

# **Policy Note**

## **Experience and lessons learnt from Cambodia's accession to WTO**

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### **Introduction**

The Government of Cambodia applied for accession to the World Trade Organization (WTO) in October 1994. Cambodia completed its negotiations and submitted its acceptance of the terms and conditions of membership set out in the Accession Protocol, which was approved by the Ministerial Conference on 11 September 2003. Cambodia became the 148<sup>th</sup> member of WTO on 13 October 2004 and, together with Nepal, was the first of only two least developed countries (LDCs) to have succeeded in accession to the WTO since the latter's transformation from the General Agreement on Tariffs and Trade (GATT) in 1995.

Cambodia's accession is unique, both for political and economic reasons, and lessons from it have to be drawn with extreme care. If there is an important lesson of experience to draw upon, it is the fact that each accession case – and Cambodia is no exception – involves a different form of negotiation with different dynamics.

### **General lessons learnt**

- **Lesson 1**

Cambodia differs from most recently-acceding countries in that it is the first LDC to have concluded its accession under Article XII of the Marrakesh Agreement establishing the WTO. Undoubtedly, Cambodia is a small economy with a *de facto* liberal trade and economic regime, and the small size of its economy may pose fewer market access issues for major WTO members. Cambodia's arguments for flexibility are simple. Cambodia has no current or potential capabilities to become a major player in the world market nor to disrupt powerful WTO members' domestic markets.

- **Lesson 2**

Cambodia has, from the outset, made its position clear that it looked to the process of WTO accession as a positive externality to stimulate and make irreversible substantial trade liberalization and more broadly-based reforms.

- **Lesson 3**

The country's clear policy direction has been translated into clear political commitment and has enabled the Cambodian negotiating team to secure political support at the highest level, both from the executive and legislative branches. Political commitments are crucial, if not a condition *sine qua non* for rapid and successful accession. Political commitments were reflected in the ease of securing budgetary allocations. WTO accession demands that the necessary funds in the national budget be allocated for required travel associated with Working Party meetings, missions, and bilateral consultations and negotiations in Geneva. The implementation of laws and policies implies institutional changes, and hence requires adequate financial as well as human resources.

- **Lesson 4**

Cambodia must demonstrate to its negotiating partners that it has the capacity and political will to implement the commitments made to other WTO members, ranging from making new legislation

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and establishing an institutional framework for implementing policies related to WTO and WTO Agreements, to reconciling domestic policies with those of foreign economic policies. Cambodia has, for that purpose, established a large task force comprising more than 110 senior government officials – in both the political and technical levels – under the chairmanship of the Minister of Commerce.

- **Lesson 5**

Because it is the private sector that decides how its best interests can be pursued. Despite the fact that it is the Government that takes on the contractual responsibilities of the WTO membership, Cambodia ensured before and during the accession process that a national consensus be secured, to the maximum extent, among all concerned parties, particularly the private sector. Cambodia has probably developed one of the most engaging approaches to policy dialogue consultations. Active public awareness campaigns about the WTO, its agreements, and the accession and implications of membership were launched. In retrospect, effective cooperation among the executive and legislative branches of government and effective public/private sector partnerships was perceived as an essential factor for a smooth accession process.

- **Lesson 6**

It is clear that difficulties existed, and that delays occurred, during Cambodia's accession process. Delays can occur on both sides of the negotiating table. The Cambodian negotiating team frequently complained that insufficient knowledge, inadequate experience, limited resources and shallow analytical capacities required for accession negotiations were recurrent sources of delay and procrastination. WTO members, for their part, were also causes of delays. WTO members have yet to agree on common approaches to the terms of accession and often expressed different views on this matter. Many existing WTO members will deny the role of precedent, claiming that Cambodia's accession should be treated according to its own merits.

- **Lesson 7**

While the process is inherently time-consuming and complex, there are a number of steps that an acceding country like Uzbekistan could take that would facilitate and expedite accession. In the case of Cambodia an aggressive pro-active approach and creative modalities for negotiations were resorted to in order to fast-track the accession process. They included:

- Submission of its National Legislative Action Plan focusing on an extensive WTO specific legislation requirement;
- Submission to the WTO Secretariat of more than 85 pieces of law, draft laws and regulatory instruments;
- Establishment of three inquiry points (SPS physically located with the National Codex Committee, technical barriers to trade (TBT) with the Ministry of Industry, Mines, and Energy, and Services with the Ministry of Commerce);
- Rectifications of obvious contradictions with WTO rules and agreements, especially with regard to the principles of MFN and national treatment, and readjustment of its trade regime to improve, over time, the country trade policy and regime;
- Using feedbacks from the Working Party meetings to remove or amend non-compliant legislation and trade practices;
- Working out "Action Plans" in each of the four areas – Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), TBT, Sanitary and Phytosanitary Measures (SPS) and Customs Valuation – of the WTO agreements in which weaknesses in Cambodia's institutional infrastructure required a delay in the implementation of these provisions. The Action Plans spelt out the specific steps that Cambodia will need to take to bring itself into full conformity with the rules, and the time frame for these steps;
- Fast-tracking bilateral negotiations by travelling to capitals of several key WTO members to engage in negotiations and lobbying activities;
- Pressing the need of WTO members to reaffirm their commitments to the GC Guidelines and requesting them to drop unreasonable demands, or the so-called "WTO-plus" requests.

- **Lesson 8**

The process of accession represents a great opportunity for local capacity-building. Cambodia has made active use of technical assistance and consultancies from international organizations, in particular the Integrated Framework for Trade-Related Technical Assistance for Least Developed Countries (IF) such as the International Monetary Fund (IMF), International Trade Centre (ITC), United Nations Development Programme (UNDP), United Nations Conference on Trade and Development (UNCTAD), the World Bank, WTO and other specialized United Nations agencies such as ESCAP as well as from Governments of WTO member countries, in the preparation of required documentation, and human resource development. The target beneficiaries encompassed both categories of public sector and private sector decision-makers and the civil society stakeholders:

- **Lesson 9**

The last and concluding lesson is that Cambodia has used its accession strategy to negotiate and obtain favourable terms of accession, while at the same time protecting its sensitive national interests. Indeed, the accession negotiations should not be seen as a “win all or loose all” process, but rather a “win some-lose some” or “give and take”. From this perspective, Cambodia has fared relatively well from the process, especially as a small economy that, by default, does not command much leverage in market access negotiations. Finally, given that WTO provides an internationally recognized framework in which Cambodia can organize and carry out the necessary development of its legal and institutional structures as well as pursue an outward oriented development strategy, the ultimate test of real success would rest entirely on the Cambodians to rise to the challenge and to turn the accession to the WTO as a potent instrument for the acceleration of Cambodia’s development.

## **Lessons from bilateral negotiations**

There are also two bilateral tracks of market access negotiations with interested WTO members on goods and services. After the second Working Party, Cambodia was requested to submit its so-called initial schedule of offers in goods and services. This consisted of: (a) the detailed schedule of tariffs the applicant proposes to impose on goods and the level at which the tariffs are “bound”; and (b) the commitments it makes (and the limitations it sets) on providing access to its market for services.

Once these offers were tabled, the accession process entered an advanced phase, which involved specific bilateral negotiations between Cambodia and each WTO member wishing to hold such talks regarding the tariff level or the degree of openness of the services sector proposed by Cambodia.

Generally, the bilateral negotiations took place individually in parallel with formal meetings of the Working Party. Some members expressed their preferences to hold the negotiations in Geneva at any time suitable for Cambodia, while others were willing to accommodate Cambodia’s plea for flexibility to allow bilateral negotiations could also take place in Phnom Penh and their respective capitals. During the course of the accession process, Cambodia negotiated bilaterally with nine members. Furthermore, to secure support from key players, Cambodian delegates travelled to Washington, D.C., Brussels and Seoul, while the European Commission and Japanese delegates travelled to Phnom Penh. Other members, such as the United States and Australia, also chose to work through their diplomatic channels based in Phnom Penh.

These bilateral meetings were scheduled at the request of the individual members, and allowed the members to make requests for changes in the initial offers proposed by Cambodia with regard to tariff bindings and access to services markets. These requests usually took the form of asking for a lower bound tariff rate on products of particular trading interest to the member country, or for additional services sectors to be added to the services offer. Cambodia had to examine each of

these requests and determine if it could accommodate it within the over-all strategy that it had for the negotiations.

#### **(a) Strategies to deal with bilateral negotiations on market access on goods**

In drawing up the tariff offer, Cambodia had to take into account the fact that members required an acceding country to “bind” all of its tariff lines. This meant that Cambodia would have to propose a “bound” rate for each of Cambodia’s 6,823 tariff lines. This binding, in turn, would determine the maximum tariff rate that could be applied to that item. The Cambodian strategy in drawing up this initial offer was to set the bound rates well above current applied rates, i.e., well above the tariff rates Cambodia was actually using.

After Cambodia submitted its initial tariff offer, key members provided Cambodia with their general responses as well as their specific requests, particularly the following:

- (i) Cambodia's tariff bound rates were still unreasonable too high and as such Cambodia needed to resubmit a new offer before some Members could start the negotiation. Some Members took the approach that, in general, an acceding country's applied rate structure should serve as the basis for their request and as such have requested that Cambodia reduce the level of the tariff bindings closer to the applied tariff rates. Their arguments were that traders need the predictability, transparency and less volatility for doing their business. Given that Cambodia’s applied rates were recently lowered from 120% to 35%, some Members requested that Cambodia took these into account in their reformulation;
- (ii) Some members requested Cambodia to bind all items so as to provide greater commercial certainty for traders;
- (iii) Another member's policy preferences – again for transparency purpose - were that the binding be on “*ad valorem*” value and not “mixed and compound”;
- (iv) On the agriculture sector, a few members proposed that a “zero to zero” tariff rate be implemented on specific items.

#### **(b) Strategies to deal with bilateral negotiations on market access on services**

Formulating the initial offer on services was more complex. The first task was to decide which services sectors would be included in the offer. Unlike the case of goods, members do not require commitments to all services sectors. In fact, in the case of LDCs, members agreed that they would require commitments “on relatively few” services sectors. Still, the WTO classifier for services contains 12 broad headings and 155 services sectors and subsectors, and Cambodia needed to choose among them in making its initial offer. For each of the service sectors or subsectors that Cambodia chose to include, it was required to indicate – for each of the four ways that the service can be imported – the degree of market access that would be allowed, and the extent to which Cambodia would regulate foreign services providers in the same way as it regulates Cambodian suppliers in that services sector. As would become clear in the subsequent negotiations, the members usually sought commitments to full market access and full National Treatment.

When conducting various bilateral negotiations, the Cambodian delegation raised several arguments to back up Cambodia’s offers, i.e., the development needs and priorities on the one hand and, on the other hand the legal provisions establishing treatment of the LDCs in the context of services negotiations. On the development side, Cambodia argued that it seemed premature to make commitments in those sectors where no supporting legislation have been put in place, nor where strategies had been prepared in terms of future development and the expected contribution of the sectors to the economy.