

Cambodia's WTO Accession Experiences Sharing with Uzbekistan

By H.E. Dr. Sok Siphana

Senior Advisor of the Royal Government of Cambodia

And Former Cambodian Trade Negotiator

Introduction

- The Government of Cambodia applied for accession to the World Trade Organization (WTO) in October 1994.
 - At its meeting on 21 December 1994, the Preparatory Committee for the WTO established a Working Party to examine the application of the Government of Cambodia to accede to the World Trade Organization under Article XII of the Marrakesh Agreement establishing the WTO.
 - Cambodia submitted on 21 May 1999 its Memorandum on Foreign Trade Regime (MFTR) based on which 4 main trading partner countries submitted a set of 179 questions.
 - Cambodia completed answering the questions and submitted them to the WTO Secretariat on 8 November 2000 opening the way for the convening of the First Working Party (WP) under the Chairmanship of Mr. Andrea Meloni (Italy) which took place on 22 May 2001 and starting at the same time the first round of bilateral negotiations with some interested members. The four Members are Australia, EU, Japan, and USA.

Introduction: *Continued*

- Cambodia committed itself to an aggressive accession agenda with the second and third Working Party meetings held in the following year.
- At the third WP the focus was on the review of the Factual Summary.
- Cambodia returned to Geneva for the fourth WP in 16 April 2003 to review the accession report.
- An informal WP was held on 26 June 2003 to review the state of play of bilateral negotiations and focus on substantive discussions on a second version of the working party's draft accession report.
- The conclusion of the informal WP opened the way for the WP Chairman to set the timetable for the Formal Final Working Party for 22 July 2003.

Introduction: *Continued*

- 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 148th member of WTO on 13 October 2004 and, along with Nepal, was the first and only 2 LDCs to have succeeded in their accessions to the WTO since the latter transformation from the GATT in 1995.

Benefits of Accession

- Cambodia's accession is unique, for both 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 is that each accession case, and Cambodia is no exception, involves a different negotiation, with different dynamics.
- WTO membership also offers the opportunity for new members to lock in existing, relatively liberal trade regimes, i.e. by assuming legally binding obligations regarding tariff levels.
 - This gives them a first line of defense against the domestic protectionist pressures that are present in all market economies.
 - The tariff commitments made by WTO members in a multilateral trade negotiation and on accession are enumerated in schedules (lists) of concessions. These schedules establish "ceiling bindings": the member concerned cannot raise tariffs above bound levels.

Preparation of the Memorandum on the Foreign Trade Regime (MFTR)

The main topics that needed to be covered by the memorandum included:

- monetary and fiscal policy;
- state ownership and privatization policies;
- pricing and competition policies;
- rules regarding the right to trade;
- customs procedures, in particular customs valuation procedures;
- the application of internal taxes to imports;
- quantitative import restrictions, quotas and import licensing;
- pre-shipment inspection;
- anti-dumping, countervailing duties and safeguards;
- export regulations;
- product standards and technical regulations;
- sanitary and phyto-sanitary regulations;
- investment measures related to trade;
- state trading;
- free zones and special economic zones;
- government procurement;
- agricultural policies;
- the protection of intellectual property;
- policies affecting trade in services.

Experiences in Dealing with the Working Party:

- The first meeting consisted of an examination of Cambodia's memorandum, and of the answers that Cambodia had provided to Members' questions.
 - This examination gave rise to requests for additional information. Cambodia was also requested to submit for the consideration of the Working Party members relevant legislation on a variety of issues covered by the WTO.
 - The question - and- answer process is very time consuming. Cambodia's initial institutional weaknesses resulted in delays of nearly one year while the Government ascertained consistency between existing legislation and regulations and WTO requirements. Delays during this phase are also frequent.

Experiences in Dealing with the Working Party: Continued

- If a member feels that the answers submitted to a question or the actions taken to remedy an inconsistency are inadequate, it simply resubmits the question for the next round.
- Cambodia was requested to provide replies to standard detailed questionnaires that the WTO secretariat had drawn up in the areas of services, import licensing, intellectual property protection, support to agriculture, technical barriers to trade and sanitary and phyto-sanitary regulations.
- Cambodia was also requested to prepare offers of the concessions it would be prepared to make on import tariffs and services.

Experiences in Dealing with Bilateral Negotiation Track: Continued

- There are two bilateral tracks of market access negotiations on goods and services with interested WTO members.
- Generally, bilateral negotiations took place individually in parallel with formal meetings of the Working Party.
- Some Members have expressed its preferences to hold the negotiations in Geneva at any time that is suitable for Cambodia while others were willing to accommodate Cambodia's plea of flexibility where bilateral negotiations could also take place in Phnom Penh and their respective capitals.

Experiences in Dealing with Bilateral Negotiation Track: Continued

- *Strategies to deal with bilateral negotiations on market access on goods*
- In drawing up the tariff offer, Cambodia had to take account of 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.

Experiences in Dealing with Bilateral Negotiation Track: Continued

- Formulating the initial offer on services was more complex. A first task was to decide which services sectors to include in the offer. Unlike the case of goods, members do not require commitments on all services sectors.
- In the case of LDCs, members had 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 sub-sectors, and Cambodia needed to choose among them in making its initial offer.

Experiences in Dealing with Bilateral Negotiation Track: Continued

- When conducting various bilateral negotiations, the Cambodian delegation raised several arguments to back up Cambodia's offers: the *development needs and priorities* on one hand and on the other hand the *legal provisions* establishing treatment of the LDCs in the context of services negotiations

Experiences in Dealing with Bilateral Negotiation Track: Continued

i) Development arguments:

- Cambodia argued that it would seem premature to make commitments in those sectors where no supporting legislations 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.
- Thus, a gradual approach, Cambodia argued, should be adopted in including the most relevant sectors in the draft offer on services.

Experiences in Dealing with Bilateral Negotiation Track: Continued

ii) Legal arguments:

- Several provisions were used as guideposts. GATS Article XIX.2 provides the legal basis for developing countries to progressively extend “*market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV*”. One important objective of the GATS Article IV is “*strengthening of developing countries’ domestic services capacity and its efficiency and competitiveness*”.

**KEY LESSONS
FROM
CAMBODIAN ACCESSION**

Lesson # 1:

- Cambodia differs from most recently acceding countries in that it is the first least developed country 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.
 - Unlike China which probably has much more bargaining power than all the recently acceding countries taken together, 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 clear policy direction was translated into clear political commitment and has enabled the Cambodian negotiating team to secure political support at the highest level both from the Executive branch and legislative branches. Political commitments are crucial, if not a condition *sine qua non* for rapid and successful accession.
 - For example, the lead ministry in charge of WTO negotiation (the Ministry of Commerce) would not have had the mandate to drive aggressively the negotiation process. Political commitments would be reflected also in the ease in securing budgetary allocations.
 - LDCs by nature suffer from chronic financial/economic constraints, and Cambodia is no exception. 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. 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.
 - Admitting Cambodia on the promises that it will deliver on the necessary commitments - from making new legislations to establishing institutional framework to implement policies related to WTO and WTO Agreements to reconciling domestic policies with those of foreign economic policies - after its accession is also a matter of trust.
 - Cambodia has for that purpose established a large task force comprising of over 110 senior government officials – both political and technical level - under the chairmanship of the Minister of Commerce.

Lesson # 5:

- Because it is the private sector which decides how its best interests can be pursued and despite the fact that it is the Government that takes on the contractual responsibilities of the WTO membership, Cambodia has ensured before, and during, the accession process that a national consensus be secured among, to the maximum extent, 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, 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 exist, and delays occur, during Cambodia's accession process. Delays can occur on both sides of the negotiating table. Insufficient knowledge, inadequate experience, limited resources and shallow analytical capacities required for accession negotiations were recurrent sources of delay and procrastination complained so often by the Cambodian negotiating team. WTO Members, for their part, were also the 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.

Lesson # 6: Continued

- To illustrate a point, demands by some Members required from Cambodia, in some way or the other, a higher level of obligations and commitments than the level of obligations and commitments made by the original WTO members in the Uruguay Round.
- Many existing Members will undoubtedly deny the role of precedent, claiming that Cambodia's accession was treated on its own merits yet the evidence contradicted them. Despite the fact that Cambodia was unlikely to become a major trading nation, it has been pressured to accept various commitments throughout the accession process – i.e. the zero binding for export subsidies.

Lesson # 7:

- While the process is inherently time consuming and complex, there are a number of steps that acceding countries and WTO Members could take which 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.
 - 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, TBT with the Ministry of Industry, Mines, and Energy, and Services with the Ministry of Commerce).

Lesson # 7: Continued

- Rectifications of obvious contradictions with WTO rules and agreements, especially with respect 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 (TRIPS, TBT, SPS, and Custom 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 take to bring itself into full conformity with the rules, and the time frame for these steps.

Lesson # 7: Continued

- Establishment of three inquiry points (SPS physically located with the National Codex Committee, TBT with the Ministry of Industry, Mines, and Energy, and Services with the Ministry of Commerce).
- Fast tracking bilateral negotiations by travelling to capitals of several key WTO members to engage in negotiations and lobbying activities.
- Pressing on the need of WTO members to reaffirm their commitments to the GC Guidelines and requested 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 in this respect.
- 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 IMF, ITC, UNDP, UNCTAD, the World Bank, WTO, and other specialized UN agencies and 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 interest. Indeed, the accession negotiation should not be seen as a “win all or loose all” process but rather a “win some-loose some” or a “give and take”.
- From this perspective Cambodia has fared relatively well from the process, especially as a small economy which by default does not command much leverage in market access negotiations.

Lesson # 9: Continued

- 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 and 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.

Thank You