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Additional Questions and Replies

The Government of the Kingdom of Cambodia has submitted the following replies to additional questions raised in connection with the preparation of the Working Party's draft Report, and requests that they be circulated to members of the Working Party.

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III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES AFFECTING FOREIGN TRADE IN GOODS AND TRADE IN SERVICES

Question 1

Paragraph 32 of the factual summary notes that there is no Commercial Court system in Cambodia yet, and that commercial cases are now heard in common courts. Unfortunately, the experience of our businesses in commercial disputes heard in Cambodian courts leads us to believe status quo is not providing businesses with the legal protection they need. The establishment of a Commercial Court system with trained judges and staff is an essential to creating a climate of transparency and predictability, and should be achieved prior to accession.

Answer:

With the intention to accelerate WTO accession, the Royal Government of Cambodia represented by the Ministry of Justice and the Ministry of Commerce has signed a Memorandum of Understanding with the Canadian Government on 4 February 2003 on technical assistance for the drafting the Law on establishment of a Commercial Court and Rules of a Commercial Arbitration Center. Cambodia hopes that further necessary technical assistance will be forthcoming from WTO members.

Question 2

Paragraph 32 of the factual summary also indicates that Cambodia has ratified the New York Convention on the Enforcement of Foreign Arbitral Judgments and that the Ministry of Commerce is preparing legislation to implement the convention. Our understanding is that implementing legislation has already been passed, although we have not seen it. We would like to request that Cambodia clarify this point, and also provide a copy of the legislation or draft legislation (whichever the case may be).

Answer:

The implementing legislation for Cambodia's accession to the New York Convention on the Enforcement of Foreign Arbitral Judgements was adopted by the Cambodian National Assembly and Senate in 2002. The draft Commercial Arbitration Law is currently being debated at the Council of Ministers, the draft of which was already submitted to the Working Party.

Question 3

Paragraph 38 of the factual summary discusses the publication of laws in Cambodia's Official Journal. Our understanding is that the Official Journal is only available by subscription and that many private sector entities are not aware of its existence. In addition, we note that while all laws do appear to be posted in the Journal, some new regulations have not been. Would Cambodia consider posting its Official Journal on the internet to improve access to new laws and regulations. And what practical steps can Cambodia take to better ensure that all new regulations are properly published in the Official Journal?

Answer:

Laws and regulations are published in the Khmer language in the Government's Official Journal. Cambodia is making every endeavour to ensure that all regulations are included. Cambodia is prepared to post the contents of the Official Journal on the Government's website.

Question 4

Cambodia's reply to question 12 in document WT/ACC/KHM/12 describes a major Cambodian government anti-smuggling initiative. However, our private sector continues to report difficulty entering the Cambodian market because of competition from smuggled goods. Weak enforcement impairs market access on an MFN basis, and is, in effect, a non-tariff barrier. We wish to note that in accession to the WTO, Cambodia will be undertaking an international obligation deter smuggling more effectively.

Answer:

The Government of Cambodia is making major efforts in combating smuggling and expects that its resolute actions will progressively bring positive results.

Question 5

We welcome the submission by Cambodia of its draft Law on Customs dated 15 August 2002 to WTO members. From Cambodia's Implementation Agenda (WT/ACC/KHM/10/Rev.1), we understand that the Law is expected to be sent to Parliament in December 2002 and to be adopted by Parliament in July 2003. Is this still envisaged?

Answer:

The Draft Law on Customs has been approved by the Council of Ministers and submitted to the National Assembly. The most recent version of the draft Law, as approved by the Council of Ministers, is now available to members of the Working Party.

Question 6

Have there been any recent developments related to the draft Civil Procedure Code?

Answer:

The draft Civil Code and the draft Civil Procedure Code have been completed and will be sent to the Council of Ministers in the near future. The drafts are being made available to the members of the Working Party.

Question 7

Enforcement and implementation is a key WTO requirement. In February we expressed a concern about the long period foreseen for adoption of the Civil Procedure Code. Is Cambodia able to advise whether it has been possible to review this, and accelerate the process for adoption?

Answer:

Please see answer to Question 6 and the updated action plans.

Question 8

Transparency is a key WTO requirement. Can Cambodia advise what the practical difficulty is in establishing the inquiry point required under Article III of GATS?

Answer:

The Council of Ministers approved in 2002 the establishment of a Services Enquiry Point at the Ministry of Commerce. However, it has not been put into operation as Cambodia needs to set up necessary computers, database, and training of staff on GATS and database operation for handling this particular job. Therefore, technical assistance in this regard is necessarily needed from WTO Members and International Organizations in order to enable Cambodia to provide notification related to services measures, law and regulation to the WTO Members in an effective manner after Cambodia has become a WTO Member. We also recognize that Members themselves have problems in tracing services trade. Cambodia also notes that Article III of GATS provides developing countries appropriate flexibility with respect to the time limit within which such an enquiry point is to be established. Cambodia may need to avail itself of this flexibility.

IV. POLICIES AFFECTING TRADE IN GOODS**1. Import regulation****(a) Registration requirements for engaging in importing****Question 9**

Cambodia's reply to question 5 of document WT/ACC/KHM/17 states that Cambodia does not restrict the quantity or value of imports. However, Cambodia's reply to questions 3 and 4 and Annex I of document WT/ACC/KHM/12 list pesticides which are banned for import and states that "import quantities of pesticides by individual companies may be restricted subject to safety requirements".

Can Cambodia explain this apparent contradiction? In addition, can Cambodia explain how it determines restrictions based on "domestic demand", and where importers can find information about safety requirements?

Does Cambodia plan to allow an interested party to petition for import tolerances for the listed pesticides or to adopt any international standards for maximum residue limits for application to imports of agricultural products?

Answer:

Because Cambodia's capacity to store and handle safely pesticides is limited, Cambodia applies import measures based on domestic demand, which can be calculated by crop production areas and estimated pest infestation. The table below illustrates the process for determining the import limitations.

TABLE 1Yearly Estimation of Chemical Pesticides needed for cultivation in Cambodia

Crops	Cultivated Areas (Ha)			Infected Areas (Ha)			Pesticide need (Kg/Liters)		
	Wet season	Dry season	Total	Wet season	Dry season	Total	Insect	Rat	Weed
Rice	1,880,000	260,000	2,140,000	56,400	78,000	134,400	53,760	67,200	13,440
Vegetables	22,845	8,605	31,450	18,276	6,884	25,160	37,740	—	—
Cash crops			183,000			27,450	10,980	13,725	2,745
Total						187,010	102,480	80,925	16,185

Note: Cash crops include:

- Peanut : 11,000 Ha
- Tobacco: 10,000 Ha
- Sesame : 20,000 Ha
- Corn : 72,000 Ha
- Others crops: 70,000 Ha
- Estimate infected areas in wet season 3%
- Estimate infected areas in dry season 30%
- Estimate infected areas on vegetables, crops in wet season and dry season 80%
- Estimate infected areas on others crops 15%

Import licenses are granted on a first come-first served basis up to the total estimated requirements indicated in the table. When those totals have been reached, the authorities may decide that the requirements of the particular crop year warrant additional imports, and may grant additional licences. When it makes such a decision, all registered importers are so informed. The procedures in both cases are as described in WT/ACC/KHM/17. In addition to these aggregate limitations, import limitations may be temporarily applied to an individual importer when that importer's capacity to store pesticides has been exhausted. These limitations are necessary because pesticide companies have limited facilities for storing and transporting pesticides. Conditions in Cambodia often result in degraded products before the expiry date, and the cost of disposal of such products is very high and can cause harm to the environment.

These measures are taken under Article XX(b) of GATT 1994. WT/ACC/KHM/17 has been revised to reflect this information, it is now contained in WT/ACC/KHM/17/Rev.1.

Cambodia has no plans to allow companies to petition for import tolerances. As Cambodia is a member of ASEAN, Cambodia will adopt standards for maximum residue limits of ASEAN and will also adhere to FAO standards.

Question 10

It would be useful to know whether import licensing requirements are automatic or non-automatic for each product. It appears from document WT/ACC/KHM/17 that pharmaceuticals, medical materials and most agricultural inputs are subject to automatic licensing, while pesticides are subject to non-automatic licensing. Please verify.

Answer:

This is a correct assumption. Please also refer to document WT/ACC/KHM/17/Rev.1.

Question 11

Would Cambodia please confirm that there are no import licensing requirements for products not identified in document WT/ACC/KHM/17?

Answer:

Yes, Cambodia confirms that there are no import licensing requirements for products not identified in document WT/ACC/KHM/17 and Rev.1.

Question 12

Would Cambodia please explain why the importation of pharmaceuticals is limited to pharmacists and the importation of agricultural inputs to agricultural technicians? Does Cambodia make a distinction between the right of importation and the right to distribute such products within its market?

We seek recognition of the right to import, i.e., to be the importer of record, as a separate status from that of distribution. In this regard, we seek Cambodia's assistance in simplifying requirements to import e.g., pharmaceuticals and agricultural inputs, recognizing that more demanding requirements may exist for distributors within Cambodia's market.

Answer:

In Cambodia, the importation and distribution of pharmaceuticals have to be done by pharmaceutical companies that are under the technical responsibility of pharmacists. In practice, in Cambodia pharmaceutical importers are usually at the same time distributors. As the distribution strongly requires the presence of pharmacists, it is difficult to separate these two activities in our country.

Sub-Decree 69 on agriculture inputs limits importation of agricultural inputs to agricultural technicians only as regards veterinary medicine. Cambodia (MAFF) does not distinguish between the right to import and distribute. Any company that meets MAFF requirements can register with the Ministry and then import and distribute.

In both cases there is need to insure human and animal health in the process both of importing and distributing.

(b) Characteristics of national tariff

Question 13

It would be helpful to the market access negotiations if Cambodia could submit, preferably in electronic form, its 2001 applied tariff. Could Cambodia please agree to submit this?

Answer:

The 2001 applied tariff was submitted to the WTO Secretariat during the 3rd Working Party Meeting in November 2002. Please see document WT/ACC/KHM/19/Add.1 of 19 November 2002.

Question 14

Paragraph 45 of the factual summary states that "only MFN rates of duty existed." However, in its Bilateral Textile Agreement with the United States, Cambodia has committed to apply tariff rates on textiles and apparel products that are lower than the applied rates listed in Cambodia's harmonized tariff schedule. Is this Cambodia's only exception to the principle of MFN treatment? If not, can Cambodia provide a complete list of all such exceptions?

Answer:

The CEPT Scheme for AFTA provides preferential rates for CEPT products originating from within ASEAN. Cambodia, as member of ASEAN, on a reciprocal basis has a commitment to extend preferential tariff rates as stipulated in the ASEAN Agreement. There are no other instances of departure from MFN treatment.

Question 15

Regarding paragraph 46, we agree that Cambodia's progress in reducing tariffs should be acknowledged. But the tariff rates cited in this paragraph are applied tariffs. Cambodia's market access offer envisions binding numerous agricultural tariffs at significantly higher levels - a great many in excess of 60 percent. Credit cannot be taken for autonomous liberalization not reflected in Cambodia's tariff schedule. In addition, it is unclear how Cambodia expects to reconcile its stated objective of an average tariff level below 15 percent by 2002/03 and a maximum tariff of 35 percent noted in the responses to questions 18 and 19 in document WT/ACC/KHM/12, when the bindings proposed in its market access offer are so much higher.

Answer:

Cambodia is aware that it has been the normal practice of the GATT/WTO that developing countries, and in particular LDCs, negotiate tariff bindings on the basis of ceiling rates in the context of Article XXXVI.8 of GATT 1994 and Article 15 of the WTO Agreement on Agriculture. The decision of the General Council on "Accession of Least-Developed Countries" of 10 December 2002 states in paragraph 1.1 that "WTO members shall exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs, taking into account the levels of concessions and commitments undertaken by existing WTO LDC Members." Cambodia is of the view that its current tariff offer goes well beyond the levels of concessions undertaken by existing WTO LDC members.

(c) Tariff quotas, tariff exemptions**Question 16**

We would appreciate any information on recent developments regarding TRQs – does Cambodia still consider the possibility of implementing TRQs?

Answer:

Cambodia reserves its right to implement TRQs should the negotiations with members so require. So far, no such necessity has arisen. We also monitor developments in the Doha negotiations (DDA) with regard to this particular issue.

Question 17

Cambodia has intimated that it might intend in the future decide to move away from its transparent tariff-only regime and tariff reform agenda to introducing tariff rate quotas. Is Cambodia prepared to reject the future use of more complex less transparent tariff rate quota import arrangements?

Answer:

Please see the response to Question 16.

Question 18

Concerning ad hoc tariff exemptions for compelling reasons of national interest (paragraph 49 of the factual summary), when such an exemption is authorized for a specific purchase, does the supplier have to be chosen in advance, or is the purchaser free to source from any foreign supplier. Are such exemptions provided on an MFN basis, or are they specific to an individually contracted purchase?

Answer:

Article 4 of the draft Law on Customs contains the following provision respecting exemptions for matters relating to “national interests”, primarily emergencies.

- 5 (c). In matters concerning the national interest, including emergencies, the Royal Government may order the total or partial suspension of duties and taxes on goods essential to the needs of the population, or suspend the import or export of certain goods.

The Law does not permit a suspension of Cambodia’s MFN obligations in such an eventuality.

(d) Other duties and charges, specifying any charges for services rendered

Question 19

Due to the public service nature of the obligations associated with making and processing of export/import declarations, the imposition of fees as indicated for these activities needs to be examined with a view to their elimination.

Answer:

We are of the view that user or processing fees applied to cover the costs of services provided do not violate WTO provisions. Cambodia is aware that many developing WTO Member countries, including in the Asian region, apply such fees.

(e) Quantitative import restrictions, including prohibitions, quotas and licensing systems

Question 20

As indicated in the Cambodia Factual Summary, the importation of many pesticides is prohibited. A list of pesticides banned from use in Cambodia is shown in Table 4. Some of the pesticides, such as ethoprop, isoxathion, methamidophos and methomyl, are still used in many countries. Could Cambodia please provide risk assessment reports on the banned pesticides. We would also appreciate knowing the quantities of pesticides to which the restrictions apply and the reasons for their restriction.

Answer:

The pesticides banned for use in Cambodia can be extremely harmful to human health. Article 14 of Sub-Decree No 69 on Standards for and Management of agriculture inputs states that “Pesticides which are included in the MAFF list of banned pesticides, pesticides imported without permission from MAFF and pesticides belonging to Toxicity / Hazard Class I, according to WHO classification, are not allowed for registration, except in case of emergency or for special purposes as determined by the MAFF. Cambodia is not presently in a position to undertake risk assessment, but would greatly appreciate assistance in developing that capacity.

Official import statistics shows that the quantity of imports of the banned products is zero.

Please also see answers to Questions 9 and 12.

Question 21

As indicated in the Factual Summary, for the importation of agricultural inputs (principally pesticides and fertilizers) and pharmaceutical products and materials, in accordance with the Law on Drug Management of 9 May 1996 and of 31 March 1999, the importers and the products should be separately registered with different competent authorities. However, a total of only fifteen companies were authorized to import agricultural inputs and ninety to import pharmaceutical products and materials. We are concerned that the Law on Drug Management and the registration regime that it stipulates constitutes an indirect restrictive factor or even a non-tariff measure. What is Cambodia's justification for instituting such a restrictive regulation?

Answer:

Please refer to Sub-Decree No 69 on Standards for and Management of agriculture inputs: its Article 5 provides that "Any physical or juridical person that intends to manufacture or import, or export fertilizers shall be required to obtain a permit from MAFF".

Please refer to Sub-Decree No 69 on Standards for and Management of agriculture inputs: its Article 12 states that "Any physical or juridical person who did, does and wishes to do business in pesticides should register their products and obtain the permit from MAFF".

Cambodia has a small market, and the number of firms engaged in these operations cannot be expected to be large. As regards agricultural inputs, any company that applies and which, in the case of pesticides, can meet safety requirements, will be granted authorization. As regards pharmaceutical products, any firm that has sufficient office, storage and air-conditioning facilities and the presence of pharmacists will be granted authorization. It should be noted that the number of firms registered to import pharmaceuticals appears to be larger than the market will bear. In 2002, although 90 firms are authorized to import pharmaceutical products, in fact only 30 engaged in import trade.

Question 22

In reference to Question 3 in document WT/ACC/KHM/17, the pharmaceuticals and medical materials licensing system is "also to control and reduce the illegal imports of pharmaceuticals ...". Does the reference to "illegal" simply refer to situations where a license has not been obtained?

Answer:

"Illegal" means goods that are smuggled, counterfeit, or expired.

Question 23

Under agricultural inputs, the purposes of fertilizer licensing are not identified.

Answer:

Licensing of fertilizer is required to ensure quality in order to minimize environmental risk through soil degradation, acidity, or salinity.

Question 24

Concerning Question 5 in document WT/ACC/KHM/17, it is stated that this question is not applicable, even though the quantity/value of pesticide imports are restricted according to Question 3 of the same document.

Answer:

Please see the answer to Question 9.

Question 25

Concerning Question 9 in document WT/ACC/KHM/17, no detail is provided as to information requirements for pesticide import applications.

Answer:

Information requirements for pesticides import applications are the following:

- Name and address of the Company
- Specification of pesticides identity (Common name, Trade name)
- Quantity of pesticides to be imported
- Country of origin
- Customs entry point for shipment.

Please also refer to document WT/ACC/KHM/17/Rev.1.

(h) Customs Valuation

Question 26

Given that Cambodia will apply the Customs Valuation Agreement on accession to the WTO, is Cambodia aware that an appropriate notification request in relation to a reservation in respect of minimum customs values (in accordance with paragraph 2 of Annex III to the Agreement) should be made as soon as possible?

Answer:

Cambodia will make the necessary notification request shortly.

Question 27

Can Cambodia confirm that:

- (a) relevant draft legislation on customs valuation;**
- (b) any request it may introduce with respect to transitional arrangements (retention of minimum values); and**
- (c) an action plan to fully implement the Customs Valuation Agreement;**

will be available before accession?

Answer:

- (a) The draft Law on Customs, which includes in its Article 21 valuation provisions (see below), has been made available to members of the Working Party. The necessary implementing regulations are being drafted.
- (b) Cambodia requests transitional period (Article 20, paragraph 1, of the Customs Valuation Agreement) including the retention of minimum customs values (Annex III, paragraph 2 of the Customs Valuation Agreement)
- (c) A revised Action Plan on the Implementation of the WTO Valuation Agreement has been submitted to members of the Working Party.

Excerpt from the Draft Law on Customs:

“Article 21:

- A. The Customs value of imported goods shall be the transaction value. That is, the price actually paid or payable for goods when sold for export to Cambodia, subject to the provisions contained in Prakas issued under (H) of this Article determined in accordance with the provisions of Annex 1 to this Law. The sequential methods of customs valuation are as follows, in accordance with the provisions of Annex 1 to this.
- B. If the Customs value of the imported goods cannot be determined under the provision of (A) of this Article, the customs value shall be the transaction value of identical goods.
- C. If the customs value of imported goods cannot be determined under the provisions of (A) and (B) of this Article, the Customs value shall be the transaction value of similar goods.
- D. If the customs value of imported goods cannot be determined under the provisions of (A), (B), and (C) of this Article, the customs value of the imported goods shall be based on a deductive method.
- E. If the customs value of imported goods cannot be determined under the provisions of (A), (B), (C), and (D) of this Article, the customs value of imported goods shall be based on a computed method.
- F. The order of application of (D) and (E) of this Article may be reversed at the request of the importer.
- G. If the customs value of the imported goods cannot be based on the provisions of (A) (B) (C) (D) and (E) of this Article, the customs value shall be determined by using reasonable means consistent with the principles and the provisions as referred to in (A) (B) (C) (D) and (E) of this Article on the basis of available data in the Customs Territory subject to certain limitations.
- H. All matters related to the determination of Customs value are regulated by Prakas of the Ministry of Economy and Finance.”

Explanatory note:

Establishes the basis for determining value for duty of imported goods, consistent in accordance with WTO Valuation Agreement requirements. The majority of goods will be valued for customs purposes based on the transaction value (method one). However, in cases where this method cannot be used because the conditions required are not met (including such situations as sales between related persons, where there are restrictions on the disposition or use of the goods by the buyer, or where the sale is subject to a condition for which a value cannot be determined) then the other methods are used in sequential order. The details of the methods and their application will be contained in prakas issued by the Ministry of Economy and Finance.

Question 28

Cambodia indicates its action plan on customs valuation in table 6(a) in the Factual Summary. Certain elements in this table would require revision in the light of the obligations assumed by Cambodia on accession.

Answer:

Please see the revised Action Plan, document WT/ACC/KHM/13/Rev.1.

Question 29

Cambodia indicates its transition plan for the implementation of the WTO Customs Valuation Agreement in table 6(b) in the Factual Summary. This table suggests that the Valuation Agreement would be successively extended to different categories of trader/importer and of goods over a period of 5 years. The sequenced application of the Valuation Agreement in this manner raises several issues, and would not be consistent with application of the Agreement on accession. It would also raise questions as to the eligibility of an application for the retention of minimum values.

Answer:

Due to widespread practice of under-declaration and under-valuation by importers, there is a great risk of loss of revenue if Cambodia moves immediately and comprehensively to the transaction value. Transitional arrangements are needed including the establishment of a risk management system, in particular as regards valuation compliance. Different categories of trader/importer and of goods will be established based on their own valuation compliance records. It is acknowledged that during this transition period Cambodia's valuation practices will not be fully consistent with all of its WTO obligations. It is Cambodia's understanding, however, that the purpose of a transition period is precisely to allow some temporary departure from full compliance, when that departure is part of an orderly, viable and comprehensive shift from extensive use of minimum and administered values to full use of transaction values. Cambodia believes that its Action Plan meets that criterion.

Please also see the decision of the General Council on "Accession of Least-Developed Countries" of 10 December 2002, paragraph 1.II, which states that "transitional periods/arrangements shall be accompanied by Action Plans for compliance with WTO rules". This clearly indicates that an LDC may not be in full compliance upon accession.

Question 30

In the Timeframe column of Table 6 (b) on page 64 of the Factual Summary concerning the Transition Plan proposed by Cambodia for the implementation of the WTO Customs Valuation

Agreement, across four rows we read "By end of second year", "By end of third year", "By end of fourth year" and "By end of fifth year". In the Annex of document WT/ACC/KHM/13, 26 July 2002, however, a different form of words is used, viz: "At end of...", instead of "By end of...". We find this somewhat confusing. We understand "By" to mean "before", or "not later than", and "At" to mean "that exact point in time", which are different time limits. Could Cambodia please confirm which of these meanings applies and clarify whether or not any change has been made by its administration to the Timeframe concerning the Transition Plan.

Answer:

The language in the Annex should read "by the end of...".

Question 31

The content of the new law on Customs will be a critical factor in evaluating Cambodia's application for WTO membership. We would like to see this law in draft as soon as possible in order to maintain a rapid pace to the accession process. What is the status of the law now, and when can Cambodia circulate it to the Working Party for review and comment? The ability to grant transitions will depend on appreciation of the direction of Cambodia's efforts towards full compliance with the Agreement.

Answer:

Please see the answer to Question 5.

Question 32

There seems to be a discrepancy between Cambodia's replies to questions 24 and 26 in document WT/ACC/KHM/12. In Question 24, Cambodia states it will seek a 5-year transition to phase out minimum values. However, in Question 26, Cambodia states it will only seek a transition period for the application of valuation hierarchy. Can Cambodia please clarify?

Answer:

Please see the revised Action Plan (document WT/ACC/KHM/13/Rev.1) that indicates that Cambodia will require 5 years to phase out completely minimum values, and 5 years to phase in completely the use of the valuation hierarchy.

Question 33

Can Cambodia clarify how it would use a transition period to implement the valuation provisions of the Customs Valuation agreement, i.e., specify a timeline of activities that will bring it to compliance within the transition period? We would also recommend that Cambodia examine work programs previously approved in the WTO Committee on Customs Valuation to assist in planning its transition work. Without this information, it is difficult for us to assess the implications of such a transition on the use of transaction value for customs valuation.

Answer:

Cambodia has examined several work programs previously approved in the WTO Committee on Customs Valuation. Please see Cambodia's revised Customs Valuation Action Plan.

Question 34

The commitments Cambodia will ultimately have to make in the area of customs valuation, including the elimination of minimum prices and on the issue of valuation hierarchy, are the same commitments undertaken by developing countries already in the WTO. Cambodia should request the necessary specific technical assistance to implement the agreement as soon as possible, and as far as possible before or upon accession. We will ultimately like to see an action plan for implementation of the Customs valuation agreement which is based upon technical assistance commitments that Cambodia has already secured. (Question 24 of document WT/ACC/KHM/12).

Answer:

Please see Cambodia's revised Customs Valuation Action Plan, which details the steps that are to be taken, and the assistance required. Cambodia would welcome any additional advice and assistance on this plan.

(j) Pre-shipment inspection**Question 35**

Given that the current PSI contract expired in October 2002, has it been extended, and if so has the PSI fee been brought into line with the requirements of GATT Article VIII?

Answer:

Please see the answer to Question 36, below.

Question 36

What is the current status of Cambodia's PSI contract (paragraph 73 of the factual summary)? If there is a new contract, Cambodia must, as a WTO member operates its PSI Regime in conformity with WTO Agreements, including but not limited to the WTO Agreement on Preshipment Inspection. These WTO obligations are the responsibility of the Government of Cambodia, and compliance with the obligations must be enforced by Cambodia in the conduct of the PSI entity.

For example, is the PSI fee applied commensurate with the cost of service rendered, or is it still based on the value of the goods inspected? (paragraph 76.)

Answer:

The PSI contract has been extended by one year until October 2003, in accordance with the provisions of the existing contract. The current contract requires that all activities of the PSI firm comply with the provisions of the WTO PSI Agreement. The fee at present is based on the value of the shipment, however, as stated previously, if the contract is renewed, the fee structure will be adjusted to reflect the cost of the services rendered. A decision to this effect was reconfirmed by the full Ministerial Cabinet Meeting of 20 December 2002.

Question 37

How will Cambodia ensure the right of appeal to the government in the event of a challenge to the PSI firm's measures under WTO rules?

Answer:

The PSI contract and the implementing regulations (Prakas) provide for the establishment by the Minister of Economy and Finance of a Dispute Settlement Working Group to respond to any appeals made against an opinion issued by the PSI company or for any breach of confidentiality.

Article 24 of the draft Law on Customs provides for appeals against customs decisions, first to the Customs and Excise Department and subsequently to a Customs Tariff Committee and finally to the court. The Committee provides an independent appeal process for importers and exporters and will be appointed by Anukret.

Question 38

Is Cambodia aware that as a User Member, it will be obliged to ensure that with respect to preshipment inspection operations, it will have to ensure that the obligations which it accepts with respect to the WTO Customs Valuation Agreement are respected.

Answer:

Yes, Cambodia is aware of this.

Question 39

Will Cambodia confirm that the fees charged with respect to preshipment inspection will be terminated, including the penalty for non-inspected goods?

Answer:

Should the contract be extended, all of its provisions will be in accordance with the relevant WTO Agreements. Cambodia will continue to charge a fee that reflects the costs involved. Penalties will continue to be applied in cases where importers ignore the requirements for PSI inspection. Such penalties are needed in order to reduce duty evasion and to protect revenue and the competitive situation of compliant importers.

(k) Application of internal taxes on imports

Question 40

Have there been any recent developments concerning the establishment of an action plan and timeframe for extending the VAT system to the remaining provinces?

Answer:

In 2000, Cambodia applied VAT in five provinces. In 2002, the coverage of VAT was expanded into 5 additional Provinces, so that it is now collected in 10 provinces and the Municipality of Phnom Penh. In preparing for the 2002 expansion, the Ministry of Economy and Finance undertook in 2000 and 2001 surveys of taxpayers in all provinces. On the basis of these surveys, the 2002 expansion of coverage included all provinces in which there were taxpayers which met the VAT threshold, even though in some provinces included in the expansion the number of such taxpayers was very low (in Kampong Speu there were 11; in Koh Kong, there were 9). It is not feasible to establish a fixed time frame for extending VAT into the remaining provinces. This depends entirely on the pace of their future economic development and the emergence in them of taxpayers meeting the threshold criterion.

Question 41

Regarding the responses to questions 39 and 41 of document WT/ACC/KHM/12, we appreciate the explanation of Cambodia's VAT system. However, with respect to question 41, Cambodia must ensure that any VAT is applied in a non-discriminatory fashion to domestically produced and imported agricultural products. We seek specific information from Cambodia on its plans for addressing this issue, and reflection, e.g., in paragraph 56 of the factual summary, that Members have urged Cambodia to eliminate any discrimination in the application of the VAT to domestically produced and imported products.

Answer:

In WT/ACC/KHM/12, the last sentence in the response to Question 39 and the answer to Question 41 were inadvertently misleading.

Cambodia grants VAT exemptions to 10 categories of agricultural inputs and/or “raw agricultural products”, as described in the answer to Question 39 in ACC/KHM/12. The exemption applies to imported as well as to domestically produced goods, as stated in the answer to Question 39. Cambodia does not grant VAT exemptions to any other agricultural products or inputs. VAT on all agricultural products is identical for imported and domestically produced goods.

In order to dispel any possible ambiguity on this point, the Council of Ministers, at its full Cabinet Meeting on 20 December 2002 reaffirmed that “VAT on imported and domestically-produced agricultural products must be identical.”

Cambodia's agricultural sector is characterized by small impoverished producers, growing mainly rice, local fruits and vegetables. There are no traditional large agricultural land owners in Cambodia. As part of its poverty alleviation and rural development strategy, Cambodia exempts farmers from land and income taxes, and from the payment of turnover tax or VAT on the first sale of produce that they have grown. (See WT/ACC/SPEC/KHM/3/Rev.1/Add.1, pg. 18.) Traditional and more recent plantation-type agricultural entities are subject to VAT. (See, the answer to Question 54.)

(I) Rules of origin**Question 42**

It would be appreciated if Cambodia could please provide the following information:

- (i) Is it obligatory for the origin of an import to be indicated in non-preferential trade? We would like to know in which document the origin of the import should be indicated. Is it the import declaration, the export declaration, the invoice, the certificate of origin, or another document? Are any specific types of non-preferential proof of origin used in Cambodia and, if so, what are they?**
- (ii) Which authorities of Cambodia are responsible for the issuance of certificates of origin?**

Answer:

For non-preferential trade, importers are required to state the origin of the imported product in the import declaration solely for statistical purposes.

The Ministry of Commerce is the responsible authority to issue certificates of origin.

2. Export Regulation

(b) Customs tariff nomenclature, types of duties, duty rates, weighted averages of weights

Question 43

In paragraph 118 of the factual summary, we believe it should be noted that Cambodia imposes taxes on the export of purebred cattle and swine.

Answer:

Yes, this could be noted. In our current tariff rates (tariff line: 0106.00.10) there is a 10 per cent export duty.

(f) Export financing, subsidy and promotion policies

Question 44

We are pleased to note (paragraph 88 of the factual summary) that Cambodia's new amended investment law will address the concerns of WTO members concerning the use of prohibited subsidies as an investment incentive. Recognizing Cambodia's right to maintain such subsidies as a Least Developed Country, the measures could still be actionable under the WTO SCM Agreement. This would be a detriment to the predictability and transparency that investors and buyers look for.

Answer:

Cambodia takes note of this comment.

Question 45

The responses to questions 3 and 6 of document WT/ACC/KHM/12 indicate that imports of "intermediate goods" and "raw materials" for use by export oriented processing and agro-industries such as food canning, edible and industrial oil milling or refining, are exempted from import duties. Please indicate the specific agricultural products that have been imported duty-free under this program.

Answer:

As a basic principle, all approved projects are eligible for duty exemption of imported construction materials, machines and equipment, raw materials and intermediate goods. In that sense, all export-oriented projects, processing projects and agro-industries are eligible for the above duty exemption. In Cambodia, there are so far no activities in food canning, edible and industrial oil milling or refining, thus there are no specific agricultural products that have been imported duty free under this program.

Question 46

In its reply to question 48 of document WT/ACC/KHM/12, Cambodia states that it is considering implementation of a duty drawback scheme consistent with the Agreement on Subsidies and Countervailing measures. We would encourage Cambodia to do so. The existing system of remission of import fees and waiver of duty for certain goods used by certain investors is highly complex, lacking in transparency, and prone to abuse. The current programs do not appear to qualify as valid duty drawback schemes, and they should be notified as subsidies until a duty

drawback program that limits rebates to the amount of tariff and tax incorporated in the exported product is in place and functioning.

Answer:

Please note that, as an LDC, Cambodia experiences insuperable difficulties in the introduction and operation of an effective duty drawback system. Cambodia cannot take on a commitment regarding such a system. The relevant current programs will be notified to the WTO as required.

3. Internal policies affecting foreign trade in goods

(b) Technical regulations and standards, including measures taken at the border with respect to imports

Question 47

We welcome Cambodia's statement (paragraph 95 of the factual summary) that it would fully implement the TBT Agreement upon accession. We note that Cambodia will likely need assistance to establish a system for the development and enforcement of technical regulations and conformity assessment procedures consistent with WTO rules. However, we do not believe that implementation of the TBT Agreement should be made contingent on the provision of future technical assistance. Steps should be taken now, for example, to ensure that any technical regulations in place are publicly available, and to identify what action is needed to ensure that notice of any future technical regulations are published as proposals for comment in the official gazette. Is technical assistance really needed for such basic actions?

Answer:

The transparency measures mentioned in the question are being addressed, but technical assistance would greatly accelerate their implementation. Cambodia would like to emphasize that substantive matters relating to the establishment of an effective system of technical regulations, standards and conformity assessment will require extensive technical and financial assistance. Cambodia is also taking transparency measures consistent with the TBT requirements. As a recent development, Cambodia has concluded two projects with UNIDO on strengthening capacities related to metrology, testing, accreditation and conformity.

Question 48

The TBT Agreement does not oblige Cambodia to establish standards, technical regulations or conformity assessment procedures. The provisions of the Agreement apply, however, when such measures are developed and applied (enforced). The basic obligations require only the identification of a central contact point for information - and this contact point ("enquiry point") need not require the establishment of an extensive bureaucracy.

What is critical is that it be responsive to requests for information, as required under the TBT Agreement. This central contact point may make referrals to other agencies, or make requests of other agencies, in order to respond to requests received. Other features of a WTO-consistent standards regime may be developed later, based on need and with the provision of technical assistance.

Cambodia should begin now to think about how to best organize its functions to abide by WTO rules in this area - technical assistance can facilitate development of necessary institutions, but is

unlikely to be able to prescribe, from the outside, the best approach for Cambodia to take on some of these basis questions.

Answer:

The Government of Cambodia has approved the establishment of the enquiry point for TBT under the Department of Industrial Standards of Cambodia. As an LDC, Cambodia will need assistance in developing information systems and human capacities as mentioned in the revised TBT Action Plan.

Cambodia accepts that its standards regime may be developed later, and, in accordance with Article 2 of the TBT Agreement, the Department of Industrial Standards will establish standards, technical regulation and strengthen the conformity assessment procedures. However, the capability, infrastructure, and skills of the Department of Industrial Standards of Cambodia are still limited. Referring to the article 11 and 12 of the TBT Agreement, Cambodia strongly requests WTO Members to provide all necessary assistance.

Question 49

We also question why Cambodia's TBT action plan should require a two-year period for "readjusting technical regulations, standards, etc.". Reviewing the appropriateness and effectiveness of particular standards and technical regulations should be done on an ongoing basis - this is good standards practice, and simply good regulatory practice, as outlined in TBT Article 2.3.

Answer:

Cambodia agrees that reviewing the appropriateness and effectiveness of particular standards and technical regulations should be done on an ongoing basis. Cambodia understands that this is a routine matter in countries with established TBT regimes. Cambodia's TBT Action Plan states that Cambodia would need two years for readjustment, because Cambodia does not have experience in standards and regulations, and in the way that WTO rules in these areas need to be applied.

Question 50

We look forward to seeing the draft Law on Industrial Standards before it is adopted, in order to have a better idea of Cambodia's plans and to provide comments that may be helpful. As part of a transparent regulatory process, we encourage Cambodia to notify WTO Members of proposed regulations before adopting them, and carefully consider Members' technical comments on proposed regulations before they become final.

Answer:

Cambodia will be very happy to circulate the draft law on Industrial Standards for comments before it is adopted. In this regard, Cambodia needs assistance as mentioned in the TBT Action Plan. Cambodia will endeavour to notify in advance proposed regulations.

(c) Sanitary and phytosanitary measures

Question 51

Regarding questions 56 and 61, please clarify whether the drafts of Cambodia's Sub-Decrees on Quarantine and Sanitary Inspection of Animal and Animal Products are available, since question 56 refers to completion of the draft in 2003 and question 61 refers to submission of the draft to the

Council of Ministers in July 2002. These documents are essential to completing Cambodia's accession process, and we look forward to receiving them as soon as possible.

Answer:

A preliminary draft of this sub-Decree was made available to members of the Working Party in November 2002 (Please see document WT/ACC/KHM/19). Since then, the draft has been further reviewed and amended to ensure conformity with the WTO SPS Agreement, IOE standards, the International Animal Health Code, International Aquatic Animal Health Code, Manual of Standards of Diagnostic Tests and Vaccine. This revised draft has been made available to the Secretariat.

Question 52

Regarding Cambodia's response to questions 56 through 62, we are willing to explore with Cambodia technical assistance to address its concerns about implementation of the SPS Agreement. However, implementation of the SPS Agreement is a key element of Cambodia's accession and a five-year transition period without specific guidelines on implementation or details on why the transition is necessary raises significant concerns. What efforts has Cambodia made to simplify its implementation of the SPS Agreement? We would encourage Cambodia to consider adoption of international standards where such standards meet Cambodia's needs. In addition, where international standards may not address Cambodia's needs, we would encourage Cambodia to consider drawing upon WTO consistent standard setting work of other governments.

Answer:

Cambodia greatly appreciates the offer of technical assistance in these areas.

Please refer to the revised Action Plan for the Implementation of the SPS Agreement, which contains very specific guidelines and details regarding implementation.

Cambodia would like to inform Members of the Working Party that the Sub-Decree on Plant Quarantine, and the Sub-Decree on Sanitary Inspections of Animal and Animal Products were adopted by the Council of Ministers on 14 February 2003.

Cambodia will draw upon international standards and the work of other governments as appropriate.

Cambodia would like to inform members of the Working Party that Protocol 8 on Sanitary and Phytosanitary measures of the ASEAN Framework Agreement on the facilitation of goods in transit has been ratified by the National Assembly and Senate.

Question 53

Why is it necessary to have a two-year period for "readjusting technical regulations, standards, etc." The review of regulations and standards is something that should be done on an ongoing basis. We believe that a more detailed implementation plan than the one provided in document WT/ACC/KHM/15 can help address some of these issues. Cambodia should seek technical assistance in this regard.

Answer:

Please see the response to Question 49. Cambodia believes that its revised SPS Action Plan, which addresses the SPS Agreement, is very detailed. Cambodia indicated in both its TBT (in document WT/ACC/KHM/14 and KHM/14/Rev.1) and SPS (in document WT/ACC/KHM/15 and KHM/15/Rev.1)

Action Plans its specific technical assistance requirements and hopes that Members will be fully responsive to these requirements.

(e) **State-trading practices**

Question 54

Has Cambodia completed its list of remaining state-owned enterprises? (document WT/ACC/KHM/12, Question 65). When can we expect notifications of these enterprises, including the information sought in document WT/ACC/1 in the questionnaire?

Answer:

Cambodia notified in its Memorandum on the Foreign Trade Regime (document WT/ACC/KHM/2) that there it has no state-trading enterprises as defined by Article XVII of GATT 1994. Cambodia understands that there is no WTO requirement to notify state-owned enterprises.

For transparency purposes, Cambodia is pleased to make available to members of the Working Party: (a) information concerning the state-owned rubber plantations; and (b) updated information concerning the privatisation program of state-owned enterprises.

(a) Information concerning the state-owned rubber plantations:

The seven rubber plantation companies (Chup rubber plantation, Krek rubber plantation, Memot rubber plantation, Snoul rubber plantation, Chamcar Andoung rubber plantation, Boeng Ket rubber plantation and Peam Chaing rubber plantation) were transformed from state-trading enterprises into state-owned public enterprises under the Ministry of Agriculture, Forestry and Fisheries, according to individual Sub-Decree governing each company (Sub-Decree No. 13-19, 15 March 1999).

At present, each rubber plantation enterprise is managed by a Board whose members consist of representatives of the Ministry of Agriculture, Forestry and Fisheries, the Ministry of Economy and Finance, the Council of Ministers, the Governor of the province in which the plantation is located, and the Director-General of the rubber plantation.

These state-owned enterprises do not receive any privilege from the Royal Government of Cambodia, in accordance with the following articles of the above-mentioned sub-decrees:

- Article 1: "A state-owned enterprise is a legal entity which is administratively and financially autonomous.";
- Article 3: "Within its operation, the rubber plantation, in principle, have to operate in the same manner as any business in the private sector. The rubber plantation should be responsible for a healthy management and progress of its own business.";
- Article 5: "The rubber plantation shall pay taxes to the Government according to the existing law and the regulations.".

STATISTICAL INFORMATION

(Figures for all seven state-owned rubber plantations aggregated)

Description	1999	2000	2001	2002
Area of rubber plantation (ha)	39,718	34,094	33,589	29,874
Dry latex production (T)	45,262	42,369	38,652	32,364
Processed product (T)	46,214	43,794	42,219	33,247
Sales (T)	44,376	40,066	35,672	36,774
Krep stock (T)	1,838	3,727	6,880	2,137

Source: Ministry of Agriculture, Forestry and Fisheries

(b) Ongoing privatisation programmes:

With reference to the Circular by Council of Ministers (No: 2018, of 26 December 2002), the Royal Government of Cambodia has decided to withdraw completely from all seven state-owned rubber plantation enterprises and the Agricultural Input Company by the year 2006.

With regard to the state-owned rubber plantation enterprises, an auditing exercise is currently being undertaken with a view to determining whether these state-owned enterprises should be: closed down completely; sold to the private sector; or made subject to a joint venture, with the private sector holding the majority of shares (e.g. 51 per cent).

As regards the Agricultural Input Company, the Government will establish a national committee with a view to setting up a programme leading to the complete divestment of Government ownership by the year 2006.

Please also see the ANNEX 1 on Updated List of State-Owned Enterprises.

Question 55

We note in response to Question 11 in document WT/ACC/KHM/12 on the Agricultural Inputs Company (State-owned enterprise), Cambodia states that one of the activities of this company is the "Import, purchase, sale agricultural inputs such as fertilizers, pesticides, seeds and other equipment used as means of agricultural production". It also states that the Government is planning to import fertilizers in 2002 and that it would be done through private companies. In relation to purchasing of agricultural inputs (in this case fertilizers), what part does the Agricultural Input Company play in the process vis-à-vis the private traders? Is there free competition between private traders and the state trading enterprise?

Answer:

The Agricultural Inputs Company is not a state trading enterprise in terms of Article XVII of GATT 1994. The Agricultural Inputs Company operates on a strictly commercial basis. For example, with regard to the imports of fertilizers planned for the year 2002, the Agricultural Inputs Company called for bids by interested private-sector importers to supply 15,000 tonnes of fertilizers. The actual purchases will be completed during 2003.

In practice, the Agricultural Inputs Company operates under a free competition against the private sector enterprises. Cambodia would like to refer to the statement of the Royal Government concerning the implementation of the Asian Development Bank (ADB) agriculture program loan (No.02/DG, 23 December 1998), paragraph 7 (*Fertilizer Pricing Formulation*) which states that "the Royal Government of Cambodia has adopted fertilizer-pricing formulae based on Full-Cost Pricing. The

Cambodian Agricultural Materials Corporation (COCMA) or its successor, the Agricultural Inputs Company, will sell fertilizers under Full-Cost Pricing, without government subsidy or price fixing". As stated in the declaration of the Ministry of Agriculture, Forestry and Fisheries (No. 3671, MAFF, 7 August 1997), the Ministry ensures that the sales of fertilizers and other agricultural inputs by the Agricultural Inputs Company are made at market prices, and receives no government subsidy.

Cambodia would like to refer to the declaration of the Ministry of Agriculture, Forestry and Fisheries No: 3671 MAFF dated 7 August 1997 which states that "The Ministry of Agriculture, Forestry and Fisheries has decided to reform the operation of COCMA (later the Agricultural Input Company) so that sales of fertilizers and other agricultural inputs to interested buyers will be at market prices without government subsidy.

Cambodia would also like to refer to the Circulation of the Royal Decree implementation No.005 dated 27 December 1997 on the general statute of public enterprises Part 1 Public Enterprises, Chapter 1 Common Provisions for all Public Enterprises, Section 1: General Dispositions, Para 8.1 Domain of Activities, where it is stated that:

"Public enterprises undertake economic activities in the same way as private enterprises. Their general activities are within a market environment characterized by competition. Public enterprises must expand and gain profit from own activities by using their own resources (sale materials or services). Public enterprises must be financially autonomous".

Cambodia would like to refer further to the statement of the Royal Government concerning the implementation of the ADB agriculture program loan, No 02/DG dated 23 December 1998, Para 7 Fertilizer Pricing Formulation where it is stated that "The Royal Government of Cambodia has adopted fertilizer-pricing formulae based on Full-Cost Pricing. The Cambodian Agricultural Materials Corporation (COCMA) or its successor, the Agricultural Inputs Company will sell fertilizers using Full-Cost Pricing without government subsidy or price fixing.

In conclusion, the Agricultural Inputs Company (State-owned enterprise) undertakes economic activities similar to private traders / private enterprises and there is free competition between private traders / private enterprises and the Agricultural Inputs Company.

4. Policies affecting foreign trade in agricultural products

Question 56

As one of the net food importing countries, we consider that the Rice Reserve for Food Security has a significant importance. We are naturally interested in Cambodian policy to establish Rice Reserve for Food Security. According to the document WT/ACC/SPEC/KHM/3/Rev.1/Add.1 (page 17), the main objective of Cambodian rice reserve policy is to prepare to rescue future victims of natural disasters, such as flood. What are the specific functions of the Green Trade Company (GTC) and Ministry of Commerce, as well as their relationship? What is the legal status of GTC?

Answer:

The Green Trade Company (GTC) was established by sub-Decree #78 dated 23 November 1998, and merged four state-owned companies: Cambodian Food Company; Material and Equipment Company; Agricultural Products Company; and Camtran Company. The GTC is under the technical supervision of the Ministry of Commerce, and the financial supervision of the Ministry of Economy and Finance.

The GTC has an initial capitalization of Riel 12 billion (approximately US\$ 3 million) subscribed by the Government in the year 1998. As the return on subscribed capital, the GTC pays annually to the Government an amount equal to 1 per cent of its total sales or 20 per cent of the gross profit for the year concerned, whichever higher. The GTC may borrow from the banking system to finance its working capital and to meet other needs. The Royal Government may provide a guarantee to such loans, should it be approved by the Minister of Economy and Finance. Interest rates on loans to the GTC are market rates. The GTC receives no financial contribution (other than the initial capital) or advantage from the Government or from any public funds. (Please note that transactions related to the Rice Security Reserve are on a commercial basis as far as the GTC is concerned. See below.)

The GTC, like any private company, is free to engage in any manner of trade, domestic or foreign, in goods and services. It is authorized to buy and sell foodstuffs and other commodities, and to provide services such as grain storage, grain brokerage, and rice milling. To date, its purchases and sales of commodities have been limited to rice.

The GTC's purchases and sales may have the effect of moderating the domestic rice price movements, as it tries to buy when rice is in abundant supply (and prices are low) and sells when commodities are scarce (and prices are high). Both purchases and sales are made at market prices.

The main headings in the income statement of GTC for 2001 are presented below (the statement for 2002 has not yet been finalized).

Green Trade Company, Balance Sheet (Riel, 2001)	
Income	1,868,354,464
Total sales	1,785,210,280
Interests on capital	83,144,184
Expenditure	1,795,232,816
Gross profit	73,121,648
Profit distribution to government	17,852,103
Net profit	55,269,545
(Pour memoire: VAT payments	R. 99,927,440)

The table below provides information on GTC's rice trading for the year 2001.

	Quantity (kg)	Value (Riel)
I. PURCHASE		
1. Paddy rice	2,201,228	684,997,484
2. Milled rice	650,000	331,372,500
TOTAL		1,016,369,984
II. SALES		
1. Milled rice	1,516,300	934,000,493
2. Other services		851,209,787
TOTAL		1,785,210,280

In addition to its commercial transactions, the GTC participates in the Cambodian Rice Reserve Policy. The objective of the Rice Reserve is to rescue victims of natural disaster, who have urgent needs for emergency food aid. Every year the government establishes a budget envelope designating amounts it estimates will be required for emergency assistance. The GTC then makes purchases within the limits established by this envelope, using its own (or commercially borrowed, see above) funds. The purchases

are at current market prices. When and as the need for emergency food supplies materializes, the responsible agency, the National Committee for Disaster Management (NCDM), purchases the amounts needed from the GTC, using the government funds earmarked in the budget envelope. The GTC charges NCDM at a rate equal to its costs plus a very small mark-up. NCDM makes the rice available to needy persons free of charge. The table below provides the budget envelopes established for emergency assistance for the period between 1998 and 2002.

Rice Security Reserve (Riel)				
1998	1999	2000	2001	2002
1,000,000,000	1,000,000,000	1,000,000,000	1,640,000,000	3,280,000,000

Source: Ministry of Commerce

Question 57

The same document, WT/ACC/SPEC/KHM/3/Rev.1/Add.1 (page 17), explains that within the main objective, the GTC also engages in purchasing and selling rice when a favourable market condition occurs, in order to maintain its readiness for the rescue operation. Could you please clarify the balance of payment (income and expenditure) of these activities; rice purchasing and selling?

Answer:

Please see the answer to Question 56.

Question 58

Cambodia's response to question 39 of document WT/ACC/KHM/12 leads us to believe that the application of VAT to agricultural products in Cambodia is not consistent with the principle of National Treatment. We would like to know how Cambodia intends to address this disparity.

Answer:

Please see the answer to Questions 41. In addition, the reply to Question 39 states that farmers selling their own products do not pay VAT. This is simply because such transactions do not meet the threshold criterion.

Question 59

In paragraph 122 of the factual summary, Cambodia indicates that, as a least developed country, it does not need to make commitments on agricultural export subsidies. While we recognize Cambodia's access to flexibilities in the agreement on agriculture, we would still urge Cambodia to commit to refrain from using agricultural export subsidies, or any other trade-distorting measures.

Answer:

Cambodia takes note of this comment. The Doha Ministerial Declaration states that Members agreed to "reductions of, with a view to phasing out, all forms of export subsidies". Cambodia will commit to bind export subsidies at zero, except those that would be allowed for developing countries as a special and differential treatment, at the same time as the completion of the phasing-out of all forms of export subsidies by all WTO Members.

Question 60

Ministers agreed at Doha to negotiations aimed at "phasing out all forms of export subsidies" for agriculture. While recognizing Cambodia's LDC status, we consider elimination of agricultural export subsidies globally to be in Cambodia's interest, and therefore repeat our request for Cambodia to bind export subsidies at zero.

Answer:

Cambodia takes note of this comment.

5. Policies affecting foreign trade in other sectors**(a) Textiles regime****Question 61**

For the record, we would like to correct the information in paragraph 123 of the factual summary. The United States has placed quantitative restrictions on 13 categories of apparel from Cambodia under the terms of our Bilateral Textile Agreement.

Answer:

Cambodia appreciates this correction.

V. TRADE RELATED INTELLECTUAL PROPERTY REGIME**1. General****Question 62**

We appreciate the action plan Cambodia has presented for implementing TRIPS. We look forward to working with Cambodia to refine this action plan. Please provide an update on the status of the new copyright law which emerged from the Council of Ministers in March 2002 and the law on Patents, Utility Models and Industrial Designs which Cambodia indicated would be promulgated in September 2002 (see paragraph 141 of the factual summary).

Answer:

Cambodia has been following the Action Plan submitted to Members of the Working Party, and wishes to confirm that the following steps foreseen in the Action Plan have been accomplished:

- The Law on Copyright and Related Rights was adopted by the National Assembly on 21 January 2003, and was adopted by the Senate on 13 February 2003. We expect to obtain the promulgation by His Majesty the King not later than March 2003.
- The Law on Patent, Utility models and Industrial Designs was adopted by the National Assembly on 28 November 2002 and adopted by the Senate on 31 December 2002. This Law was promulgated by His Majesty the King on 22 January 2003.

Question 63

Based on work to date and Cambodia's own assessments, we seek a realistic schedule laying out the measures that Cambodia will take, over time, to bring its IPR regime into compliance with

specific provisions of TRIPS. This schedule should be incorporated into Cambodia's protocol of accession to record the understanding between Cambodia and the Working Party on how Cambodia will use its transition period. It will also be a blueprint for the technical assistance that will make compliance possible within the timeframe contemplated. By outlining the timeframe and steps towards compliance, Cambodia will eliminate uncertainty for traders and investors. We also seek some specific assurances from Cambodia on its application of measures covered by the WTO TRIPS agreement during any transition period approved, i.e., along the lines described earlier in the presentation. We remain ready to work with Cambodia towards the earliest possible implementation of WTO TRIPS Agreement.

Answer:

Cambodia appreciates this comment and wishes to inform the member states that Cambodia's Legislative Action Plan contains an assessment of required technical assistance and the time frame for enactment of individual IP laws. We understand that this Action Plan will help to reduce uncertainty among investors and help make known Cambodia's commitment to bring its IP legislation into full compliance with WTO-TRIPS agreement through the enactment of new IP laws and regulations, and the implementation of these laws. We also take note of the comment on the need to establish a realistic schedule laying out measures to be taken by Cambodia to bring its IPR regime to be complied with the specific provisions of TRIPS, and understand that this schedule will be incorporated into the protocol of accession.

Question 64

We have some specific questions regarding the Draft Law on Patents. Concerning legislation, the Action Plan for the Kingdom of Cambodia for the Implementation of the TRIPS Agreement (document WT/ACC/KHM/16 of 26 July 2002) indicates that the Law on Patents, Utility Models and Industrial Designs was to be promulgated in September 2002, and that the sub-decree and implementing regulations under this law would be issued in February 2003. Please indicate the status of the draft law and regulations.

Answer:

Please refer to the answer to Question 62 regarding the status of the Law on Patent, Utility Models and Industrial Designs. Additionally, Cambodia wishes to inform member states that the Sub-Decree on the implementation of this law will soon be drafted with the assistance of WIPO. It is anticipated that this drafting will begin during the first quarter of 2003.

Question 65

Concerning exclusions, the draft Patent Law would exclude from patent protection several items, including "schemes, rules or methods for doing business" and "computer programs". Please indicate why inventions in these areas that otherwise meet the patentability criteria of novelty, inventive step and industrial applicability are to be excluded from patent protection. How are these and other exclusions in the patent law consistent with the limited exclusions permitted under Article 27 of the TRIPS Agreement?

Answer:

Schemes or methods for doing business are not eligible for patent protection to the extent that they lack practical application. In computer programs, it is algorithms per se that are not eligible for patent protection. These distinctions will be made clear in the implementing decree.

Question 66

Concerning plant varieties, Article 27.3(b) of TRIPS Agreement requires members to "provide for the protection of plant varieties either by patents or by an effective *sui generis* system." Article 4, of the Cambodia law does not exclude plants, so it would appear Cambodia is in compliance with Article 27.3(b). However, the full content of the patent law exclusions could not be reviewed since Articles 6, 7 and 8 contain printing code errors preventing review of these provisions. No information was provided that would indicate that Cambodia has a plant variety protection act or has adopted the provisions of UPOV. Please verify that plant varieties are protected by patents or a plant variety protection law.

Answer:

Plant varieties are excluded from the Law on Patent, Utility Models and Industrial Designs. Cambodia plans to draft a separate IP law on Plant Varieties Protection with technical assistance of UPOV which is anticipated in March 2003 (please refer to the submitted Legislative Action Plan).

Question 67

Concerning dependent Patent Compulsory Licenses - Articles 56-64 of Cambodia's patent law appear to provide for a type of dependent patent compulsory license. However, the grant of such a license does not appear to include all of the conditions for the grant of such a license as required by TRIPS Article 31, especially Article 31(l). Given that Articles 56-57 were cut off in transmission and could not be fully reviewed, please clarify that all of the provisions of Article 31(l) are contained within the law.

Answer:

TRIPS –Article 31 (l)		Cambodia's Law on Patent, Utility models and Industrial Designs – Articles 56-64
(i)	Technical advance of economic significant in second patent related to invention claimed in the first patent.	Article 59
(ii)	Owner of the first patent shall be entitled to cross-licence to use invention claimed in the second patent.	Article 60
(iii)	Non-assignable use of the first patent excepted for the assignment being done together with the second patent.	Article 62

Question 68

Concerning compulsory licenses, Articles 47-55 appear to set forth conditions for compulsory licensure. However, condition for the grant of such a license does not include all of the provisions set forth in Article 31 of the TRIPS Agreement. Please clarify how Cambodia's law provides for each of the provisions of TRIPS Article 31(a)-(l) when compulsory licenses are issued.

Answer:

Article 31 – TRIPS Compulsory Licensing		Cambodia's Law on Patent, Utility Models and Industrial Designs, Articles 47-55
(a)	Authorisation on individual merits.	Article 47

Article 31 – TRIPS Compulsory Licensing		Cambodia's Law on Patent, Utility Models and Industrial Designs, Articles 47-55
(b)	Efforts to obtain authorisation failed, and case of national emergency or non-commercial use.	Article 52.
(c)	Limited scope and duration on authorised purpose. Only authorises for public non-commercial use in the case of semi-conductor.	Article 47,49,54.
(d)	Non-exclusive use.	Article 47 (i).
(e)	Non-assignable use.	Article 50.
(f)	Authorised only for domestic supply.	Article 53.
(g)	Right to review by competent authority and possible termination if circumstance ceases to exist.	Article 49.
(h)	Paid adequate remuneration to the owner.	Article 47.
(i)	Authorisation subjected to Judicial review or other independent reviews.	Article 55.
(j)	Remuneration subjected to Judicial review or other independent reviews.	Article 55.
(k)	Taking into account the principle of anti-competitive practices.	Article 47(ii) and 52 (iii).
(l)	Permission to exploit the second patent which can't be exploited without infringing the first one.	Conditions set forth in Articles 59, 60, and 62. (Please see answer of question 67).

Question 69

Concerning utility models – Cambodia's patent utility law does not appear to contain any provisions for protection of layout-designs as required by Article 35 of TRIPS Agreement. Please verify that these provisions are or will be provided for in a separate law.

Answer:

Concerning the protection of Layout Designs as required by Article 35 of TRIPS agreement, Cambodia requires technical Assistance in preparing a separate IP law on the protection of Layout Designs and will proceed with the drafting as soon as it receives such assistance.

Question 70

Concerning undisclosed information, Cambodia's patent utility law also does not appear to contain any provisions for protection against undisclosed information (data exclusivity) as required by Article 39 of TRIPS Agreement. Please indicate where Cambodia's law provides protection for undisclosed data as required by Article 39 of TRIPS Agreement.

Answer:

Please see Article 128 of the Law on Patent, Utility Models and Industrial Designs. Cambodia will also prepare and adopt a separate law on the protection of undisclosed information. Please see the revised IPR Action Plan.

Question 71

Regarding enforcement provisions, in the Additional Questions and Replies document (Replies to Questions 1 and 9), Cambodia indicates that it will fully address the civil procedure requirements under the TRIPS Agreement in a new Civil Code and Civil Procedure Code, and further that such

draft code is to be submitted to Parliament for review and action in October 2004. Is this timeframe still the current one for the Civil Code and Civil Procedure Code?

Answer:

Yes, this timeframe is still current.

Question 72

In response to Question 9 concerning how Cambodia plans to provide for border measures as required under TRIPS Articles 51-60, Cambodia indicated that a separate Law on Customs would address these requirements. What is the status of the proposed Law on Customs, and does it fully address all TRIPS requirements in this area?

Answer:

Border measures required by TRIPS Articles 51-60 are not included in the draft Customs Law. Rather, the necessary border measures are included in the Law on Marks, Trade Names and Acts of Unfair Competition articles 35-47 and the Law on Copyright and Related Rights. The Law on Copyright includes, by reference, all border measures included in the Law on Marks, Trade Names and Acts of Unfair Competition. (See Article 63 of the Copyright Law.)

Question 73

TRIPS Article 47 - application to civil court proceedings: This was raised in the accession documents as a concern that was not currently addressed, but that would be in the future. When and how will this issue be addressed?

Answer:

Cambodia understands that Article 47 is not a requirement for WTO members. The issue referred to in TRIPS Article 47 is addressed in article 42 (second paragraph) of the Law on Marks, Trade Name and Acts of Unfair Competition.

Question 74

TRIPS Article 48: The accession documents indicate that the indemnification of defendant, including attorneys' fees, will be provided for in the new Civil Code and/or Civil Procedure Code. It would appear that there is current language in both the Draft Law on Copyrights (i.e., Arts. 61, 67(3)) and the Trademark Law (i.e., Arts. 27-28) that may address or encompass this concern. Will provisions be written into the Civil Code and the Civil Procedure Code to comply explicitly with TRIPS Article 48 in order to avoid any ambiguity?

Answer:

The Codes will not have such detailed provisions. Cambodia believes that the relevant laws adequately and unambiguously meet the requirements of TRIPS Article 48. The forthcoming IPR legislation that remains to be drafted will likewise address this issue. Cambodia is making available current drafts of the Civil Code and Civil Procedures Code.

Question 75

TRIPS Article 61: Responses in the Revised Checklist concerning a number of enforcement provisions requirements do not cite applicable sections of the Draft Law on Copyright. Please explain this lack of reference to draft Law on Copyright provisions.

Answer:

The Checklist has been revised to reflect applicable sections of the Law on Copyright. Please also note that the Law on Copyright includes by reference the border measures included in the Law on Marks.

Question 76

Regarding the Draft Law on Copyrights Enforcement Provisions and its Articles 58-63, these appear to meet minimal TRIPS compliance on most requirements, although specifics would need to be fleshed out in more detail in implementing regulations.

Answer:

Please see the answer to Question 75. Cambodia will specify the necessary implementing regulations in a Sub-Decree that will be drafted soon.

Question 77

As for Articles 64-65, there would appear to be some inconsistency in the ranges of fines and imprisonment provided for in the case of overlapping protected works (e.g., audiovisual works). Please clarify the apparent inconsistency in the range of potential fines and imprisonment terms contained in these two provisions.

Answer:

There is no inconsistency, because article 64 addresses only the issue of the infringement of the rights of authors and article 65 addresses only the abuse of the rights of performer, phonogram producers and broadcasting organisations. It seems to be overlapping in the last paragraphs of both articles, but in article 64 the last paragraph refers to the infringement by displaying/performing or disseminating without authorization, and in article 65 it merely refers to the infringement by means of broadcasting without authorization. The implementing Sub-Decree will clarify that infringement of broadcasting rights is to be dealt with only under Article 65.

Question 78

Concerning Article 67, there would appear to be an attempt at compliance with TRIPS requirements in granting customs officials provisional enforcement measures at the border subject to judicial review (the translation might be inaccurate). Will all customs related TRIPS requirements be more fully and explicitly addressed in the proposed Law on Customs or in implementing regulations?

Answer:

Article 63 (not 67) of the Law on Copyrights and Related Right grants customs officials the right to enforce border measure on pirated goods including suspension of clearance and seizure. Please note that the more detailed border measures spelled out in the Law on Marks are included by reference in the Law on Copyrights.(See Article 63).

Question 79

About Article 68, this provision appears to address both anti-circumvention and rights data management issues adequately.

Answer:

Cambodia agrees with this comment.

Question 80

Regarding Trademark Law enforcement provisions, the provisions in Articles 27-28 grant courts the authority to award damages and any other remedial measures as provided for in the "general law"? Will this authority be more explicitly provided for in the Civil Code and Civil Procedures Code?

Answer:

The Civil Code and the Civil Procedures Code provide legal authority for awarding damages and other remedial measures. Cambodia is making available current drafts of the Civil Code and the Civil Procedures Code.

Question 81

Articles 29-34: These provisions address and comply with other TRIPS requirements. Will implementing regulations or a decree more fully detail these provisions on procedures?

Articles 35-47: These concern border measures and appear to be TRIPS compliant.

Article 62: Provides for judicial review of administrative decisions and appears to be in compliance with TRIPS Article 41.

Articles 63-69: These provisions lay out the various penalties available to be imposed by a court. They would appear to be adequate and calculated to have a future deterrent effect against repeated infringement, at least on a commercial scale.

Answer:

Cambodia agrees with these comments.

Question 82

Regarding Law on Patents enforcement provisions, Article 126 grants the courts authority to order injunctive relief for infringement, to award damages, and to grant any other remedial remedy provided for under general law. Will this authority also be addressed or contained in the Civil Code and Civil Procedures Code?

Answer:

Yes, this authority will be addressed in the Civil Procedures Code. Cambodia is making available current drafts of the Civil Code and Civil Procedures Code.

Question 83

Articles 129-132 would appear to establish fair and adequate criminal penalties calculated to deter future infringement; provides for imprisonment, seizure, forfeiture, and destruction of both infringing goods and equipment used in the commission of the infringement. Will implementing regulations spell out more explicitly the situations in which these criminal penalties can/will be imposed?

Answer:

Yes, the relevant Sub-Decree will contain explicit details regarding implementation.

Question 84

Regarding the Law on the Management of Pharmaceuticals, various provisions of this law could be potentially used to deal with counterfeit pharmaceutical sale, distribution and importation. Will intellectual property rights-holders be able to utilize provisions of this law to seek administrative action against unauthorized/unlicensed manufacturers, retailers, and distributors of counterfeit pharmaceutical products?

Answer:

Yes, right-holders will be able to use the provisions contained in this law to protect their own lawful rights. Article 12 of the Law provides for criminal penalties for knowingly producing, importing, exporting, distributing or selling unregistered narcotic drugs or pharmaceuticals that are counterfeit, of sub-standard quality or expired thus having an adverse effect on human health. Penalties consist of fines of Riels 20 million to 50 million, and prison terms of from 5 to 10 years.

Question 85

Regarding the Law on Criminal Procedure, while it does not always use explicit TRIPS language, it appears to provide clear and adequate criminal procedures that can be used in intellectual property prosecutions. Implementation will be the key.

Answer:

Cambodia agrees with this comment.

General Questions/Comments on Next Steps in the Working Party

In addition to the necessary review of Cambodia's trade regime, and the negotiation for terms of Cambodia's WTO membership required by Article XII of the WTO Agreement, we view Cambodia's accession process as an opportunity to identify areas where technical assistance can help build trade capacity and incorporate trade as part of Cambodia's economic development program.

There was a time when acceding countries trade regimes were not reviewed, and when little was required of a country to join the international trading system. History has shown that membership on these terms was of little value to the acceding country.

Working with other delegations, we hope to make this accession process a point of departure for the reforms and assistance that Cambodia needs to make full use of its participation in the WTO. We are prepared to work with Cambodia to move the accession process forward.

On transitions:

Cambodia has stated that it intends to seek transition periods to implement the Agreements on Customs Valuation, SPS and TRIPS.

Are these the only areas where Cambodia believes it will need transitions to fully implement WTO provisions?

Is Cambodia prepared to implement all other WTO provisions from the date of accession, or are there other areas where additional time or flexibility will be needed?

We understand that Cambodia has a legitimate need to make use of some of the flexibilities available to least developed countries (LDCs) under the WTO agreements or transitions not otherwise provided for in WTO Agreements. We are sympathetic, and we expect that Cambodia will be explicit in its requests for such flexibility and transitions.

For each requested transition or departure from otherwise standard WTO requirements, we would seek as much specificity as possible as to the scope and duration of the transition requested.

This will mean that Cambodia should provide more detailed action plans, indicating the precise areas where a transition is requested, end dates for the transitions, and the intermediate steps that Cambodia's trading partners can use to follow Cambodia's progress in implementing the relevant agreements.

This will help us secure the technical assistance necessary to assist in implementing the commitment within the period of the transition.

We would request that Cambodia make commitments to consolidate current implementation or make further progress towards WTO compliance in some areas immediately.

E.g. in the case of Customs valuation, Cambodia should not expand the use of minimum prices beyond the products currently listed in legislation and the prohibited methods of valuation should not otherwise be used.

E.g., in the case of Intellectual Property Protection, TRIPS-consistent measures already in place should not be subject to transition and Articles 3, 4 and 5 of the TRIPS Agreement, providing for, inter alia, national treatment and MFN treatment under current legislation in place, should apply

from the date of accession. During the transition, Cambodia should not allow manufacturing facilities to be established that produce goods or works inconsistent with the substantive provisions of the TRIPS Agreement.

E.g., in the case of SPS, an enquiry point should be established, SPS measures taken should be notified to the WTO, and Cambodia should be prepared to consult with WTO members upon request if measures taken negatively impact their trade.

In those areas where Cambodia is already in compliance with WTO agreements, whether or not subject to a transition, Cambodia should not take any action that would bring it out of compliance.

As changes are made in its laws, regulations and practice during the transition, Cambodia should ensure that any progress towards WTO conformity is retained, and that none of the changes result in a reduction in the degree of consistency with the provisions of WTO agreements.

In general, Cambodia should provide MFN and National Treatment for all existing rules during any transition periods granted.

Technical Assistance:

We applaud Cambodia's efforts to reform its economy and integrate itself into the world economy, including through this accession process. Cambodia has put itself on what we believe is the only path to sustainable development for a small economy - a path of open markets and the rule of law.

There is more hard work to do, and we understand that technical assistance will be required in several areas.

In this regard, work underway in the Integrated Framework and other technical assistance opportunities will be extremely relevant.

We are concerned, however, about the numerous areas in which Cambodia describes its proposed actions as being contingent on the availability of technical assistance.

It is up to Cambodia to identify the specific assistance it needs in each case to move towards WTO compliance, so that technical assistance providers, both in the Integrated Framework context and otherwise, can confirm their willingness to provide the necessary support.

Ideally, Cambodia should finalize its WTO commitments only after obtaining commitments for the necessary technical assistance, so there will be no question of Cambodia's ability to follow through on its action plans.

We, and other Working Party members, stand ready to address Cambodia's technical assistance needs and to help make Cambodia's accession a useful tool for economic development.

Answer:

Cambodia appreciates these thoughtful comments and looks forward to exploring them in more detail in the context of discussion over the draft Report of the Working Party.

ANNEX 1**UPDATED LIST OF STATE-OWNED ENTERPRISES****I. STATE-OWNED ENTERPRISES****Ministry of Agriculture, Forestry and Fisheries**

1. Chup Rubber Plantation Company
2. Krek Rubber Plantation Company
3. Memut Rubber Plantation Company
4. Chamkar Andaung Rubber Plantation Company
5. Snuol rubber Plantation Company
6. Pem Chang Rubber plantation Company
7. Boeung Ket Rubber Plantation Company
8. Agricultural Inputs Company

Ministry of Public Works and Transport

1. Sihanouk Ville Port
2. Phnom Penh Port
3. Kampuchea Shipping Agency and Broker (KAMSAB)
4. Construction Laboratory
5. Royal Railway of Cambodia
6. Neak Loeung Ferry
7. Prek Kdam Ferry

Phnom Penh Municipality

1. Phnom Penh Water Supply

Ministry of Industry, Mines and Energy

1. Electricity of Cambodia (EDC)

Ministry of Economy and Finance

1. Rural Development Bank

Ministry of Commerce

1. Green Trade Company

II. JOINT-VENTURE ENTERPRISES (participation of the State in 51 %)

1. Camintel Company
2. Cambodia Pharmaceutical Enterprises

**III. ENTITIES TRANSFORMED INTO AUTONOMOUS STATE-OWNED ENTERPRISES
THAT ARE IN THE PROCESS OF ORGANIZING THEMSELVES FOR OPERATIONS**

1. Printing and Distribution Institution
 2. National Insurance Company
 3. Cambodia-Re Company
 4. Public Construction Laboratory Department
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