries. The establishment of a precedent would confirm the trend of demanding increasingly higher levels of commitments of those countries that have not yet entered the WTO. As pointed out by the Cambodian negotiator, this is in complete contradiction to the WTO principle to provide countries with trade opportunities “commensurate with their development needs” (as indicated in the preamble of the WTO).

Section One: Basic facts about the accession process

As indicated in Article XII of the Marrakesh agreement, “decisions on accession of new members shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO.” The brevity of this text might indicate that entering the WTO is an easy and innocuous process. Unfortunately the reality is quite different.

As Lanoszka (2001) put it: "Article XII does not stipulate any membership criteria, and this signals perhaps the most problematic legal aspect of the accession process. ...No guidance is given on the 'terms to be agreed', these being left to the negotiations between the WTO Members and the Candidate. Furthermore, Article XII does not identify any concrete steps, nor does it provide any advice when it comes to the procedures to be used for negotiating the terms of accession".²

Not only must a country abide by all WTO rules to enter the WTO, but individual members are allowed to ask for further concessions from applicants in return for existing members’ support for their application. Without the support of key WTO members, there is no chance that any country would enter the WTO. This is why acceding countries are forced into negotiating bilateral agreements with all key players. “WTO officials are fond of saying that the multilateral trading system is a rule-based system. Yet the accession process has no rules, except precedent and power, and is the very antithesis of what the members publicly state to be the intention and design of the WTO. Accession, because the applicant is not a WTO member and has no rights, is power based. More importantly, the applicant cannot inflict any marginal cost on the WTO members when they demand progressively more trade concessions” (Grynberg and Joy 2000)

It is for this reason that the level of commitment for a new entrant can be superior than that of other WTO members. In fact, this has become the norm, “Ideally, acceding countries should accede on terms that are broadly comparable both for acceding countries among themselves and in comparison with incumbents. In practice, however, the situation may evolve somewhat differently. In several areas acceding countries have made commitments in excess of incumbent Members.³ Acceding countries, for instance,

² Ibid. p. 589.
³ See Langhammer and Lücke (1999), Michalopoulos (2000) or Naray (2001). For further details see also footnote 1.
are required to bind all tariffs while many developing countries still have relatively high shares of their non-agricultural tariff lines unbound.” Bachetta, Drabek (2002).

In short, the big players call the shots.

China experienced this law of the jungle during its accession process. After many years of lengthy negotiations for the renewal of its Most Favoured Nation (MFN) status with the US, China saw accession to the WTO as an essential element in securing access to the US and other WTO members’ markets. But the accession process proved extremely difficult. China had to agree to very substantial tariff reductions, most notable on agriculture, which went far beyond obligations of existing WTO members. It also had to agree to a special safeguard clause allowing individual WTO members to take measures to limit imports of Chinese products in case of a surge. This extraordinary measure, which goes against the founding principle of the WTO, the MFN clause, will apply to China for 12 years after accession. Showing how demands from a single country or company can block a country’s entry to the WTO, the accession process of China was held up for months by the opposition of the insurance company AIG. The obstacle was only removed after an agreement between AIG and the government of China regarding establishment rights for the insurance company.

In the case of LDCs, the Doha Ministerial conference pledged to facilitate LDC accession to the WTO, “Accession of LDCs remains a priority for the Membership. We agree to work to facilitate and accelerate negotiations with acceding LDCs,” paragraph 42 of Doha declaration. Implementing the Ministerial decision, the General Council of the WTO agreed to:

- Negotiations for the accession of LDCs to the WTO, be facilitated and accelerated through simplified and streamlined accession procedures, with a view to concluding these negotiations as quickly as possible, in accordance with the guidelines set out hereunder:

- **Market access:** 1) WTO Members shall *exercise restraint in seeking concessions* and commitments on trade in goods and services from acceding LDCs, taking into account the levels of concessions and commitments undertaken by existing WTO LDC Members; 2) acceding LDCs shall offer access through reasonable concessions and *commitments on trade in goods and services commensurate with their individual development, financial and trade needs*.

- **Special and Differential Treatment:** 1) *SDT*, as set out in the Multilateral Trade Agreements, Ministerial Decisions, and other relevant WTO legal instruments, *shall be applicable to all acceding LDCs*, from the date of entry into force of their respective Protocols of Accession; 2) *transitional periods/transitional arrangements* foreseen under specific WTO Agreements, to enable acceding LDCs to effectively implement commitments and obligations, *shall be granted* in accession negotiations taking into account individual development, financial and trade needs;
Unfortunately, as this paper shows, none of these pro-development principles were respected when it came to the crunch of the Cambodian accession negotiations.

Section 2: Cambodia’s development needs

Cambodia is one of the world’s poorest countries. Average incomes were estimated at only $268 at the end of the 1990s, with more than one-third of the population living below the poverty line.

Cambodia Basic Development Indicators

- GDP (current US$): 3,403,924,000
- GNI per capita, Atlas method (current US$): 270
- Rate at which rural poverty has fallen per annum: 0.3%
- Illiteracy rate, adult female (% of females ages 15 and above): 42
- Illiteracy rate, adult total (% of people ages 15 and above): 31
- Primary completion rate, total (% of relevant age group): 70
- Immunization, measles (% of children under 12 months): 59
- Life expectancy at birth, total (years): 54
- Mortality rate, under-5 (per 1,000 live births): 138
- Fertility rate (births per woman): 3.9
- Infant mortality rate (per 1,000 live births): 97.0
- Births attended by skilled health staff (% of total): 34.4 (2000)
- Child malnutrition, weight for age (% of under 5): 45.0 (2000)
- Child immunization, measles (% of under 12 mos): 59.0
- Prevalence of HIV (female, % ages 15-24): 2.5

Source: World Development Indicators database 2003(all figures for 2001 where not otherwise stated) and the Oxfam Trade Report, “Rigged Rules and Double standards”, 2002

Under a succession of IMF programmes, Cambodia has embarked on a rapid trade-liberalisation exercise. Average tariff rates have been halved since 1996, to 15 per cent.

Under the terms of two memoranda signed between the IMF and Cambodia in 2001, further reforms were introduced, including a sharp reduction in maximum tariff levels. In addition to the shock caused by such rapid reform, the decrease in applied tariff rates demanded by the IMF and the World Bank weakened the bargaining position of Cambodia during the WTO accession process.

Although economic growth has been strong, averaging over four per cent in the 1990s, it is narrowly based on the export of garments. Increased exports of garments resulted in an increase in the export/GDP ratio in Cambodia by a factor of six (to more than one-third) during the period 1990–1999. The dependence of Cambodia on garment exports – 85% of all exports - is a cause for concern because of the cut throat competition in this sector and continued protectionism which makes small countries’ market access extremely vulnerable.
Unfortunately, Cambodia is about to lose the preferential access it previously enjoyed through quotas because of the dismantlement of the WTO textile agreement in December 2004. For Cambodia, entering the WTO will not necessarily mean expanded market access in this area due to additional competition from highly competitive suppliers like China and India. Lower textile exports could be disastrous for Cambodia given its already high balance of payments deficit (-9.4 % of GDP in 2001).

Rural poverty has fallen very slowly, at only 0.3 per cent per year. Rural areas, where 80% of the workforce is still employed in agriculture, continue to suffer from poor infrastructure and a lack of essential services. Given the already harsh adjustment process that Cambodia went through it is crucial that the country is able to protect vulnerable sectors that are vital to food security and rural livelihoods from outside competition. The protection of these sectors should continue at least until other employment opportunities are available for population currently employed in agriculture. The rice sector is a case in point. Rice is cultivated by traditional farming practices by over 80% of Cambodia’s farmers, 60% of whom produce for subsistence needs. Yet Cambodia’s productivity in this sector is only half that of its neighbors Vietnam and Thailand.

<table>
<thead>
<tr>
<th>Key Facts on Agriculture in Cambodia</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Agriculture contributed to 37% of Cambodia’s GDP in 2001</td>
</tr>
<tr>
<td>- 80% Cambodia’s labour force are employed in agriculture</td>
</tr>
<tr>
<td>- 80% of the poor live in rural areas</td>
</tr>
<tr>
<td>- Rainfed rice is the main crop covering 90% of cultivated areas</td>
</tr>
<tr>
<td>- Rice is cultivated by traditional farming practices by over 80% of Cambodia’s farmers, 60% of whom produce for subsistence needs.</td>
</tr>
<tr>
<td>- Rice accounted for 46% of agricultural output in 2001 and 17% of GDP</td>
</tr>
</tbody>
</table>


Section 3: Cambodia’s accession process

Background and current status

The Working Party on Cambodia’s Accession was established on 21 December 1994. The final meeting of the Working Party (WP) was on July 22nd 2003 when the accession package was finally approved by members of the Working Party, which includes Australia, Canada, China, EU, India, Japan, Rep. Korea, Malaysia, New Zealand, Panama, Singapore, Chinese Taipei, Thailand, United States and Venezuela. After the Ministerial Conference at Cancún officially approves the package, Cambodia will then have to ratify the agreement in an up or down vote of the parliament. It will become a full member 30 days after notification of the WTO, probably in the first quarter of 2004.
Given the length and difficulty of the accession process it is surprising that so many members want to enter the WTO. However, in the case of a poor country like Cambodia accession is seen as a necessary means to achieve economic growth.

“In a time of harsh and fierce global competition, the survival of our country depends on our ability to capture the right opportunities and at the right time. We believe the entry to the WTO is such a case”. H.E. Mr. Cham Prasidh, Minister of Commerce and Chief Negotiator for Cambodia, July 22nd 2003 on the adoption of Cambodia’s accession package

As part of their economic strategy to increase export revenues, countries knocking at the door of the WTO want to secure the benefits derived from membership. Such benefits include Most-Favoured Nation treatment, access to the dispute settlement mechanism and a potential increase in foreign direct investment. Entering the WTO is also seen as the only way to try and influence the shape of future world trade rules which have an enormous impact on developing countries.

But more importantly for Cambodia, accession to the WTO is seen as an additional step towards breaking away from its image as a poor, war-stricken country, isolated from the international community. According to one Cambodian official Cambodia does not want only to be seen as “a country with killing fields”. This is why Cambodia has embarked on a structural adjustment program, sweeping domestic reforms, negotiation of a bilateral textile agreement in 1999 with the US including a labour clause and is now on the verge of achieving WTO accession.

But will Cambodia really benefit from entering the WTO?

It is worthwhile looking at the situation of the 30 LDC members of the WTO. Despite their membership, they have been unable to secure trade opportunities commensurate with their development needs. Low income countries account for 40% of the world’s population but only 3% of world trade. During the period 1997-2000, non-oil exporting LDCs have actually seen their value of exports decrease because of the absence of any WTO, or other international measure, to address falling commodity prices.

In the current negotiations, despite promises made at the United Nations by WTO members, LDCs have still not received any insurance that they will obtain bound, duty-free and quota-free market access to developed countries, one of their long standing demands. In fact, the current round will probably erode the trade preferences that they currently enjoy, marginalising them even further. In the case of the dispute settlement, costs, lack of technical capacity and political pressures have prevented LDCs from defending their rights. None of them have made any claims at the Dispute Settlement body so far. Technical assistance remains a drop in the ocean with just 22 million dollars in 2002 to be distributed among 104 developing country members.

Flexibility - or lack thereof - secured by Cambodia
When asked what constituted special and differential treatment in Cambodia’s accession deal, a WTO official said that Cambodia has secured longer implementation periods for the following agreements:

- Technical Barriers to Trade (2008)
- Customs Valuation (2009)
- Trade Related aspects of Intellectual Property (TRIPS) (2007)

This is an extremely poor example of an SDT package. Not only is Cambodia unlikely to be significantly more developed by 2009 – the close of the longest implementation period - but it has no recourse to exemptions from the rules of the agreements or any elements of positive discrimination. In fact, regarding TRIPS a 2007 deadline constitutes a WTO + demand (see below). Furthermore, implementing all these agreements within four years will be extremely burdensome for a country like Cambodia where the national budget is under stress and already unable to cover essential social expenditures in the areas of health and education. According to available estimates, the cost of implementation of such agreements costs around $100 million dollars. One might wonder whether using any resources for the implementation of these agreements is a reasonable use of public funding in such a poor country.

**Evidence of pressure from WTO members**

"(We feel) deep regret (because of the) onerous demands made by members to acceding countries like Cambodia" Malaysian representative in Cambodia’s Working Party, July 22nd 2003 on the adoption of Cambodia’s accession package

Despite the fact that Cambodia, a country with 13 million inhabitants, is unlikely to become a major trading nation, it has been pressured to accept all sorts of commitments throughout the accession process. “The placing of these demands on an LDC is occurring only because of the precedent that not doing so would create vis-à-vis other applicants to the WTO” (Grynberg and Joy, 2000). WTO officials and many existing members deny the role of precedent, claiming that each country's accession is treated on its own merits yet the evidence contradicts them.

There are several areas where there is clear evidence of pressure from WTO members in the Cambodian accession deal. Whilst there is reluctance among WG members to ‘name and shame’ the key demandeurs, it is widely known that the US takes the lead, “Given that the USA places the greatest demands upon acceding countries – and this is well known among accession negotiators – assumptions have developed regarding US behaviour that allow WTO members to play what accession negotiators now term ‘good cop-bad cop’” (Grynberg and Joy, 2000).
The Cambodian negotiator’s demands for technical assistance in the implementation of the four agreements (TRIPS, customs valuation, TBT, SPS) were rejected out right by the US. Recognising the potential financial burden of implementation at an early stage in the accession negotiations, Sok Siphana, Secretary of State for the Cambodian Ministry for Commerce, had tried to get binding commitments from WTO member countries for technical assistance related to the implementation of these four agreements and beyond. However, Mr. Siphana was obliged to drop the request when the WTO Secretariat told him that this was impossible since the US was absolutely against establishing such linkages.

Market Access

Due to the pressure of other members, Cambodia had, for instance, to revise substantially its first offer on market access in agriculture and industrial products in April 2003. This is completely in contradiction with the pledge made by WTO members to exercise due restraint in demanding further market access concessions from acceding LDCs.

<table>
<thead>
<tr>
<th>Initial offer</th>
<th>Revised offer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Average bound</td>
</tr>
<tr>
<td></td>
<td>tariff</td>
</tr>
<tr>
<td>Agricultural products</td>
<td>44%</td>
</tr>
<tr>
<td>Industrial products</td>
<td>27.44%</td>
</tr>
</tbody>
</table>

Overall, this means that the bound average tariffs of Cambodia have decreased from its initial offer by 25% to a level of 22.13% which is extraordinary low for an LDC. In terms of peak tariffs, Cambodia, a country where 80% of the population is employed in the agricultural sector, has been asked to provide less protection to its sensitive agricultural sectors than the US, the EU and Canada. The EU highest tariff peak on agriculture is 252%. In the case of the United States and Canada, it is 121% and 120% respectively.

TRIPS

Reportedly, during the negotiations on the accession package the Cambodian delegation had requested a reference be made to the Doha Declaration regarding access to medicines but some WTO Members opposed this, hence it was dropped. The draft report of the working party[4] shows that Cambodia had then asked for a 2009 deadline for TRIPS compliance, including pharmaceuticals, but they were eventually bargained down to 2007.

The bilateral process

Furthermore, to secure support from key players, Cambodian delegates had to go to Washington, Brussels and Canberra, negotiating bilateral deals with the US, EU and Australia. The content of such bilateral treaties has not been fully disclosed. It is not known at this stage if other bilateral agreements were concluded. “Without any right or ability to impose costs on a demandeur negotiations must continue until the WTO members are satisfied that no further concessions are possible. Thus, irrespective of the size of the applicant, the bilateral negotiations will be protracted unless the applicant quickly concedes the vast bulk of the standardized demands of the large WTO members” (Grynberg and Joy, 2000).

“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.” Commissioner Lamy, commenting on the conclusion of the Cambodia-EU treaty paving the way for Cambodia’s accession (19 June 2003)

The diplomatic speeches come easily to developed country ministers but despite this kind of lip service paid to development, once the curtains were drawn it is clear that bilateral agreements were used to secure additional commitments from Cambodia. Less than one month after the conclusion of these agreements, the accession deal of Cambodia was completed.

Evidence of WTO-plus requirements in the accession package

**TRIPS-plus**

- Following Doha, all LDCs have the right to delay the implementation of TRIPS sections 5 and 7 of Pt II in relation to pharmaceutical patents until at least 2016. The draft report of the working party shows that Cambodia had asked for a 2009 deadline for TRIPS compliance, including pharmaceuticals, but they were eventually bargained down to January 1st 2007. According to the WTO Secretariat, the 2007 deadline is generous given that Cambodia already has some intellectual property laws in place - the reference point for accession negotiations being what is already established. However, the truth is that Cambodia has recently passed and promulgated a law excluding pharmaceutical patenting altogether until the 2016 deadline agreed in the Doha Declaration. It would be a global scandal if the WTO accession now requires the Cambodian government to overturn this law. According to Carlos Correa, an internationally renowned intellectual property expert, Cambodia will gain nothing by shortening this period. The Cambodian government and the public will have to pay the cost of this early deadline in terms of higher prices for drugs. As a result many people will be deprived of access to the medicines they badly need.

---

5 WT/ACC/SPEC/KHM/4/Rev.1, 19 June 003
6 It is worth noting that LDCs that were members of the GATT during the Uruguay Round were granted a 10 year implementation period to implement the TRIPS agreement. In contrast, by agreeing to the 2007 deadline, Cambodia will have to fully implement TRIPS less than 10 years after accession.
7 From an email exchange with Carlos Correa, July-August 2003
The accession requirements on data protection are TRIPS-Plus. First because Cambodia is being asked to introduce data protection immediately after its accession to the WTO, which is ahead of both the 2007 accession requirement to comply with TRIPS, and ahead of the new compliance period for pharmaceutical patenting agreed at Doha for LDCs i.e. 2016. And second, because the requirements go beyond what is required by TRIPS. When brand companies seek regulatory approval for a new drug they have to submit test data to the relevant government concerning the quality, safety and efficacy of the drug, as well as information on its chemical composition. In many countries this data is kept confidential for a period. When this period expires, generic producers or importers can gain regulatory approval without generating their own clinical data, by submitting bio-equivalence data that shows that their drugs are the same compound, which is much quicker and cheaper. The TRIPS Agreement requires that members must protect such data against 'unfair commercial use' but does not specify what this means, or the time period for protection. Yet the USTR and PhRMA are pressurising countries to give exclusive rights over the test data to the brand companies and for countries to adopt a minimum 5 year protection - effectively granting brand name companies a monopoly even when there is no formal patent. In this case, Cambodia has been required to "protect against unfair commercial use of undisclosed test or other data submitted in support of applications for marketing approval of pharmaceutical or of agricultural chemical products which utilize new chemical entities, by providing that no person other than the person who submitted such data may, without the permission of the latter person, rely on such data in support of an application for product approval for a period of at least five years from the date on which Cambodia granted marketing approval to the person that produced the data." This requirement will prevent test data from being used by the regulatory authority to assess a bio-equivalent generic, and thereby slow down the production or import of generic versions of new patented medicines after patent expiry. The generic producing or importing company would have to repeat all the trials - expensive and slow - or wait the five years. Again, according to Carlos Correa, by preventing generic competition on off-patent drugs this obligation could be seriously damaging to public health in Cambodia. Essentially, Cambodia is denied the rights to fully use the flexibilities accorded by TRIPS and the Doha Declaration - whether the extended compliance period for LDCs, or the use of article 39.3 which does not imply data exclusivity.

Cambodia is obliged to sign The Patent Cooperation Treaty (PCT) which comes under the auspices of WIPO. The Treaty makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an "international" patent application. Since its adoption in Washington in 1970, the PCT has been constantly evolving; the Treaty itself was amended in 1979 and subsequently modified in 1984 and 2001. Efforts aiming at a more substantial reform of the PCT began in October 2000. The last meeting of the Working Group on Reform of the PCT for this stage of reform took place in May 2003.

---

8 WT/ACC/SPEC/KHM/4/Rev.1, 19 June 2003
According to Peter Drahos[^9], a global intellectual property expert, the basic problem for developing countries is that the PCT is part of a deeper agenda about patent harmonization that will see global patent administration placed in the hands of the Trilateral offices - US Patent and Trademark Office (USPTO), the European Patent Office (EPO) and the Japanese Patent and Trademark Office (JPTO). In effect national patent offices will become letterboxes as many of them already are. The problem is that if patent administration should itself be responsive to a society’s stage of technological development it follows that a globally harmonized system of patent administration run by the big three developed country offices is unlikely to serve the interests of developing countries. As Drahos warns, if the big three offices harmonize on matters such as the granting of patents relating to doing business over the internet this will almost certainly be of no assistance to entrepreneurs in Cambodia. Cambodians have a strong interest in an open source model of the internet, not a proprietary one.

"[E]very society must choose how to regulate property rights in the context of the niche in which it seeks to excel in the world system. Again this is a prescription for rich local democratic deliberation on how to enforce property rights. It is a prescription against buying any WIPO Anglo-German hybrid regime as "best practice" in getting the best of both worlds." Drahos and Braithwaite, 2003

According to Carlos Correa, Cambodia should be allowed to claim the right to apply Chapter 1 of the PCT only (an option available to all countries). This means that a foreign patent office will do the international search on the patent application, but the assessment about patentability will be done by Cambodia according to its own national law and criteria.

### Agriculture: a glaring case of double-standards

- Cambodia has agreed to eliminate agricultural export subsidies by binding them at 0%[^10]. Whilst Cambodia has no previous export subsidies for agricultural products, the Cambodian negotiator had resisted this provision, stating that under the Agreement on Agriculture LDCs were not required to undertake any commitments on export subsidies. Nevertheless, after sustained pressure, Cambodia complied with the demand. This provision will effectively seal off Cambodia’s right under the AoA to introduce export subsidies on any agricultural product in the future should this be necessary in order to protect the livelihoods of poor farmers or achieve development priorities. Australia, representing the Cairns Group as one of the key demandeurs, was far more successful with Cambodia than it has been with the EU and the US in agricultural negotiations. In spite of the Doha Declaration commitment to phasing out export subsidies, EU and US intransigence on this issue means that total agricultural subsidies (including domestic support) account for one-quarter of farm output in the USA, 40% in the EU and over 60% in Japan (Watkins, Oxfam, 2002). The latest position on export

[^9]: From an email exchange with Peter Drahos, July-August 2003
subsidies is enshrined in the EU/US framework for agricultural negotiations which states the elimination of subsidies applied to products of particular interest to developing countries but provides no specific examples. This follows on from the EU statement following the Montreal Mini-Ministerial Meeting that they will phase out export subsidies “for certain major products” only and total phase-out may take up to 50 years.

- Under the terms of Cambodia’s accession deal it is apparent that the WTO is continuing to impose further liberalisation commitments on Cambodia for sensitive products. Whilst very few tariff lines will be bound at 0% (exceptions: electronic circuits etc), tariffs on rice will be bound at 40%, wheat 10%, dairy products +/- 40%, alcohol 60% (highest rate) and tobacco 50%. Given that existing developing country members of the WTO are not required to make further tariff reduction commitments under the Uruguay Round, it is unconscionable that the first acceding Least Developed Country should have to do so. 40% is not a very high bound rate should Cambodia need to protect against import surges in their most important agricultural commodity.

Section Four: Other acceding LDCs

Another 26 countries are also in the process of negotiation to become members of the WTO, including nine LDCs, four developing countries and eight transition countries: Algeria, Nepal, Russian Federation, Saudi Arabia, Belarus, Ukraine, Sudan, Uzbekistan, Viet Nam, Seychelles, Tonga, Kazakhstan, Azerbaijan, Andorra, Lao People’s Democratic Republic, Samoa, Lebanese Republic, Bosnia Herzegovina, Bhutan, Cape Verde, Yemen, Serbia and Montenegro, Bahamas, Vanuatu, Tajikistan and Ethiopia (full list with details of status in Annex 2).

News has just broken of Nepal’s approved accession package. Nepal’s membership negotiation ended on 15 August when the WTO working party wrapped up its work. Following closely behind Cambodia, Nepal is set to be the second least-developed country to join the WTO through the full working party process. Along with Cambodia, Nepal’s membership is likely to be approved at the Cancún Ministerial Conference in September. It appears that Nepal has also been subject to pressure to make commitments far in excess of those of existing members. Headline information from the agreed package reveals that Nepal has bound the tariff rate at around 42% in agricultural products and around 24% in other products. As with Cambodia, these rates are very low for an LDC with a heavy reliance on its agricultural sector. In another striking example of WTO-plus demands, Nepal has also agreed to implement the TRIPS agreement by January 1st 2007.

Vanuatu has been close to agreeing its accession package for a number of years. Grynberg and Joy have produced a detailed critique of Vanuatu’s accession process.

---

11 Cambodia Tariff Offer: Department of Economic Integration and ASEAN, MEF
highlighting where the demands are WTO-plus. From their evidence it is clear that the USA is the principle demandeur. In fact, Grynberg and Joy report that in the year 2000 Vanuatu indicated that unless there is was moderation of US demands, it would withdraw its application for WTO membership completely. This had not yet occurred but they are still in the process of negotiating the deal.

TRIPS

“The USA has also refused the request by Vanuatu for a two-year transition for the implementation of TRIPs. Vanuatu offered to WTO members to have the TRIPS legislation in place on the date of accession but is unwilling to commit to full implementation in less than two years because it lacks an agency and the proper level of training to make such a goal achievable. While Vanuatu is an LDC and WTO rules do provide for a delayed implementation of these agreements, these pertain only to members and hence Vanuatu has no automatic rights to WTO transitional arrangements.”

Agriculture

“Vanuatu was prohibited from joining the WTO if it insisted on using Special Safeguard Provisions (Article 5). WTO members argued that these, as ‘Uruguay Round methodologies’, were not available to acceding countries. Vanuatu, having ‘tarifficated’ its quantitative restrictions in potatoes, felt that it should have rights to use SSG provisions. WTO members, despite the LDC status of Vanuatu, denied this request. This is once again a ‘WTO-plus’ demand made by members, not out of concern for access to Vanuatu’s miniscule potato market but rather a containment of the what these WTO members perceive as a regrettable precedent established when Bulgaria joined the WTO with SSG provisions.”

“The most difficult agricultural area was that of export subsidies. Vanuatu occasionally offers agricultural price supports to some of its poorest copra farmers when prices fall to catastrophically low levels. Given that large WTO members such as the EU and the USA offer massive subsidies to temperate edible oils, the USD 1 million in price supports that had been offered for copra producers in 1996 should not have been problematic. However, because these were funded by Stabex funds under the Lomé IV Convention, it was argued that since the money was aid, it could not be used as a subsidy. Thus Vanuatu was in the paradoxical position of having to argue that it was subsidizing exports, yet given that the EU funds could be used in any of a number of ways, their use as subsidy was a matter of choice for the government…..LDCs are not obliged to make export subsidy commitments but once again WTO-plus demands had to be met, even by an LDC. In the end, Vanuatu decided that it would not be able to join the WTO if its ES1 schedule contained any export subsidies and for this reason, accepted the interpretation that Stabex was aid. In the future, some of the poorest farmers in Vanuatu will have to bear the full brunt of price fluctuations in a distorted and volatile edible oil market, solely because it was in the interests of WTO members.”(Grynberg and Joy, 2000)
**Recommendations**

Given the harsh experience of Cambodia, the following reform of the WTO accession process must take place:

- fundamental reform of the accession process which would set clear benchmarks regarding rights and obligations of new members based on development indicators
- enable Cambodia and future LDC entrants to use all flexibilities granted to existing LDC members
- the establishment of a panel of experts to decide whether an applicant’s trade regime is already in conformity with existing WTO rules in order to counter the proliferation of ‘WTO-plus’ demands
- exemption for new entrants from further market access commitments in the current negotiations, given the high level of concessions they have already made.

**References**

Bachetta, Drabek (2002). Effects of WTO accession on policy-making in sovereign states: Preliminary lessons from the recent experience of transition countries (Draft).


Interviews with WTO Secretariat staff


Marrakesh agreement (1994), Doha ministerial Conference declaration (2001), Decision from the General Council on LDC accession (2003), to be found at: [http://www.wto.org/english/thewto_e/acc_e/acc_e.htm](http://www.wto.org/english/thewto_e/acc_e/acc_e.htm)
Annex One

WHAT CAMBODIA HAS PROMISED: IN BRIEF

Some highlights of the Working Party report:
STATE OWNERSHIP AND PRIVATIZATION: Privatization was carried out during a first phase from 1991 to mid-1993, and a second phase starting in April 1995. Cambodia would ensure the transparency, and keep WTO Members informed and also provide periodic reports on other issues related to its economic reform as relevant to its obligations under the WTO.

PRICING POLICIES: From the date of accession, in the application of price controls, Cambodia would apply price controls in a way that is consistent with the WTO in a WTO-consistent fashion, and take account of the interests of exporting WTO Members. He also confirmed that Cambodia published the list of goods and services subject to state control.

TRADING RIGHTS (THE RIGHT TO IMPORT AND EXPORT): Responding to a comment that Cambodia’s restrictions on imported pharmaceuticals and veterinary medicines discriminated in favour of domestic production of similar products. Cambodia said that no later than 1 June 2005, it would amend its legislation, and ensure that its laws and regulations are in full conformity with its WTO obligations.

OTHER CUSTOMS DUTIES AND CHARGES. Cambodia will ensure these comply with WTO provisions from the date of accession and will be bound at zero.

TARIFF RATE QUOTAS, TARIFF EXEMPTIONS. Although Cambodia had not resorted to tariff rate quotas so far, Cambodia would reserve its right to implement such quotas depending on the outcome of the accession negotiations. Cambodia confirmed that it would respect WTO disciplines on tariff rate quotas.

The representative of Cambodia stated that upon accession to the WTO, any tariff exemptions would only be implemented in conformity with the relevant WTO provisions.

FEES AND CHARGES FOR SERVICES RENDERED. All fees and charges for services related to imports and exports will be used in conformity with the provisions of WTO agreements, and from the date of accession, Cambodia will not apply, introduce or reintroduce any fees and charges for services rendered that were applied to imports on an ad valorem basis.

APPLICATION OF INTERNAL TAXES. From the date of accession, Cambodia will apply its domestic taxes in strict compliance with Article 3 of the GATT 1994 and in a non-discriminatory manner to imports regardless of country of origin.

QUANTITATIVE IMPORT RESTRICTIONS, INCLUDING PROHIBITIONS, QUOTAS AND LICENSING SYSTEMS. No later than 1 June 2005, Cambodia will eliminate quantitative restrictions on imports of fertilizers, pesticides and other agricultural inputs and establish a WTO-consistent method of registration and review of imported agricultural chemicals. From 1 January 2007 Cambodia would rely on the
provisions of Technical Barriers to Trade Agreement to regulate domestic and international trade in these items. From the date of accession, Cambodia will not introduce, re-introduce or apply other non-tariff measures such as licensing, quotas, prohibitions, bans and other restrictions having equivalent effect that could not be justified under the provisions of the WTO Agreements.

CUSTOMS VALUATION. Cambodia will fully implement the Customs Valuation Agreement from 1 January 2009. The Working Party took note of this commitment.

RULES OF ORIGIN. Cambodia will comply fully with the provisions of the WTO Rules of Origin Agreement by 1 January 2005, parts by 1 January 2004.

OTHER CUSTOMS FORMALITIES. A dispute settlement mechanism within the Cambodian Customs Service to handle complaints about customs practices from traders and governments will be established before 1 January 2005.

PRESHIPMENT INSPECTION. From accession the Cambodian government will take full responsibility to ensure that the operations of the preshipment inspection companies retained by Cambodia meet the requirements of the WTO Agreements. Cambodia’s preshipment inspection regime will be temporary and will cease when the Customs and Excise Department is able to carry out the functions currently performed by pre-shipment inspection service providers.

ANTI-DUMPING, COUNTERVAILING DUTIES, SAFEGUARD REGIMES. Cambodia will not apply any anti-dumping, countervailing or safeguard measure until it has notified and implemented appropriate laws and regulations conforming with the WTO agreements. After that, Cambodia will also only apply any anti-dumping duties, countervailing duties and safeguard measures in full conformity with the relevant WTO provisions.

EXPORT RESTRICTIONS. Cambodia restricts exports of rice; round logs, unprocessed timber and forestry products; antiques more than 100 years old; narcotic drugs and poisons; weapons, explosives and ammunition; and vehicles and machinery for military purposes. From the date of accession, Cambodia will ensure that restrictions comply with WTO agreements.

EXPORT SUBSIDIES. Cambodia will comply with the Subsidies Agreement from accession. It will either eliminate the existing system of remission of import fees and waiver of duty for certain goods used by certain investors, or establish a functioning duty drawback system consistent with WTO provisions, through amendment of the Law on Investment, as necessary, by the end of 2013.

INDUSTRIAL POLICY, INCLUDING SUBSIDIES. These subsidies to be notified from the date of accession.
STANDARDS AND CERTIFICATION. Cambodia will gradually implement the Technical Barriers to Trade Agreement. Full implementation will start from 1 January 2007 without recourse to any further transitional period.

SANITARY AND PHYTOSANITARY MEASURES. Cambodia will gradually implement the SPS Agreement, with full implementation by 1 January 2008. Cambodia will consult with WTO Members upon request if they deemed that any measures applied during the transition period affected their trade negatively.

TRADE-RELATED INVESTMENT MEASURES (TRIMS). Cambodia will not maintain any measures inconsistent with the TRIMs Agreement and would apply the TRIMs Agreement from the date of accession without recourse to any transitional period.

STATE TRADING ENTITIES. Cambodia would apply its laws and regulations governing the trading activities of state-owned enterprises in full conformity with the provisions of the WTO Agreement.

FREE ZONES, SPECIAL ECONOMIC AREAS. Free zones or special economic areas, including special promotion zones established in accordance with the Law on Investment, will be fully subject to the coverage of WTO Agreements and its commitments in its Protocol of Accession to the WTO Agreement. Cambodia will ensure enforcement of its WTO obligations in those zones or areas. In addition, from the date of accession goods produced in these zones or areas under tax and tariff provisions that exempt imports and imported inputs from tariffs and certain taxes will be subject to normal customs formalities when entering the rest of Cambodia, including the application of tariffs and taxes.

TRANSIT. Cambodia will apply any laws, regulations and practices governing transit operations and would act in full conformity with the provisions of the WTO agreements.

AGRICULTURAL POLICIES. Cambodia binds its agricultural export subsidies at zero, and will not maintain or apply any export subsidies for agricultural products.

TEXTILES REGIME. Textiles and clothing import quotas that other members apply to imports from Cambodia will have growth rates applied as provided for in the Agreement on Textiles and Clothing shall be applied, from the date of Cambodia's accession. These growth rates will end when the Agreement on Textiles and Clothing terminates (in 2005).

TRADE-RELATED INTELLECTUAL PROPERTY RIGHTS (TRIPS). Cambodia will apply the TRIPS Agreement no later than 1 January 2007, with some protection provided in the interim.

TRANSPARENCY. From the date of accession, all laws and regulations will be published according to WTO requirements, and on a website from 1 January 2004.
REGIONAL TRADE AGREEMENTS. Cambodia's only regional trade agreement is within ASEAN (the ASEAN Free Trade Area). In this, Cambodia will gradually eliminate tariffs on essentially all ASEAN products by 2015. Details will be notified to the WTO.

Annex Two: Current Status of Individual Accessions to the WTO

LDCs in bold with more detail.

Albania - Accession completed
Algeria - The fifth meeting of the Working party took place on 20 May 2003.
Andorra - The Working Party met for the first time in October 1999
Armenia - Accession completed
Azerbaijan - The first meeting of the Working Party was held on 7 June 2002.
Bahamas - The Working Party has not yet met.
Bosnia Herzegovina - The first meeting of the Working Party may take place in late 2003.
Bulgaria - Accession completed
Cambodia - Cambodia will become a full WTO Member 30 days after it has notified the Secretariat of its ratification of the Agreement, i.e. most likely early 2004.
Cape Verde - The Working Party has not yet met.
China - Accession completed
Croatia - Accession completed
Ecuador - Accession completed
Estonia - Accession completed
Former Yugoslav Republic of Macedonia - FYROM notified the Secretariat of ratification of its Protocol of Accession on 5 March 2003 became the 146th Member of the WTO on 4 April 2003.
Georgia - Accession completed
Jordan - Accession completed
Kyrgyz Republic - Accession completed
Lao People's Democratic Republic - The Lao People's Democratic Republic's Working Party was established on 19 February 1998. The Memorandum on the

12 Information from http://www.wto.org/english/thewto_e/acc_e/acc_e.htm
Foreign Trade Regime was circulated in March 2001. The Working Party has not yet met.
Latvia - Accession completed
Lebanese Republic - The first meeting of the Working Party took place on 14 October
Lithuania - Accession completed
Moldova - Accession completed
Mongolia - Accession completed
Oman - Accession completed
Panama - Accession completed
Russian Federation - the next Working Party meetings are scheduled for November 2003.
Samoa - an informal consultation was held in July 2003.
Saudi Arabia - The last meeting of the Working Party was held in October 2000.
Serbia and Montenegro - The Working Party has not yet met.
Seychelles - The Working Party on the accession of the Seychelles was established on 11 July 1995. Members agreed to keep meetings to the minimum necessary and to accelerate the accession process as much as possible at both the bilateral and multilateral level.
Sudan - The Working Party on the accession of Sudan was established on 25 October 1994. Sudan's Memorandum on its Foreign Trade Regime was circulated in January 1999, replies to question in January 2003 and further inputs in May 2003. The first meeting of the Working Party was held in July 2003.
Chinese Taipei - Accession completed
Tajikistan - The Working Party has not yet met.
Tonga - The first meeting of the Working Party was held in April 2001 and, following further inputs in 2003, informal consultations in July 2003.
Uzbekistan - The first meeting of the Working Party took place on 17 July 2002.
Vanuatu - The final meeting of the Working Party was held on 29 October 2001.
Viet Nam - The Working Party on the accession of Viet Nam was established on 31 January 1995. The last meeting of the Working Party was held on 10 April 2002. Bilateral market access contacts have been initiated. Topics under discussion in the Working Party include: agriculture, the customs system, import licensing, national treatment, SPS and TBT, State trading, trading rights and TRIPS. The sixth meeting of the Working Party took place on 12 May 2003, and the next meeting may take place in late 2003.