


9-3

Cambodia's WTO Accession

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Executive Summary

Since the creation of the World Trade Organization (WTO) in 1995 with 128 members, an additional 21 countries have successfully acceded to the organization. On October 13, 2004, Cambodia became the WTO's 148th member, almost 10 years after it had first applied and just over a year after its membership package was approved at the Cancún Ministerial Conference. Cambodia is the second in the category of least-developed countries (LDCs) to join the WTO, following Nepal's accession on April 23, 2004.

In its Protocol of Accession, Cambodia has taken on commitments in two major areas, including market access for imported goods and services and implementation of trade-related rules established in various WTO agreements. Cambodia agreed to bound its tariffs for all imported goods, eliminate export subsidies, allow foreign involvement in services, and apply trade-related rules either upon accession or at specified dates.

Cambodia's WTO accession has raised a number of issues that might be of concern to existing WTO members as well as to other applicants. First, the vague definition of membership criteria in the WTO document has resulted in a complex and lengthy accession process. Second, countries seeking membership usually have to agree on higher obligations but limited rights, a phenomenon referred to as the WTO+ commitments and WTO- rights. Third, the special and differential treatment (SDT) provisions in various WTO documents were not executed fully in the recent accession cases. The existence of these issues has greatly hampered the process of integration of the LDCs to the world economy.

A series of concrete steps must be taken to move the world trading system in a more pro-development direction. WTO legal documents should lay out detailed and transparent criteria for accession and make available specific provisions for LDCs compared with other applicants. Developed-country members should also exercise restraint in seeking concessions and commitments on goods and services from acceding LDCs and take into account those undertaken by existing LDC members. The

role of SDT should be emphasized, and the SDT as set out in WTO agreements should be applicable to all acceding LDCs from the date of their accession. Accompanying the SDT, targeted and coordinated technical assistance and capacity building should be provided to acceding LDCs to cover all stages of the accession process.

Taking into account the interests of the identified stakeholder groups, your assignment is to recommend how the accession process can be streamlined for least-developed countries.

Background

Overall Economy before Accession

Cambodia is one of the world's least-developed countries (LDCs) according to the classification of the United Nations (UN). The Cambodian economy was completely devastated during the Khmer Rouge years in the late 1970s and remained stagnant throughout the 1980s. Cambodia witnessed stronger economic growth after the formation of the Royal Government in 1993 and subsequent market-oriented reforms. Real gross domestic product (GDP) increased at an average annual rate of 7.2 percent between 1993 and 1997, peaking at 8.4 percent in 1995. After this short period of solid macroeconomic performance, the economy plummeted in 1998 as a result of regional economic crisis, civil violence, and political infighting. Economic growth resumed afterward, and the real GDP growth rate was maintained at 5–6 percent per year in 2001–2003. Inflation in Cambodia has been low in recent years (except 1998), and deflation occurred in 1999 and 2000.

As part of its economic reform efforts, Cambodia embarked on a series of trade liberalization exercises, with the aim of fostering its integration into the world economy. Key steps were taken during the early phases of the establishment of the Royal Government and after the implementation of several programs sponsored by the International Monetary Fund (IMF). Important early reforms included the unification of exchange rates, tariff

reform, the abolition of many nontariff barriers, and the implementation of a liberal Law on Investment. Under the terms of two memoranda signed by the IMF and Cambodia in 2001, further tariff reforms were introduced. Before Cambodia's WTO accession, the highest tariff rates of 40, 50, 90, and 120 percent were abolished, and the unweighted average tariff rate dropped to 16.5 percent, with the number of tariff bands reduced from 12 to 4 (0, 7, 15, and 35 percent) (WTO 2003a).

Economic development was pushed further by the Bilateral Textile Agreement signed by Cambodia and the United States in 1999. The agreement gave Cambodia a guaranteed quota of U.S. textile imports and established a bonus for improving working conditions and enforcing Cambodian labor laws and international labor standards in the industry. In 1999–2000, the economy grew at an average rate of 9 percent, driven largely by the expansion in the garment sector.¹ The industrial sector grew at a record high rate of 31 percent in 2000. Increased exports of garments resulted in a sharp increase in the share of exports in GDP, pushing it to almost 60 percent in 2002. In the same year, the garment industry's share of total export value reached 84 percent (Bargawi 2005). The garment industry also contributed to a significant share of government revenue, which consisted primarily of value-added taxes, trade taxes, and quota auctions. In 2002 this share was about 40 percent (IMF 2004). Cambodia's heavy dependence on garment exports was also a cause for concern, however, because of the intense competition in this sector, especially after the termination of the Agreement on Textile and Clothing (ATC) on January 1, 2005. This dependence on the garment industry also poses substantial risks to the country's balance of payment and fiscal deficits, which reached –10 and –5 percent of GDP in 2003, respectively.

In spite of its recent economic progress, Cambodia has lagged significantly behind most of its neighboring countries. The economy has continued to suffer from political instability and policy reversals and setbacks. Subsistence agriculture is the major component of the economy, employing about 80 percent of the work force and contributing more than 40 percent to the national income by the end

of the 1990s. Yet the sector has experienced little growth in recent years (and negative growth in 2000 and 2002). Per capita GDP in 2002 was estimated to be US\$300 (in 1995 dollars), with 35 percent of the population living below the poverty line. The poverty rate is higher (40 percent) in rural areas, where the majority of the population resides (80 percent). The rural poor suffer from low income and consumption, poor nutrition, little or no access to public services including school and health services, vulnerability to external shocks, and exclusion from economic, social, and political opportunities. The relatively high prevalence of HIV/AIDS in Cambodia is an additional challenge to its poverty situation.

WTO Accession

Cambodia initiated its WTO accession process in December 1994. At its meeting on December 21, 1994, the General Council of the WTO established a Working Party to examine the application of Cambodia to accede to the WTO under Article XII of the Marrakech Agreement. Members of the Working Party were Australia, Canada, China, the EU, India, Japan, the Republic of Korea, Malaysia, New Zealand, Panama, Singapore, Chinese Taipei, Thailand, the United States, and Venezuela. In June 1999 Cambodia submitted its Memorandum on Foreign Trade Regime (MFTR) to the Working Party, describing, among other things, its economy, economic policies, domestic and international trade regulations, and intellectual property policies. Based on the memorandum, the Working Party circulated a series of questions posed by the WTO members. Cambodia's response to these questions was submitted to the WTO Secretariat in November 2000. Subsequently, in May 2001, Cambodia started a series of bilateral negotiations with WTO members—in particular, Australia, the EU, and the United States. The bilateral negotiations concluded in July 2003.

The final meeting of the Working Party was held on July 22, 2003, when the accession package, including a summary of all prior meetings, the Protocol of Accession, and the schedules of market access commitments, was finally approved. Cambodia submitted its acceptance of the terms and conditions of membership set out in the Protocol of Accession, which was approved by the Ministerial Conference in Cancun on September 11, 2003, and signed by Cambodia subject to

¹ The tourism industry (service sector) also registered high growth rates during this period.

ratification. The Cambodian parliament ratified the protocol in September 2004 following the formation of the new Royal Government of Cambodia—after a year-long political negotiation. Cambodia became a member of the WTO on October 13, 2004, 30 days after it notified the WTO about its ratification. Cambodia, following Nepal (a member since April 23, 2004), was the second LDC to accede to the WTO since its transformation from the GATT in 1995.²

Major Commitments

The commitments made by Cambodia cover two major areas: market access for imported goods and services and implementation of trade-related rules established in various WTO agreements.³ In its Protocol of Accession, Cambodia agreed to bind all tariff lines, which effectively set ceilings on the tariff rates of all imported products. As a result of unilateral tariff reductions undertaken in the 1990s, the tariff levels that Cambodia had actually applied in 2003 were in virtually all cases equal to or lower than the agreed-upon levels of tariff binding in the protocol. Thus, no significant reductions in tariffs were required upon WTO accession.

In particular, Cambodia agreed to an overall average bound duty rate of 20 percent, whereas the average rate of duty actually applied in 2003 was 16.5 percent. For agricultural products, Cambodia agreed to a simple-average bound rate of 28 percent, which was higher than the average applied rate of 19 percent in 2003. Peak bound rates for the most sensitive agricultural products were 50–60 percent and the lowest bound rates were 5 percent. For industrial products, the average bound rate was 18 percent, compared with the rate actually applied in 2003 of 16 percent. Peak bound rates were 50 percent, and the lowest rates, 0 percent. In addition to setting bound tariffs, Cambodia also agreed that it would not introduce, reintroduce, or apply quantitative restrictions or other nontariff barriers on imports, such as licensing, quotas, prohibitions, bans, and other

restrictions having equivalent effects that could not be justified under the provisions of the WTO agreements.

In terms of market access in services, foreign involvement was generally permitted except in a very limited number of areas where local initiatives might be threatened.⁴ Liberalization in services focused on areas that would contribute most to the investment climate. For example, Cambodia committed itself to allow foreign firms to operate in the areas of legal services, accounting, auditing, bookkeeping, banking, management consulting, telecommunications, and transport. To help Cambodians develop the skills needed for a modern, competitive economy, the country allowed foreign firms to provide higher education and adult education services. In addition, Cambodia liberalized services in the areas of health care and sanitation, refuse, and sewerage services, with the expectation that a foreign presence in these activities can contribute to improvements in public health. Cambodia also took on commitments to liberalize in sectors where it had long had an open policy regarding foreign participation, such as in banking, tourism, transport, and courier services, and where Cambodians could compete successfully with foreigners, such as in guide services.

In terms of subsidies, Cambodia agreed to comply with the Subsidies Agreement from the Protocol of Accession. It would either eliminate the existing system of remission of import fees and waiver of duty for certain goods used by certain investors (mostly export-oriented) 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. Cambodia was, however, able to retain the right to waive customs duties on imported inputs used by its export industries. Securing exporters' access to imported inputs at world prices was extremely important for the garment industry and was thus an important negotiating objective for Cambodia.

Cambodia made a commitment to bind export subsidies in agriculture at zero and not to apply

² Altogether there are 32 LDC members in the WTO, 30 of which were GATT members that automatically gained WTO membership when WTO replaced GATT in 1994.

³ Details on commitments on goods, services, and WTO rules can be found in the following WTO documents: "Goods Schedule" (WT/ACC/KHM/21/Add.1), "Service Schedule" (WT/ACC/KHM/21/Add.2), and "Working Party Report" (WT/ACC/KHM/21).

⁴ 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 supermarkets or large department stores (with floor space no smaller than 2,000 square meters).

such subsidies in the future. It is, however, important to note that under the WTO Agreement on Agriculture, LDCs are not required to do so. According to the Cambodian government, agricultural export subsidies were given up because they are neither desirable nor fiscally feasible in this country. Cambodia did maintain the right to provide export subsidies for industrial goods.

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

The Stakeholders

Cambodia

Cambodia lost its quota-based preferential access to foreign textile and clothing markets, especially the U.S. and EU markets, because of the phasing out of the ATC at the end of 2004. Losing garment export markets could be disastrous for Cambodia given the fact that the industry supported more than 230,000 workers and accounted for more than 80 percent of total exports (Table 1). Indeed, Cambodia's primary goal in acceding to the WTO was to protect its garment industry. WTO membership was expected to provide market access to existing and emerging markets through a lower tariff rate, which could be as low as zero for an LDC like Cambodia, without any ceiling on quantities that could be exported. For Cambodia, however, entering the WTO did not necessarily mean expanded market access because it would still face potential competition from highly competitive suppliers like China and India. The combined effect of WTO accession and textile and clothing sector liberalization is difficult to predict, and the exact outcome will depend largely on the competitiveness of Cambodia's garment sector relative to that of other countries.

Table 1: Cambodia's Garment Industry

Year	Export Value (million US\$)	Share of Total Exports (%)	Employment (thousands)	Number of Factories
1995	27	3.3	18	20
1996	80	12.1	24	24
1997	227	28.9	82	67
1998	359	51.7	79	129
1999	661	66.2	96	152
2000	985	77.0	161	190
2001	1,156	81.4	187	185
2002	1,338	81.3	208	187
2003	1,607	83.8	234	197

Source: Bargawi 2005.

In a broader context, upon WTO accession, Cambodia could benefit from the rights accorded to all members under the WTO agreements, such as most-favored-nation (MFN) treatment, access to the WTO dispute settlement procedure, and participation in multilateral trade rule making and standard setting.⁵ Acceding to a rule-based and predictable multilateral trading system such as the WTO could in turn engender more transparency and predictability in Cambodia's domestic policies and regulations. For countries like Cambodia that have suffered from a long history of political instability, this aspect is particularly important. Predictable and stable domestic policies could help attract more foreign direct investment and boost economic development.

It is worth noting that in addition to the benefits available to all member countries, Cambodia also enjoyed the SDT designed for developing countries. SDT typically includes four major areas: privileged access to the markets of trading partners, particularly the developed countries; the right to restrict imports to a greater degree than developed countries; freedom to subsidize exports; and flexibility in applying certain WTO rules or the right to postpone applying rules. For Cambodia, the transition periods permitted for implementation of various WTO agreements partly reflected the provisions of SDT.

Other Acceding LDCs

The United Nations' list of LDCs currently contains 50 countries, of which 32 have become WTO members to date. Since the establishment of the WTO in 1995, only 2 out of 21 countries that have acceded are LDCs—Cambodia and Nepal. Currently about 30 countries are in the process of accession, of which 8 are LDCs, whereas most of the others are low-income developing countries (Table 2). The remaining 10 LDCs have not yet submitted their accession requests to the organization. For those currently seeking WTO membership, Cambodia has set a good example from which numerous lessons can be learned.

⁵ Whether an LDC like Cambodia can actually enjoy these rights is questionable. Murphy (2007) points out that LDCs generally have difficulty participating in WTO negotiations either because they lack representation in Geneva or have limited staff available to work on WTO issues domestically.

First, like Cambodia, all LDCs currently seeking WTO membership are small economies that have no current or potential capability to become major players in the world market or power to disrupt other WTO members' domestic markets. This fact could be a bargaining factor used to facilitate and expedite their accession negotiations (Siphana 2005).

Second, Cambodia's unilateral tariff cuts and legislative and institutional improvements before accession have been key to its successful accession. Acceding LDCs, especially those whose domestic and trade policies are not in accordance with WTO rules, should implement substantive reforms in their domestic laws and regulations to align them with WTO disciplines before they apply to the WTO. This task may pose difficulties for the LDCs because they often lack institutional, financial, and human resources. In this case, a strong domestic political commitment to accession and sometimes external financial and technical assistance become necessary. For example, Cambodia's strong political will has secured domestic executive and legislative support during the whole accession period. Meanwhile 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).⁶

Third, Cambodia's experiences show that the accession process can be extremely complex and time consuming. In fact, among the countries currently seeking membership, some applications date back to the late 1980s (Algeria) or early 1990s (Belarus, Russia, Sudan, and Ukraine) (Table 2). Therefore, applicants should form realistic expectations of what the WTO accession process involves. They should expect the process to take at least 5 to 10 years, or even longer. Given ministerial and staff turnover, a long-term, broad base of government,

⁶ The IF is a multiagency, multidonor program that helps the least-developed countries expand their participation in the global economy, thereby enhancing their economic growth and poverty reduction strategies. The IF program was first mandated by the WTO Singapore Ministerial Conference in December 1996. The participating agencies are the International Monetary Fund (IMF), the International Trade Centre (ITC), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Development Programme (UNDP), the World Bank, and the WTO.

civil society, and private sector support for the accession initiative is required.

WTO and Existing Members

The inclusion of another LDC, Cambodia, as a member is a major step forward in making the WTO a truly global organization. With further expansion of the WTO, international trade will be increasingly subject to universally-applied, multi-lateral rules rather than non-transparent, unilateral policies that have been directed against exports for decades. This change could be expected to push more WTO members toward realizing that internationally agreed rules now set effective limits to the conduct of national trade policies (Langhammer and

Lucke 1999). For the WTO, Cambodia's accession, along with Nepal's, was also proof that the organization is able to accommodate the trading needs of world's poorest nations.

From the standpoint of current LDC members, Cambodia's accession represents a potential improvement in the balancing of political power among competing interests. In the WTO, decisions are made, *prima facie*, by negotiations and consensus and not by economic power or trade share. Legally, all members have equal rights of participation and the same level of influence on the outcome of negotiations irrespective of their levels of economic development. Therefore, although

Table 2: List of Countries Currently Seeking Accession to the WTO

Europe and Central Asia	Middle East and North Africa	East Asia and Pacific	Sub-Saharan Africa	South Asia	Latin America and Caribbean
Russia (June 1993)	Algeria (June 1987)	Viet Nam (Jan. 1995)	Sudan* (Oct. 1994)	Bhutan* (Sept. 1999)	Bahamas (May 2001)
Belarus (Sept. 1993)	Lebanon (Jan. 1999)	Tonga** (June 1995)	Seychelles (May 1995)	Afghanistan* (Dec. 2004)	
Ukraine (Nov. 1993)	Yemen* (April 2000)	Vanuatu* (July 1995)	Cape Verde* (Nov. 1999)		
Uzbekistan (Dec. 1994)	Libya (June 2004)	Lao PDR* (July 1997)	Ethiopia* (Jan. 2003)		
Kazakhstan (Jan. 1996)	Iraq (Dec. 2004)	Samoa* (April 1998)	São Tomé and Príncipe* (May 2005)		
Azerbaijan (June 1997)	Iran (May 2005)				
Bosnia and Herzegovina (May 1999)					
Andorra (July 1999)					
Tajikistan (May 2001)					
Serbia (Feb. 2005)					
Montenegro (Feb. 2005)					

Note: Dates in parentheses show when the accession process was initiated.

* denotes least-developed country.

** Tonga's accession agreement was approved on December 15, 2005, and is now subject to parliamentary ratification.

Source: WTO 2006a.

Cambodia is not expected to be a key player in economic terms, its membership is widely welcomed by the incumbent member countries, especially the LDCs, who can count on Cambodia to take up the issues confronting them. Given its shared objectives with other LDCs, Cambodia's entry might affect the future negotiation process in the WTO in favor of the LDCs. With Cambodia's accession to the WTO, the use of the consensus-based Dispute Settlement Mechanism (DSM) might be expected to enhance resolution of international trade disputes in ways more favorable to LDCs.

Apart from these institutional effects, the accession of an applicant to the WTO might have some economic consequences on other WTO members as multilateral trade liberalization enhances import and export opportunities and thus affects the welfare of current members. High-income WTO members will probably benefit from terms of trade improvements as the global supply of their import goods increases by more than the global supply of their export goods; some developing-country WTO members whose exports compete directly with applicant-country exports may suffer from corresponding terms of trade deterioration. But compared with recently acceding large developing countries such as China, the expected terms of trade effects from Cambodia's accession (and that of other LDCs) may be insignificant.

Policy Issues and Questions

Accession Issues

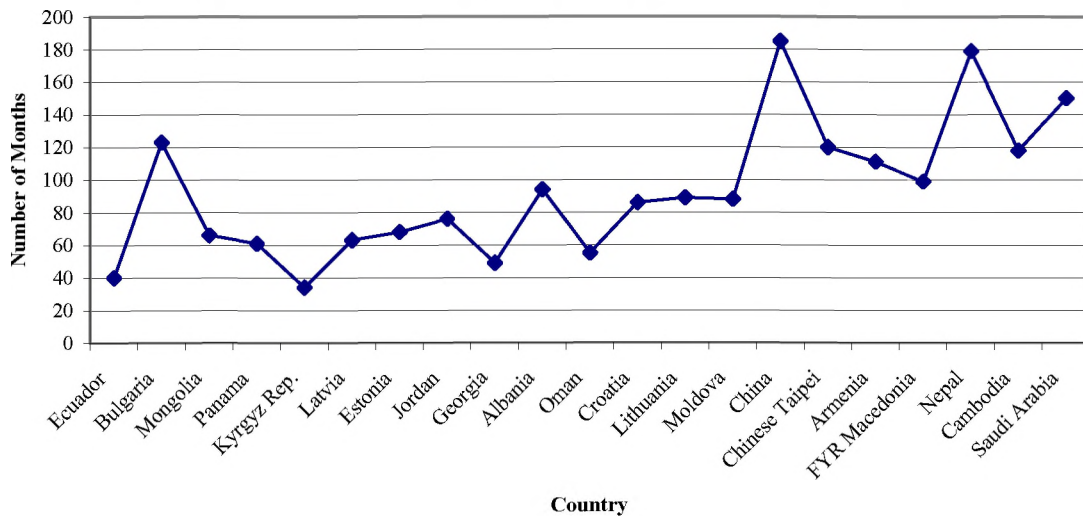
As indicated in Article XII of the Marrakech Agreement, "decisions on accession of new members shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO." Article XII does not stipulate any membership criteria, however, and gives no guidance on the "terms to be agreed," leaving them to the negotiations between the WTO members and the candidate. The brevity of this text seems to suggest that entering the WTO is an easy and expedited process. Unfortunately, recent experience has shown the opposite: WTO accession can be cumbersome and extremely time consuming. For China, the process took more than 15 years. The average length of the accession process for the three

newest members—Nepal, Cambodia, and Saudi Arabia—was around 10 years (Figure 1).

The slow pace of accession is only partly due to a lack of preparedness on the part of applicants. It also results from the complicated procedure an applicant country must follow during its accession process. At least 20 distinct steps can be readily identified (WTO 2004). The most important steps are the creation of a Working Party to consider the application for WTO membership, the drafting of a memorandum on the applicant's foreign trade regime, the applicant's satisfactory answering of questions from existing WTO members about this memorandum, bilateral negotiations with each of the Working Party members and multilateral negotiations with respect to WTO rules, the adoption of the Protocol of Accession by the Working Party and then by the WTO's General Council or Ministerial Conference, and finally the ratification of the protocol by the acceding country's parliament.

It is, however, the terms, rather than the multi-step procedures, that have really caused the protracted accession process for recently acceding countries. Broadly speaking, the terms to be negotiated deal with two types of issues: (1) commitments on WTO rules and (2) commitments and concessions directly relating to market access for goods and services. The WTO agreement and its annexes contain mandatory rules on the conduct of a wide range of national trade-related policies. Compared with GATT 1947, the rules are far more detailed and cover a wider range of topics, such as international trade in services (GATS), intellectual property rights (TRIPS), technical barriers to trade (TBT), and sanitary and phytosanitary barriers to trade (SPS). Accession negotiations therefore involve a detailed review of the relevant legislation and practice of applicant countries. Current members typically take the view that these practices must be substantially in line with WTO rules by the time an applicant joins the WTO (WTO 2004). In recent accessions, the implementation of particular legislation was deferred until after accession only in very few cases, with the exact timing specified in the acceding country's Protocol of Accession (WTO 2004). The existing financial, technical, institutional, and regulatory gap restraining acceding countries from implementing policies in conformity with the rule can therefore hinder their accession process.

Figure 1: Length of Accession to the WTO for Recent Members



Source: WTO 2004

Second, accession negotiations deal with market access for imported goods and services in applicant countries. Among GATT 1947 and WTO members, the protection offered to domestic firms has been progressively reduced as a result of successive rounds of trade negotiations; nevertheless, the level of protection still differs widely among WTO members (Langhammer and Lucke 1999). Relevant policy instruments include the level and dispersion of import tariffs for goods and market access commitments in services. Accession negotiations have become protracted because some current WTO members are using their leverage in negotiations to extract concessions from acceding countries that go much further than the commitments made by current WTO members at a similar level of economic development. Acceding countries are forced into negotiating bilateral terms with all key trading partners, and in most cases these negotiations involve numerous rounds of intensive bargaining.

WTO+ and WTO-

According to official notes for WTO accession (WTO 2004), when seeking WTO membership, a country not only must abide by all WTO rules, but may also be required to make further commitments

and concessions that individual members are allowed to ask for (during bilateral negotiations) in return for supporting the application. Without the support of key WTO members, there is no chance that the applications would be accepted. A controversy then arises concerning whether these additional commitments go beyond the ones agreed to by the incumbent countries (constituting WTO+ commitments) or require an accession country to forgo the rights available to other WTO members (WTO- rights).

Cambodia's accession provides a good example of both WTO+ and WTO- at work. For example, the 30 percent average bound tariff rate for agricultural commodities in Cambodia is significantly lower than that in other LDC members. For example, Bangladesh, a GATT contracting party and one of the 32 LDC WTO members, has an average bound tariff rate of 200 percent (ERS, USDA 2006). In terms of peak tariffs, Cambodia—a country where the majority of the population is employed in the agricultural sector—has been asked to provide less protection to its sensitive agricultural sectors than Canada, the EU, and the United States. The peak tariff for agricultural commodities in Cambodia was set at 60 percent,

compared with 120 percent in Canada, 252 percent in the EU, and 121 percent in the United States. For sensitive products such as rice, a tariff bound of 40 percent was established. Such a low bound tariff rate could limit Cambodia's ability to protect against import surges in its most important agricultural commodity.⁷

An example of WTO- for Cambodia was that it was required to introduce data protection for pharmaceuticals immediately after its accession to the WTO, which is before both its 2007 accession requirement to comply with TRIPS and the new compliance deadline for pharmaceutical patenting agreed to in the Doha agenda for LDCs (that is, 2016).⁸ This WTO- requirement will prevent Cambodia's regulatory authority from using test data to assess bio-equivalent generic drugs and will thereby slow down the production or import of generic versions of the medicines. By preventing generic competition with the protected drugs (patented or non-patented), this obligation could have serious negative implications for public health in Cambodia.

In addition, Cambodia agreed to eliminate agricultural export subsidies by binding them at zero, although under the Agreement on Agriculture (AoA) LDCs were not required to undertake any commitments on export subsidies. This provision effectively seals 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 to achieve development priorities.

⁷ Cambodia may rely on certain "safeguard" provisions to protect against sudden import surges that may cause substantial disturbances to domestic markets. The use of such measures, however, can lead to a nontransparent form of protection that introduces unpredictability and instability and hence is regulated by the WTO through the Agreement on Anti-dumping, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards.

⁸ The TRIPS itself represents a WTO- for Cambodia. In the Doha Declaration on the TRIPS agreement and public health, all LDCs have the right to delay the implementation of sections 5 and 7 of Part II of the TRIPS agreement in relation to pharmaceutical patents until 2016 (WT/MIN(OI)/DEC/2). 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 1, 2007.

Given all the WTO+ and WTO- commitments facing Cambodia, it is not surprising that upon the adoption of Cambodia's accession package on July 22, 2003, Mr. Cham Prasidh, minister of commerce and chief negotiator for Cambodia, commented: "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" (Charveriat and Kirkbride 2003 p.).

Similar WTO+ and WTO- commitments also occurred to other recently acceding countries. For example, China had to agree to very substantial tariff reductions, most notably 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. WTO+ and WTO- commitments differentiate WTO members, and they could be interpreted as contributing to a multi-tier multilateral trade system. This systemic concern is in addition to any of the adverse developmental effects that may result from these specific commitments.

Special and Differential Treatment (SDT)

Ensuring that the multilateral trade system promotes development remains a fundamental challenge confronting the WTO. Traditionally, developing countries have sought differential and more favorable treatment in the GATT/WTO with a view to increasing the development relevance. Such special and differential treatment (SDT) was made an element of the trading system in 1979 through the so-called "Enabling Clause" negotiated during the Tokyo Round (Keck and Low 2004). Currently there are 97 SDT provisions in the Uruguay Round agreements that fall into four major categories (discussed earlier in the section "Major Commitments"). In addition, technical assistance to help LDCs implement the commitments is suggested. Further special provisions in favor of particularly poor LDCs exist.

Many developing countries enjoy preferential access to markets in developed countries. The first preferential scheme put in place by a number of countries was the Generalized System of

Preferences (GSP), for which a permanent waiver from the nondiscrimination requirement was eventually obtained under the Enabling Clause. Other schemes limited to a defined subset of beneficiaries include, for example, the African Growth and Opportunity Act (AGOA) and the Caribbean Basin Initiative of the United States, and the EU's "Everything But Arms" (EBA) initiative for least-developed countries. Regional preferential trading arrangements among developing countries are permissible even when they do not meet the requirements of Article XXIV of GATT 1994 (Langhammer and Lurcke 1999).

The WTO agreements also acknowledge that developing countries may find it particularly difficult to fully meet WTO obligations with respect to trade liberalization. Developing countries are therefore allowed greater freedom to restrict trade in exceptional situations (such as in the presence of balance of payments problems [Article XII of GATT 1994]) and to withdraw from existing commitments such as tariff bindings in order to protect infant industries (Article XVIII of GATT 1994). Developing countries are also allowed to provide more domestic support to agriculture and are subject to lower tariff and subsidy reduction commitments.⁹ Other special provisions for developing countries relate to extended implementation periods for various WTO rules (such as Article 15 of the Agreement on Agriculture, Article 10 of the SPS, Article 12 of the TBT, and Article 27 of the Subsidies and Countervailing Measurements [SCM]).

The most prominent features of the SDT associated with Cambodia's accession are the longer implementation periods for TBT (2007), SPS (2008), Customs Valuation (2009), and TRIPS (2007). However, this SDT package has very limited implications for Cambodia because within this short implementation period this poor country can hardly make any realistic adjustments. In contrast, existing LDC members have until 2016 to implement TRIPS, for instance.

Furthermore, implementing all these agreements within few years of accession will be extremely

⁹ The *de minimis* permissible subsidies in developing countries are 10 percent of the value of production, instead of the normal 5 percent for developed countries. The average tariff reduction commitments for developing countries are 24 percent compared with 36 percent for developed countries.

burdensome for a country like Cambodia, where the national budget is under stress (the deficit was 5 percent of GDP in 2003) and already unable to cover essential social expenditures in health and education. According to available estimates, the cost of implementing such agreements is around US\$100 million (Charveriat and Kirkbride 2003), in addition to the other costs associated with post-accession adjustments. Yet the Working Party rejected the Cambodian negotiators' demand for technical assistance in implementing the four agreements.

Policy Options

Although there is much debate about how the Doha Development Round should proceed, there is no question that accession issues are on the negotiation agenda. The experiences of Cambodia and Nepal illustrate what WTO accession might entail for an LDC. From these cases, one might conclude that the WTO accession process is inherently power based and the very antithesis of the original intention and design of the WTO. Indeed, the acceding countries have not received what is best for their trade and development interests, but only what they can negotiate with existing members. The most challenging aspect, however, is that it is very difficult to change the current WTO accession practice because acceding countries have no role to play in setting the rules relating to accession since they are by definition outside the system. And once they are inside the system, they either lose the incentives or simply do not have the power to make a change. This situation serves the interests of powerful WTO members and undermines the credibility of the WTO as a rules-based system.

Attempts within the WTO to change this situation and to facilitate LDCs' accession were well reflected in its legal documents. Paragraph 9 of the Doha Ministerial Declaration, signed by 142 member countries of the WTO at Doha, Qatar, in November 2001, commits "to accelerating the accession of LDCs" (WTO 2001). In paragraph 42 members pledged that "Accession of LDCs remains a priority for the Membership. We agree to work to facilitate and accelerate negotiations with acceding LDCs." Furthermore, the General Council decided on December 10, 2002, to streamline the process of LDCs' accession (WTO 2002). The Cancun

Ministerial Conference again stated, "We take the opportunity to reaffirm our commitment to the Guidelines on the Accession of LDCs adopted by the General Council on 10 December 2002, and to facilitate and accelerate their accession" (WTO 2003b). Despite these statements, however, there is no evidence that they have helped facilitate the fast-track accession of LDCs to the WTO in recently acceding cases.

If the developed-country members of the WTO really want to accelerate and simplify the accession process of the LDCs and push the WTO in a pro-development direction, they must go beyond the rhetoric and pursue several concrete steps. First, Article XII of the Agreement Establishing the WTO should be interpreted with clear-cut guidelines detailing transparent criteria for accession. The WTO should incorporate a specific provision for the accession of LDCs relative to other acceding developing countries. In the accession process, efforts should be made to expedite document exchange and streamline accession procedures with assistance from the Secretariat. WTO members and the Working Party should adopt additional measures in their bilateral negotiations to facilitate and streamline the accession process.¹⁰

Second, in terms of market access, members should exercise restraint in seeking concessions and commitments on goods and services from acceding LDCs and take into account those undertaken by existing LDC members. Acceding LDCs could be asked to make commitments commensurate with their level of economic development, administrative and institutional capacity, and trade and financial needs, but should not be required to undertake higher levels of commitments than those made by the founding LDC member countries of the WTO.¹¹

¹⁰ In consultation with members, the Secretariat has streamlined the accession process for least-developed and small island developing economies by reducing the number of Working Party meetings (to an average of three or four) and by ensuring that maximum progress is made between meetings without requiring the acceding government to visit Geneva. To the extent possible, bilateral market access negotiations in goods and services are held in the capital of the acceding government (WTO 2004).

¹¹ While there is some consensus among members on restraining their demands for concessions, there is much less agreement on establishing equal treatment between applicants and existing members.

Moreover, acceding LDCs should not be asked to make commitment on any of the plurilateral agreements of the WTO or to participate in other optional sectoral market access initiatives.

Third, the SDT as set out in WTO legal documents might be made equally applicable to all acceding LDCs from the date of their accession. Different transitional arrangements under specific WTO agreements could be granted, taking into account individual development, financial, and trade needs. In addition, all SDT should be made mandatory and legally binding and subject to the dispute settlement system of the WTO.¹²

Fourth, acceding LDCs should get high priority for receiving targeted and coordinated technical assistance and capacity building covering all stages of the accession process. The role of the IF could be emphasized so that effective collaboration between WTO and other organizations and donors could be achieved. In the case of Cambodia and Nepal, the IF contributed positively to the accession process. Ethiopia, Lao PDR, and Yemen are among the 31 LDCs currently in various stages of the IF process.

Finally, given the importance of the agricultural sector in the economies of LDCs—particularly its role in poverty reduction, human development, food security, and rural development—commitments on subsidies and tariffs on agricultural commodities should be negotiated with great care.

Assignment

Taking into account the interests of the identified stakeholder groups, your assignment is to recommend how the accession process can be streamlined for least-developed countries.

Additional Readings

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¹² The work of the Trade and Development Committee on SDT provisions is still underway (WTO 2006b). The Doha Declaration has mandated the committee to identify which of those SDT provisions are mandatory and to consider the legal and practical implications of making mandatory those that are currently nonbinding.

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