

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(1) INTRODUCTION

1. After the fall of the Khmer Rouge regime (1975-79), Cambodia followed a path of communist policies during the 1980s before undertaking a gradual transition to an open market economy in the 1990s, paving the way for it to emerge from three decades of instability. With peace and macroeconomic stability more firmly entrenched by the time of its accession to the WTO, Cambodia has embarked on far-reaching reforms to achieve rapid and sustained socio-economic development. International trade has been crucial to achieving this goal because it has been the driving force behind much of Cambodia's recent economic growth and poverty reduction, linking its economy more firmly to regional and global markets, and encouraging energetic reform on the regulatory and institutional front.

(2) TRADE POLICY FRAMEWORK AND IMPLEMENTATION

(i) General institutional and regulatory framework

2. Cambodia is a constitutional monarchy. The Constitution adopted in September 1993 stipulates that the monarch is the Head of State for life. The monarch appoints the Prime Minister and the Council of Ministers and, upon approval and ratification by the National Assembly, signs and thereby promulgates international treaties and conventions.

(a) Legislative and executive branches of government

3. Legislative powers are exercised by the National Assembly (lower house) and the Senate (upper house). The National Assembly consists of 122 members elected simultaneously for five-year terms of office. Members are elected directly by the electorate at large. The National Assembly, the only organ empowered to adopt laws, approves the national Budget and various government development strategies and programmes. It approves government proposals to borrow or to lend, and imposes, alters or annuls taxes.

4. The Council of Ministers constitutes the Royal Government of the Kingdom of Cambodia, the executive arm of the State. It is in charge of the overall execution of all national policies and programmes, and is responsible and accountable to the National Assembly. The Council of Ministers is responsible for establishing Cambodia's economic policy, including foreign trade policy. International treaties, conventions and inter-governmental agreements are negotiated by the Prime Minister and, after ratification by the National Assembly, are promulgated by the monarch. For Cambodia's accession to the WTO, a package including the Protocol and all WTO Agreements and legal documents were submitted by the Government to the National Assembly and the Senate for adoption and then presented to the monarch for promulgation, prior to publication in the *Official Journal*. In case of conflict between domestic legislation and the WTO Agreements, WTO provisions prevail over national legislation, with the exception of Cambodia's Constitution.

5. The Prime Minister, through his regulatory authority, executes all decisions adopted by the Council of Ministers. The Prime Minister presents decrees (kret) to the monarch for signature. The Prime Minister may also issue sub-decrees (anu-kret) on his own authority, after the approval of the Council of Ministers. Individual ministers issue ministerial prakas, and decisions and circulars. Provincial Governors issue decisions and circulars (Box II.1). All regulatory acts are published in the *Official Journal* once they are signed.

Box II.1: Legal hierarchy of official actions in Cambodia

The Constitution: the Supreme Law of the Kingdom of Cambodia.

Treaties and Conventions: according to Article 26 of the Constitution, the King shall sign and ratify international treaties and conventions, following the approval of the National Assembly. After such ratification, international treaties and conventions shall become one of the bases for judicial decisions.

Laws (Chhbab): laws adopted by the National Assembly.

Royal Decree (Reach Kret): to be issued under the name of the King to execute his constitutional powers.

Sub-Decree (Anu-Kret): to be signed by the Prime Minister and countersigned by the minister(s) in charge after adoption by the Cabinet. The Prime Minister may use this in exercising his own regulatory powers.

Ministerial Order (Prakas): to be issued by members of the government in exercising their own regulatory powers.

Decision (Sechdei Samrech): individual decision of the Prime Minister and decision (Prakas-Deika) of a minister or a governor, which is used in exercising his own regulatory powers.

Circular (Sarachor): in general, to be issued by the Prime Minister as head of government, and by a minister as an official of the ministry either to explain or clarify certain legal regulatory measures or to provide instructions.

Provincial Deka (Arrêté): to be used by a provincial governor within the geographical limits of his province.

Source: Council for the Development of Cambodia (CDC), *2010 Cambodia Investment Guide book*.

(b) Judiciary

6. Cambodia has a unitary judiciary with courts of first instance at the provincial/municipal level. These courts have jurisdiction over all cases regardless of the nature or magnitude of the dispute. Appeals are heard by an appeals court, which sits in the capital. Further appeal may be made to the Supreme Court, which is the highest appellate court (in all except electoral and constitutional matters).

7. Cambodia's commercial regulatory environment presents a number of challenges for business, among which corruption, regulatory policy uncertainty, and the lack of reliable dispute resolution are identified as obstacles to doing business. At the time of its accession to the WTO, Cambodia's judicial system did not provide for administrative or commercial courts. Cambodia recognized the need to establish an appeals process and an independent tribunal to meet the requirements of Article X of the GATT 1994 and related provisions, including customs valuation, trade remedies, and import licensing and quotas. Since accession, the regulatory framework for commercial dispute resolution in Cambodia has evolved to some extent, including through administrative procedures in trade-related ministries.

8. Recognizing the need for more effective commercial dispute resolution systems, Cambodia enacted the Law on Commercial Arbitration in 2006, establishing a framework for private arbitration of business disputes that follows international practices. In July 2009, the Government passed a sub-decree creating a commercial arbitration body, the National Arbitration Center (NAC) under the auspices of the Ministry of Commerce. Once the NAC is operational, parties involved in a commercial dispute that have a written arbitration agreement will be able to settle commercial disputes by means of quasi-judicial methods without involvement of the Cambodian courts, except when required by the law on commercial arbitration.

9. A new civil code and a code of civil procedure were promulgated in 2007 and 2006, respectively. The draft Law on Judicial Organization envisages the right to appeal administrative decisions before the Administrative Chamber of the Appellate Court and allows special courts to be established. According to the authorities, this includes appeals of administrative decisions in matters covered by WTO Agreements to an independent tribunal, as provided for in Article X of the GATT and other WTO Agreements. The draft Law on Judicial Organization has been under examination by the Council of Ministers and the Council of Jurists and is expected to be submitted to the National Assembly after decision made by the Council of Jurists, the Council for Legal and Judicial reform, and the Council of Ministers.

10. The Ministry of Justice, together with the Ministry of Commerce (MoC), have been preparing a draft law establishing a commercial court, or a functional equivalent, with trained judges and staff, which is essential for creating a climate of transparency and predictability. The law is under preparation at the ministry level. In the interim, commercial cases have been brought before provincial and municipal courts. Further legislation on the enforcement of judgements and commercial contracts is expected during the mandate of the current Government (2008-13). The draft Law on Commercial Contracts is under consideration in inter-ministerial meetings.

(ii) Trade policy objectives

11. International trade plays a fundamental role in Cambodia's economic growth. Despite recent setbacks caused by the world economic and financial crisis, Cambodia's garment exports to North America and Europe, along with its tourism sector, have played an important role in expanding income and employment, and in reducing poverty. However, the economic and financial crisis has also shown the danger of relying on a few export products and markets. To reduce this danger, trade policy has focused on two broad objectives: to broaden the range of products exported and to enlarge the number of export markets.

(a) Export product diversification

12. Cambodia's National Export Strategy identifies products that could be developed into successful exports.¹ The strategy identifies steps that could be taken to reinforce the competitiveness of garments and tourism, but also identifies fruits and vegetables, fresh water fish, organic rice, and silk and silk products as having export potential. The report makes a series of proposals regarding the steps that might be taken to assist these sectors in achieving export competitiveness.

13. Building on the 2002 Integrated Framework, the MoC, with the support of the UNDP and development partners, finalized a Diagnostic Trade Integration Study (DTIS) in 2007. The DTIS reviewed developments in key trade-related policies, including tariff and other restrictions, trade facilitation, legal reform, TBT and SPS measures, intellectual property rights, and investment promotion. It concluded, *inter alia*, that tariff advantages were unlikely to drive future export growth and that Cambodia needed to diversify exports and export markets. The DTIS also examined the export potential of a wider range of products and identified 15 products and 4 services. It also looked at the human development potential of the various products and services.²

¹ Ministry of Commerce and International Trade Centre (2006).

² The Sub-Steering Committee for Trade Development and Trade-related Investment decided to establish a working group to examine further the steps that could be taken, with support from development partners, to assist these sectors in becoming more competitive and entering or expanding export markets. This usually involves using value chain analysis to identify areas that need policy attention. This work is in progress.

14. The Government's trade development agenda, known as its sector-wide approach (SWAp) to trade, aims to sustain growth by diversifying the country's still narrow economic base of garments and tourism. Private-sector expansion is considered key to achieving these objectives by improving both foreign and domestic trade by developing efficient backward linkages in the economy.³ As a vehicle to implement the DTIS, the Trade SWAp seeks to bring together activities in the trade area around a common monitoring framework. It is structured to deal with issues in three broad areas or strategic pillars: (i) reforms and cross-cutting issues for trade development (legal reforms, trade facilitation, TBT and SPS regulation and practice); (ii) product and service sector export development with a focus on the products identified in the DTIS); and (iii) capacity building for trade development.

(b) Export market diversification

15. Cambodia's policies for expanding market access have two dimensions: support for the completion of the Doha Round and expansion and full exploitation of preferential trading arrangements. Within the overall context of ASEAN policies, Cambodia attaches special importance to the preferential trading arrangements with ASEAN dialogue partners. Cambodia has ratified free-trade agreements: (i) for goods with China, Republic of Korea, Japan, Australia and New Zealand, and India; (ii) for services with China, Republic of Korea, and Australia and New Zealand; and (iii) for investment with China, Republic of Korea, and Australia and New Zealand. These agreements, together with ASEAN's AFTA, are expected to help Cambodia to expand exports to the dynamic economies of Asia, both by securing access for Cambodia's current products and by attracting investment to create production targeted to those markets.

16. Cambodia's policies to exploit preferential market access have not been limited to Asia. The Ministry of Commerce has been helping light manufacturers through information on how to shape their production process to make their goods eligible for the EU's Everything But Arms preference scheme. The Government is also supporting the efforts of agricultural producers to gain access to European markets, especially now that Cambodian rice and sugar can enter those markets duty free. According to the Cambodian authorities, ASEAN negotiations with the European Union on a free-trade agreement have been suspended.

17. To secure better access to the U.S. garment market, the Government has worked with the Garment Manufacturers' Association of Cambodia to promote legislation in the U.S. Congress that would grant duty-free status to Cambodian garments. This effort is ongoing.

18. Investment, an integral part of trade policy, plays a key role in bringing about the diversification of export products and markets. Government policy is to improve the perception of Cambodia as an attractive investment destination by maintaining competitive investment incentives, developing special economic zones, pursuing trade facilitation, and improving the legal framework for business.

(iii) Trade policy formulation and implementation

(a) Institutions

19. Policies related to foreign trade are formulated and implemented by the Ministry of Economy and Finance (MEF), in close cooperation with the Ministry of Commerce (MoC), the Council for the Development of Cambodia (CDC), the National Bank of Cambodia (NBC), the Ministry of Planning (MoP), the Ministry of Industry, Mines and Energy (MIME), and the Ministry of Agriculture, Forestry and Fishery (MAFF). Provincial and municipal authorities have no jurisdiction over policies

³ Ministry of Commerce (2007).

affecting foreign trade, such as in the areas of subsidies, investment, application of taxes, charges on imports not applied to domestic goods, or quantitative restrictions on imports or exports.

20. The MEF is charged with maintaining macroeconomic stability and an economic environment conducive to growth. It collaborates with other ministries in formulating the strategic policy of the Government for integrating the Cambodian economy into the regional and global economies. It prepares the national Budget and oversees its execution once adopted by the National Assembly. It collects tax and non-tax revenue, including customs duties. It prepares draft laws on financial matters and implements them once they are promulgated. It administers and oversees government procurement activities and coordinates financial management of all assistance to Cambodia. It proposes to the Government changes in import tariffs, and implements tariff and other trade policies through the General Department of Customs and Excise (GDCE), which is an integral part of the Ministry. The GDCE is the operational arm of the MEF as regards the border control of international trade. It is charged with: preparing proposals as regards the tariff schedule; implementing all laws with regard to import and export of goods; collecting taxes and duties on imported and exported products; and suppressing smuggling and other evasions of the law bearing on international trade. The MEF also regulates the insurance industry and portfolio investment.

21. The Ministry of Commerce registers foreign and domestic business activities and participates through Camcontrol (MoC's Department for Control of Import and Export and Fraud Repression) in border control, fraud repression, in the formulation and implementation of technical standards, and in the development of policies concerning certain intellectual property rights. It takes the lead in developing commercial legislation and issues certificates of Cambodian origin. The MoC acted as the focal point for activities related to WTO accession and continues to do so in relation to WTO-related issues, in particular by coordinating the preparation of WTO notifications. The Department of International Cooperation (DICO) of the MoC, reporting to the Secretary of State serving as the EIF Focal Point, acts as the National Implementation Unit (NIU) for the EIF and for the multi-donor Trade Development Support Programme (TDSP). In addition, DICO serves as the Secretariat for the Trade SWAp and has been tasked with the coordination of Aid for Trade.

22. The Council for the Development of Cambodia implements investment regulations, *inter alia*, by reviewing and approving investment licence applications, granting duty and tax exemptions and other incentives to investors, and arranging visas and work permits for foreign employees.

23. Issues related to industrial and technological development, exploitation of natural resources and the production and supply of electricity and potable water are under the Ministry of Industry, Mines and Energy. The Ministry has responsibility for fostering an environment conducive to the industrial and technological development of Cambodia. It manages and implements national policies on the exploitation of minerals, except petroleum and gas. It recommends and implements policies designed to develop the production and distribution of electricity. The Institute of Standards of Cambodia is also part of the MIME.

24. The National Bank of Cambodia, in consultation with the Government, determines monetary and exchange-rate policies, and implements such policies. It licenses, regulates, and supervises banks, financial institutions other than the insurance industry, financial auditors and liquidators, as well as firms operating in the foreign exchange market and the markets for precious stones and precious metals.

25. The Ministry of Planning generates and maintains statistics on a variety of economic and social indicators, including the national accounts. It develops methodologies for measuring socio-economic progress. It prepares indicative socio-economic plans, which form the yardstick

against which socio-economic progress is measured, as well as the census and other socio-economic surveys.

(b) Agency coordination

26. The Government's 2004 Rectangular Strategy and the National Strategic Development Plan 2006-2010 are based on a vision of private-sector-led growth with a strong role for exports. The reform agenda in private sector development (PSD) is led by a steering committee, comprising the MEF and other relevant ministries/agencies (notably Commerce, MIME, Agriculture, Transport, Tourism, the NBC and the CDC). The steering committee has four sub-steering committees and works with the Government Private Sector Forum (G-PSF) in an effort to strengthen coordination and minimize institutional fragmentation.

27. The Sub-Steering Committee on the Investment Climate and Private Participation in Infrastructure is chaired by the MEF. Its achievements include: enactment of the Law on Customs; progress on the WTO legal reform agenda; initial implementation of ASYCUDA; and the establishment of several special economic zones (SEZs). Recent priorities have included full implementation of the Law on Customs; design and implementation of the National Single Window to meet Cambodia's commitment to join the ASEAN Single Window by 2012 as well as further progress on the WTO legal reform agenda.

28. The Sub-Steering Committee on Trade Development and Trade-related Investment, chaired by the MoC, has launched the Trade SWAp approach to coordinate efforts on the Government side and align development partners' support. Current priorities include: implementation of the risk-management framework for exports; introduction of a flat fee for imports and exports; institutional strengthening for handling TBT and SPS issues; facilitation of trade; and streamlining of company registration procedures.

29. The Sub-Steering Committee on SMEs, chaired by the MIME, has worked to streamline business registration and is currently concerned with implementation of the licensing review and establishment of the Institute of Standards.

30. The Sub-Steering Committee on Corporate Governance is chaired by the MEF.

31. Cambodia's G-PSF, established in 1999, is a mechanism for public/private-sector consultation and dialogue, chaired by the Prime Minister. It enables the private sector to advocate, directly raise concerns with the Government, and provide inputs on business and trade-related policies, laws and regulations. Some G-PSF working groups are connected to steering committees and have development partner participation. The private sector is represented by business associations such as the Cambodia Federation of Employers and Business Associations, the Garment Manufacturers Association in Cambodia, the Cambodia Hotel Association, and the Freight Forwarders Association.

32. A notable achievement has been the examination of the current trade regulations and practices with the participation of representatives of private firms with long experience in importing and exporting. Based on that experience, this exercise gave rise to a Twelve-Point Action Plan for Trade Facilitation, aimed at eliminating or reducing features of the present regime that unnecessarily raise the costs of moving goods across Cambodia's borders.

(iv) **Main trade and related laws**

33. Cambodia accession to the WTO in 2004 generated a large agenda of legal and other reforms. As a result of the intensive scrutiny undertaken by WTO Members in the context of the accession

process, a work programme was adopted by the Government, which laid out a set of legal and regulatory reforms to bring Cambodia's business, investment, and trade regimes into line with international norms and provide transparency and predictability. It consists primarily in laws that must be enacted to achieve these goals and contains subordinate legislation and administrative and other steps that need to be taken to ensure proper implementation and enforcement of these laws (Table II.1).

Table II.1
2011 update on WTO accession legal agenda

Area	Law/regulation	Status/comment
Trade	Customs Law	Promulgated July 2007; most sub-decrees approved
	MEF Regulation 387	Adopted 2008 – implements Customs Valuation Agreement
	Sub-decree 209	Adopted 2007 on list of prohibited and restricted goods
	MoH Regulation 1031	Adopted 2008 – allows any registered firm to engage in import of pharmaceuticals
	Law on Trade Remedies	At ministerial level - final draft in English, working on Khmer version
	Law on Rules of Origin	Draft under discussion at ministerial level
	SEZ law	Sub-decree adopted in 2005; law under preparation
	Law on Standards	Promulgated 2007; Sub-Decree No. 62 on Institute of Standards adopted in 2008
	MAFF Regulation 589	Promulgated 2003 – eliminates QRs on pesticide and fertilizer imports
	Anukret 15 on Plant Quarantine	Adopted 2003
	Anukret 16 on Control of animal Hygiene and Animal Products	Adopted 2003
	Inter-ministerial Prakas 868 on food safety	Adopted 2010
	Law on e-commerce	First draft in English under consideration at ministerial level
Investment	Amendment to the Investment Law and related sub-decrees	Law promulgated in 2003; several sub-decrees adopted, including No. 111 (2005) abolishing incentives contingent on export performance and No.149 (2005) on the establishment of the CDC
Competition	Law on Competition	First draft in English under consideration at ministerial level
IPRs	Sub-decree implementing the Law Concerning Marks, Trade Names and Acts of Unfair Competition	Adopted 2006
	Law on Geographical Indications	Draft near completion
	Law on Integrated Circuits and Layout Designs	Draft under development at ministerial level
	Law on Trade Secrets and Undisclosed Information	Draft under development
	Law on Seed Management and Plant Breeder Rights	Promulgated 2008; contains provisions protecting new plant varieties
	Regulation on IP Border Measures	Under consideration at ministerial level
	Law on Patents	In force since 2002. Two Prakas adopted in 2006 on procedures for: registration of industrial designs, and granting patent and utility model certificates
	Law on Copyright and Related Rights	Promulgated in 2003
	Prakas on Trade Mark Agent	Adopted in February 2011
	Sub-decrees on the establishment of a national Committee for IPRs (NCIPR) and sub-committees on enforcement and education	Adopted 2008; sub-committees sub-decrees finalized and to be sent to the Council of Ministers
	Draft compulsory licensing law/regulation for public health	Draft under preparation at ministerial level

Table II.1 (cont'd)

Area	Law/regulation	Status/comment
Business framework	Law on Commercial Court	Draft under preparation at ministerial level
	Law on Judicial Organization	Allows special courts to be established; draft under consideration at the Council of Jurists
	Law on Insolvency	Promulgated in 2008; sub-decrees under preparation
	Law on Commercial Contracts	Draft under consideration by inter-ministerial meeting
	Law on Commercial Agency	Draft under preparation at ministerial level
	Law on Commercial Arbitration	Promulgated in 2006; 2009 Sub-Decree No. 124 established NAC
	Civil Code, Civil Procedural Code, Criminal Code and Criminal Procedural Code	Civil and criminal procedural codes promulgated in 2006 and 2007, respectively; others promulgated between 2007 and 2010
	Law on Anti-Corruption	Promulgated in 2010
	Law on Commercial Enterprises	Promulgated in 2005
	Law on Concessions	Promulgated in 2007; sub-decrees under preparation
Services	Law on Telecommunications	Draft law to separate operations from regulation and establish independent regulatory body - under consideration at ministerial level
	Amendment to the Labour Law	Horizontal commitments: to allow work permits for foreigners to be issued for 2-year periods with possibility of renewal up to 5 years. Under preparation at ministerial level
	Draft amendment to the Law on Land Management and Urbanization	GATS commitment: to allow foreign licensed architects to sign off on large projects. Under preparation at ministerial level
	Amendment of the Law on Bar	GATS legal services: to bring various provisions into conformity with commitments. Under preparation at ministerial level
	Law on Tourism	Promulgated in 2009; 2009 Prakas on minimum standards for tourism resorts
	Prakas on minimum standards in hotels	Adopted 2009
	Law on Maritime Transport	Work ongoing to ensure that draft law contains provisions covering additional commitments
	Law on Insurance and Reinsurance	Draft under preparation at ministerial level
	Law on Financial Leasing	Promulgated in 2009
	Law on Civil Aviation	Promulgated in 2008

Source: WTO Secretariat, based on information provided by the Cambodian authorities.

34. The Customs Law was enacted in 2007 and a first batch of supporting regulations has since been adopted. Under the Law on Standards in Cambodia, passed in 2007, the Institute of Standards was created as a central authority to develop standards and product conformity assessments. The ASEAN Harmonized Tariff Nomenclature was introduced in July 2007. Further progress is required to implement the Customs Law and complete the legal agenda that Cambodia committed to as part of the WTO accession. The MoC is working on a draft law on trade remedies consistent with best international practice and an economy-wide perspective, which was expected to be submitted to the National Assembly in 2011.

35. Cambodia continues to work to fulfil its WTO commitments to pass necessary business legislation concerning the general business environment, trade in goods, trade in services, and the protection of intellectual property rights. It has made progress recently, passing several significant laws in 2008, including a Law on Plant Breeder Rights and Law on Civil Aviation, and in 2009, the Government promulgated a Law on Tourism, a Law on Insolvency, and a sub-decree establishing a national commercial arbitration body. The Government is still in the process of drafting further laws and regulations to create a favourable environment for trade and investment. A commercial contract law and other important business-related laws, including on a commercial court, e-commerce, telecommunications, and personal property leasing are in draft. Cambodia is also preparing a draft competition law.

36. According to the authorities, the legal reform agenda has evolved more slowly than anticipated because, until recently, technical assistance was insufficient. There are also inherent difficulties in transforming WTO concepts into the Khmer language, which may not have comparable terminology.

(3) INTERNATIONAL TRADING RELATIONS

(i) World Trade Organization

(a) Accession

37. The signing of the Paris Peace Agreement in 1991 and the 1993 elections allowed Cambodia to rejoin the international community and participate in multilateral and regional institutions.⁴ In 1994 Cambodia applied for membership of the WTO and following approval in September 2003 at the Cancun Ministerial Conference, Cambodia's membership became effective in 2004. With regard to tariff bindings, Cambodia negotiated average final tariff bound rates of 28.1% for agricultural and 17.7% for non-agricultural products. Cambodia did not provide agricultural export subsidies during the relevant base period and bound these at zero in its schedule. Cambodia undertook specific commitments under the GATS in 94 services sub-sectors. It was given transition periods to implement various WTO Agreements in areas such as SPS, TBT, TRIPS, and customs valuation, for which Cambodia provided precise plans for implementing WTO-related legislation and enforcement mechanisms.

(b) Legal reform agenda

38. As part of its WTO commitments to strengthen the trade and investment climate for both foreign and domestic businesses, Cambodia committed to enact a large number of laws or regulations to address areas where existing law did not meet WTO requirements. Accession to the WTO in 2004 energized the legal reform agenda, the key items of which are summarized in section 2(iv) above.

(c) Transparency

39. Cambodia confirmed that from the date of accession all laws, regulations, decrees, judicial decisions, and administrative rulings of general application related to trade would be published in a manner that fulfils WTO requirements. No law or regulation related to international trade would become effective prior to such publication in the *Official Journal*. Cambodia intended to establish or designate an official journal or website, published or updated on a regular basis, and readily available to WTO Members, individuals and enterprises, dedicated to the publication of all regulations and other measures pertaining to or affecting trade in goods, services, and TRIPS obligations. Currently, all laws and regulations are published in Khmer in the *Official Journal*, which is updated monthly and is available to all individuals and institutions. There is no corresponding website.

⁴ Apart from the WTO, these include: the International Bank for Reconstruction and Development; the International Monetary Fund; the Asian Development Bank; the International Development Association; the Multilateral Insurance Guarantee Agency; the United Nations Development Programme; the United Nations Conference on Trade and Development; the Food and Agriculture Organization; the International Fund for Agricultural Development; the International Civil Aviation Organization; the World Intellectual Property Organization; the International Standards Organization; the World Health Organization; the International Maritime Organization; the International Telecommunications Union; the United Nations Educational, Scientific and Cultural Organization; the World Tourism Organization; the Economic and Social Commission for Asia and the Pacific; and the Paris Convention for the Protection of Industrial Property Rights.

40. The Department of Notification and Legal Compliance (WTO Department) at the MoC has strengthened its system for coordinating WTO notifications; Camcontrol is the enquiry point for SPS, and the MIME is the TBT enquiry point. The enquiry point for intellectual property is being developed in the IPR department within MoC. The enquiry point for services is located in MoC's Department of Notification and Legal Compliance; there have been no enquiries so far.

41. The Department of Notification and Legal Compliance recently started submitting notifications to the WTO. As of January 2011 these covered: agriculture export subsidies and domestic support (G/AG/N/KHM/1 and 2, March 2010); Preshipment Inspection (G/PSI/N/1/Add.12, April 2010); Customs Valuation (G/VAL/N/1/KHM/1, March 2010); Import Licensing (G/LIC/N/3/KHM/1, November 2010); Anti-Dumping, Countervailing Measures and Safeguards (G/ADP/N/1/KHM/1, G/SCM/N/1/KHM/1, G/SG/N/1/KHM/1, March 2010); and Technical Barriers to Trade, one notification under Article 15.2 (G/TBT/2/Add.103, July 2010) and three notifications under Article 10.6 (G/TBT/N/KHM/1, 2 and 3, July 2010).

(d) Doha Round negotiations

42. At the 7th WTO Ministerial Conference held in December 2009, Cambodia joined the LDC group's call to developed countries to provide predictable duty-free and quota-free (DFQF) market access to products originating from LDCs and covering products of export interest to individual LDCs.⁵ In the Dar es Salaam LDC Ministerial Declaration of October 2009⁶, LDCs called for an "early harvest" in the DDA negotiations, *inter alia*, in the areas of duty-free quota-free market access for LDCs; provision of a services waiver; and implementation of SDT provisions. Cambodia has been paying substantial MFN duties for its garment exports and the majority of its export items are dutiable. Cambodia argues that the granting of DFQF access would benefit not only the LDCs, but also low-income consumers in developed countries in accessing cheaper products imported from LDCs.

43. Cambodia has called for the outcome of the NAMA modalities to ensure that the core principle of Special and Differential Treatment are made operational by granting all LDCs more preferential treatment than non-LDCs. The conclusion of the DDA is viewed as one of the solutions to the crisis, which could stimulate the growth of the world economy through a better flow of goods and services, and preventing increased protectionism; thus more employment could be created and poverty gradually reduced.

44. The issue of LDCs' accession to the WTO is of importance to Cambodia. Since the WTO was established in 1995, three LDCs have acceded. Currently, 12 LDCs constitute over 40% of countries in the process of accession, and are facing great challenges due to their resource constraints and the complicated accession process. Cambodia has called on WTO Members to provide their full support in the implementation of the Phnom Penh Round Table Statement, which emphasized, *inter alia*, a greater role for the Director-General in the accession process, strict respect of the 2002 LDC Accession Guidelines, and increased technical and financial support for acceding and acceded LDCs.⁷ Cambodia has also emphasized that increased provision of financial support by the development partners to LDCs, through various mechanisms including Aid for Trade and EIF, is needed during the global financial crisis in order to help the recovery of the LDC economies.

⁵ Statement by Cambodia in WTO document WT/MIN(09)/ST/32/Rev.2, 7 December 2009.

⁶ Circulated in WTO document WT/MIN(09)/2.

⁷ WTO document WT/MIN(09)/1 and Add.1.

(ii) ASEAN

45. Cambodia joined ASEAN in 1999. Its membership in ASEAN affects its trade and trade regime in three broad ways, through: (a) the liberalization of regional trade; (b) the harmonization of trade and trade-related procedures; and (c) the development of trade relations with ASEAN dialogue partners.

(a) Trade liberalization

46. Like all ASEAN Members, Cambodia has been following its agreed schedule for reducing tariffs on goods originating in its ASEAN trading partners. In 2008, duties on a large number of tariff lines on its inclusion list had been reduced to the 5%-0% level, and by 2010, all tariff lines on the list were at 5%-0%. According to the authorities, tariffs on all products on the inclusion list will be eliminated by 2015 (except for 7% of tariff lines for which tariff elimination is scheduled by 2018).

47. The reduction of tariffs on ASEAN trade has been accompanied by rapid expansion of Cambodia's trade with its ASEAN partners. During the three-year period 2006-08, Cambodia's exports to ASEAN countries rose at an average annual rate of 37%, compared with an average rise of 14% in its exports to the rest of the world. Imports from ASEAN also rose rapidly, the increase averaging 35% during the period, compared with 25% for imports from the rest of the world. For Cambodia, however, the growth of intra-ASEAN trade is occurring from a small base: despite its rapid expansion, in 2008 exports to ASEAN accounted for only 7% of the value of Cambodia's total exports.

48. Cambodia follows the established schedule for liberalization of ASEAN trade in services. As of the seventh package of commitments under the ASEAN framework Agreement on Services, Cambodia's ASEAN commitments on market access and national treatment have gone beyond its WTO commitments in a limited number of sectors, for example leasing of construction machinery, translation and interpretation services, paging services, and dental services. According to the authorities, information is not available on the value of Cambodia's trade in services with ASEAN member countries.

(b) Harmonization

49. ASEAN has established a number of programmes designed to harmonize the trade and trade-related procedures of its members. ASEAN's harmonization policies cover a wide range of topics. There is a Common Manual for post-clearance customs audit and customs valuation. ASEAN is working toward a single window for cargo clearance. Work is under way to harmonize intellectual property (IP) procedures and cooperate on enforcement of IP rights. The harmonization of standards has begun, and the mutual recognition of conformity certifications is in progress. In services, mutual recognition arrangements have been agreed in engineering, nursing, architectural, surveying, and accounting services, and for medical and dental practitioners.

(c) ASEAN Dialogue Partners

50. ASEAN has negotiated free-trade agreements with Australia/New Zealand, China, India, Japan, and the Republic of Korea. These agreements are broad in scope, covering trade in goods and services, as well as investment. The agreement with Australia/New Zealand also contains provisions on intellectual property, SPS and TBT, and competition. They all contain dispute settlement mechanisms, and create cooperation fora. ASEAN is also negotiating a free-trade agreement with the

European Union.⁸ As a member of ASEAN, Cambodia is and will be subject to tariff reductions set in free-trade agreements (FTAs) between ASEAN and its dialogue partners (Table II.2).

Table II.2
Cambodia's tariff commitments under FTAs between ASEAN and its dialogue partners

ASEAN FTAs with:	
China	2002: Framework Agreement on Comprehensive Economic Cooperation signed 2010: Tariff rates of China and ASEAN 6 reduced to 0% 2015: Tariff rates of newer ASEAN members including Cambodia will be reduced to 0%
India	2003: Framework on Comprehensive Economic Cooperation Agreement signed 2011: Tariff rates of India and ASEAN 5 (except the Philippines) reduced to 0% 2018: Tariff rates of Cambodia will be reduced to 0%
Republic of Korea	2005: Framework Agreement on Economic Cooperation signed (with the exception of Thailand) 2010: Tariff rates of the Republic of Korea and the ASEAN 6 reduced to 0% 2018: Tariff rates of Cambodia will be reduced to 0%
Japan	2008: Agreement on Comprehensive Economic Partnership signed 2018: Tariff rates of Japan and the ASEAN 6 will be reduced to 0% 2026: Tariff rates of Cambodia (and Laos, Myanmar) will be reduced to 0%
Australia and New Zealand	2009: Agreement Establishing Free Trade Area signed 2010: Tariff rates of Australia and New Zealand reduced to 0% 2024: Tariff rates of Cambodia (and Myanmar) will be reduced to 0%

Source: Cambodian authorities.

(iii) Other trading relations

51. Cambodia is a beneficiary of the Generalized System of Preferences (GSP) schemes operated by developed countries. Under these schemes, import tariffs on many products from the beneficiaries are exempted or reduced if requirements such as rules of origin are fulfilled. Since Cambodia is categorized as a least developed country, it is entitled to additional preferences, under which more of its products qualify for duty-free treatment or tariff reductions (Table II.3).

Table II.3
Number of products qualifying for preferences under selected GSP schemes

	Japan	United States	European Union
For all developing countries	3,540	3,400	6,300
Additional only for LDCs, including Cambodia	2,200	1,400	All other articles but arms and ammunition (EBA) and a few other exceptions

Source: Cambodian authorities.

52. Cambodia was granted duty-free and quota-free access to the EU market under the Everything-But-Arms Initiative (EBA), which is part of the EU's GSP programme for LDCs. EBA was put into effect and applied to Cambodia in February 2001. Cambodia is also entitled to privileges under the U.S. GSP programme. In addition, in July 2006, Cambodia signed a Trade and Investment Framework Agreement (TIFA) with the United States, which aims to promote greater trade and investment in both countries and provide a forum to address bilateral trade and investment issues.

⁸ For detailed information on these agreements, including Cambodia's commitments on trade in goods and services, see ASEAN online information. Viewed at: www.aseansec.org/22935.htm.

(4) FOREIGN DIRECT INVESTMENT REGIME**(i) Legal framework**

53. From the early 1990s, the growth in FDI to Cambodia was motivated by the country's shift towards a market economy and growing macroeconomic stability. In 1994, in recognition of the benefits of inward FDI, the Cambodian Government introduced laws and regulations on investment with generous incentives offered to investors, including a tax holiday of up to eight years followed by a concessionary corporate tax rate of about 9% (as against a standard rate of 20%). Total freedom was granted to repatriate profits or proceeds of investment without paying withholding tax. Reinvested profits were exempt from corporate tax. Investors were also provided with guarantees against nationalization and price control. A considerable amount of inward FDI between 1995 and 2003 went into the manufacturing sector, in particular into apparel factories. Garment companies exporting from Cambodia took advantage of the supply of cheap labour and preferential access to U.S. lucrative and European markets. However, except for the garment and tourism industries, Cambodia has yet to attract a critical mass of Cambodian or foreign investors in its export-potential sectors.

54. The Government subsequently scaled back its investment incentives, partly in order to increase government revenue, through a revised Law on Investment, which entered into force in 2005. This was an attempt to achieve greater transparency in incentives provided and minimize distortions and delays arising from policy-maker discretion.

55. The main features of the revised law relative to previous requirements are: (i) the eight-year blanket tax holiday for foreign investors was replaced with a tax holiday based on a formula (see Table II.4) for all qualifying new investors (foreign and local); (ii) when the tax holiday expires, all investment projects are subject to the standard corporate tax rate (currently 20%) and all previously approved and operational projects currently subject to the 9% concessionary corporate tax are to be brought under the standard corporate tax rate within the next five years; (iii) in place of the provision of tax-free reinvestment of profits, an accelerated depreciation allowance was introduced under the general tax law for all qualified investors, irrespective of source of finance, and profit that is repatriated is now subject to a 1% withholding tax; (iv) as part of the new reforms, a fast track procedure has been introduced with the aim of approving investment applications within 28 days under the "one-stop service" at CIB.⁹

56. The Council for the Development of Cambodia, and the Cambodian Investment Board are Cambodia's mandated institutions in the area of investment promotion and facilitation. The CDC is the investment approval body and administers a package of investment incentives. As a one-stop shop to facilitate foreign direct investment, the CDC is responsible for obtaining all the licences from relevant government agencies on behalf of investor applicants. The relevant government agencies must issue the required documents no later than 28 workdays from the date of the Conditional Registration Certificate. At the end of the 28 days, the CDC will issue a Final Registration Certificate.

⁹ Seven working groups, which involve both private- and public-sector participation, have been set up in key sectors to work in collaboration with the Cambodian Investment Board to facilitate speedy investment approval, monitoring, and promotion. An investor forum, headed by the Prime Minister, is held twice a year as part of the new investment regime.

Table II.4
Foreign investment policy regime

Area	Comment
Government agency dealing with FDI	Cambodian Investment Board (CIB) Council for the Development of Cambodia (CDC)
Limits on foreign equity participation	100% foreign ownership is allowed in all sectors/industries
Tax incentives	A tax holiday determined according to the formula: "trigger period + 3 years + n priority years". (Trigger period: the first year of profit or 3 years after the first revenue is made, whichever is sooner. Priority period: to be determined by CDC) A standard 20% corporate tax rate for all new projects (domestic and foreign-invested firms) from May 2005 The 9% corporate tax rate applicable to invested enterprises approved prior to the promulgation of the new law (5 August 1994) to be phased out, 20% within the ensuing 5 years Accelerated depreciation Duty-free importation of capital equipment and spare parts for initial installation of promoted investment 100% exemption from export tax Tax refund on reinvested earnings
Tax on repatriation of profits and expatriates income	100% repatriation of capital and dividends is allowed Profit repatriation subject to 1% withholding tax
Ownership of land	Not permitted for foreigners
Employment of foreign personnel	Limited to 10% of workforce
Performance requirements	Not applicable
Protection of foreign investment	Includes guarantee against nationalization and international convention for settlement of industrial disputes

Source: Cambodian authorities.

57. All sectors are open to foreign investors, except for activities prohibited to all investors, contained in the negative list of Sub-Decree No. 111 (2005) on the Implementation of the Amendment to the Law on Investment. This also details investment activities that are excluded from incentives, although investment is permitted. They include: retail, wholesale, and duty-free stores; entertainment (including restaurants, bars, nightclubs, massage parlours, and casinos); tourism service providers; currency and financial services; press and media-related activities; professional services; and production and processing of tobacco and wood products.

58. Article 44 of the Constitution provides that only Cambodian citizens and legal entities have the right to own land. However, a new law allowing foreign ownership of properties located above the ground floor was passed in 2010. Aside from this, there is no discrimination against foreign investors either at the time of initial investment or after investment. However, some foreign businesses have reported that they are at a disadvantage compared with Cambodian or other foreign rivals, who engage in acts of corruption or tax evasion, or take advantage of Cambodia's poor enforcement of legal regulations.¹⁰

59. According to the IMF, in most respects Cambodia's investment framework compares favorably with that of its regional neighbours.¹¹ Considerable work has been done to turn legal drafts into approved laws and fill in the regulatory details through sub-decrees and administrative

¹⁰ According to the World Bank, for example, corruption remains the most severe constraint on business and investment identified by existing firms. See World Bank and the International Finance Corporation (2009), p. 38.

¹¹ IMF (2006), pp. 10-19.

instructions as well as develop the institutional capacity to implement those.¹² Although there is no sector closed only to foreign investment, the activities listed in Sub-Decree No. 111 (2005) are prohibited for investment by both Cambodian and foreign entities. These are: production/processing of psychotropic substances and narcotic substances; production of poisonous chemicals, agriculture pesticide/insecticide and other goods by using chemical substances prohibited by international regulations or the World Health Organization, that affect the public health and environment; processing and production of electrical power by using any waste imported from a foreign country; forestry exploitation business prohibited by Forestry Law; investment activities prohibited by law. The 2007 DTIS noted that a major weakness of the investment framework was the lack of a predictable and transparent set of rules that are enforced in a prompt, fair, and efficient manner by the appropriate government institutions. In addition, investors in their dealings with each other could not rely on a functioning commercial justice system.

(ii) Bilateral investment agreements

60. Cambodia has signed bilateral investment promotion and protection agreements with 24 countries or territories.¹³ The agreements generally provide reciprocal national treatment to investors, excluding benefits deriving from membership in future customs unions or free-trade areas and agreements relating to taxation. The agreements preclude expropriations except those that are undertaken for a lawful or public purpose, are non-discriminatory, and are accompanied by prompt, adequate, and effective compensation at the fair market value of the property prior to expropriation. The agreements also guarantee repatriation of investments and provide for settlement of investment disputes via arbitration.

61. Cambodia has no double taxation treaties (DTTs) nor tax-sparing agreements.

¹² The main sub-decrees are: Sub-Decree on the Establishment of the Sub-Committee on Investment of the Provinces-Municipalities of the Kingdom of Cambodia (Sub-Decree No. 17 ANK/BK dated 9 February 2005); Sub-Decree on the Implementation of the Amendment to the Law on Investment of the Kingdom of Cambodia (Sub-Decree No. 111 ANK/BK dated 27 September 2005); and Sub-Decree on the Organization and Functioning of the Council for the Development of Cambodia (Sub-Decree No. 149 ANK/BK dated 3 October 2008).

¹³ Agreements in force as of 31 December 2010 are with: Australia, China, Croatia, Cuba, the Czech Republic, France, Germany, Indonesia, Kuwait, Japan, Laos, Malaysia, the Netherlands, North Korea, OPEC (USA), the Organization of the Petroleum Exporting Countries (OPEC), Pakistan, the Philippines, Singapore, Republic of Korea, Switzerland, Thailand, and Viet Nam. Agreements with Algeria, Bulgaria, Egypt, Hungary, Libya, Malta, Myanmar, Qatar, Russia, the United Kingdom, United States, and Ukraine are planned or near completion.