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CAMBODIA'S WTO ACCESSION: A STRENUOUS BUT NECESSARY STEP FOR A POOR NATION SEEKING ECONOMIC PROSPERITY

Rebecca Povarchuk

Abstract: During the 2003 World Trade Organization (“WTO”) Ministerial Conference, Cambodia became the first least-developed nation to accede to the WTO through the organization's full working party accession process. Due to domestic, political, and economic pressures to accede, Cambodia agreed to an arduous package of legal and economic reform that have left many, including Cambodian officials, wondering whether the small country is capable of meeting its obligations. Having plunged into the WTO with the belief that accession is its best hope for a prosperous future, Cambodia now faces the challenges of implementation.

In arguing against WTO membership for Cambodia, critics condemn powerful developed nations like the United States for pressuring the smaller, poorer country into an inequitable arrangement that may leave poor farmers worse off and the sick without access to drugs. Yet liberalizing its markets and integrating its economy with the rest of the world will ultimately benefit Cambodia because it will stimulate reform, encourage the continued flow of international assistance, and provide trade protections it otherwise would not enjoy. As a trade-dependent country, Cambodia made a wise investment by successfully negotiating for WTO membership. WTO membership can be a helpful tool for achieving greater prosperity for developing nations like Cambodia because it encourages progressive domestic policies.

I. INTRODUCTION

In September 2003, during the World Trade Organization (“WTO”) Fifth Ministerial Conference, Cambodia became the first least-developed country (“LDC”) to accede to the organization through its full working party process. Thirty other LDCs have been WTO members since the...
trade organization formed in 1995 as an extension of the General Agreement on Tariffs and Trade ("GATT").

As a young democracy and fledgling market economy, Cambodia's government has pursued policies designed to strengthen the rule of law, establish political checks and balances, and foster a thriving civil society. The cornerstone of the government's long-term economic objectives has been to increase trade and support economic growth via regional and global integration. Accordingly, Cambodia has actively pursued WTO membership.

Membership, however, has not come without sacrifice. Even pro-WTO Cambodian officials have expressed concern over their country's future and whether they will be able to implement their membership obligations. The WTO called implementation of the obligations "a lengthy and difficult process." International humanitarian organizations have condemned WTO's accession as dangerous for the poor and the sick, and criticized the WTO for taking advantage of Cambodia.

This Comment argues that, despite the country's onerous accession commitments, WTO membership will benefit Cambodia by furthering its goal of achieving increased economic prosperity through trade. Part II of this Comment outlines Cambodia's recent political, social, and economic history and the resulting challenges that this history presents to the WTO requirement of economic liberalization. Part III explores some of the specific disadvantages that LDCs like Cambodia face during WTO accession negotiations and membership. Part IV examines some of Cambodia's specific WTO accession commitments that have drawn criticism from

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9 WTO, supra note 7, para. 7.
human rights advocates, then highlights the benefits of WTO membership. Finally, Part V argues that Cambodia can greatly benefit from WTO membership by implementing reformatory and progressive domestic policies.

II. CAMBODIA SINCE 1975: FROM KHMER ROUGE TO WTO

In the last thirty years, the Cambodian people have experienced brutal totalitarianism, devastating civil war, foreign invasion, and most recently, democratization. Cambodia still suffers from the legacy of political extremism that characterized the nation during the 1970s and 1980s. During the 1990s, the small country emerged from isolation and began an attempt to secure its place as a democratic Asian exporter through yet another major political and economic shift. Cambodia has engaged in major reforms in order to become more WTO-compatible. It encountered serious political, judicial, and economic challenges to implementing democratic ideals and achieving the level of liberalization necessary to integrate globally.

A. Pol Pot's Cambodia and the Subsequent Vietnamese Regime: Death, Poverty, and Destruction

In 1975, the Khmer Rouge gained control of Cambodia and set upon the destruction of much of the country's financial, governmental, legal, and social structures. The regime banished money, blew up the central bank and many court houses, destroyed government documents, dismantled the education system, and massacred millions. Under its infamous leader Pol Pot, the Khmer Rouge attempted to wipe out all social classes. In one of the most horrific state-committed atrocities of the twentieth century, up to

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13 WTO, supra note 7, para. 4.
14 See WTO, Accession of Cambodia: Memorandum of the Foreign Trade Regime, at 2, WTO Doc. WT/ACC/KHM/21 (June 22, 1999).
15 WTO, supra note 7, para. 6.
16 See id. para. 4.
17 Ratner, supra note 12, at 3.
19 WTO, supra note 14, at 1.
20 FERNANDO, supra note 18, at 44.
21 Ratner, supra note 12, at 3.
two million people died in a period of only a few years. This short experiment in social reconstruction devastated Cambodia.

The Vietnamese invaded and gained control of Cambodia in 1978, and established a regime that defined itself by its opposition to American hegemony and the capitalist system. During the next twenty years of Vietnamese rule, civil war ensued until the United Nations ("U.N.") intervened in 1992 to implement an accord between the fighting factions. The United Nations Transitional Authority in Cambodia ("UNTAC") assumed control of the country in a successful intervention to establish peace. In 1993, UNTAC oversaw democratic elections in which approximately ninety percent of registered voters participated.

In light of its turbulent recent history, the current Cambodian government is eager to achieve stability and economic prosperity. Increasing international economic integration, especially through WTO membership, is the path the government has chosen in order to attain these goals. Government policy has adopted trade as a strategy to reduce entrenched poverty. Given the recent decades of instability and destruction, however, the Cambodian government is now faced with a long list of domestic problems.

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22 WTO, supra note 14, at 1.
24 Vietnam invaded Cambodia because of historical tensions, and in part because of cross-border raids by some Cambodians. Ratner, supra note 12, at 3.
25 CAMBODIA CONST. pmbl. (People's Republic of Kampuchea 1979-1989); Deputy Sec'y of the Communist Party of Kampuchea Nuon Chea, Statement to the Communist Workers' Party of Denmark (July 1978) (on file with author).
30 The U.N. and Cambodia have been in discussions about the establishment of a Tribunal since 1997, but so far U.N. concerns about the impartiality and independence of the tribunal have delayed its realization. Daniel Kemper Donovan, Joint U.N.-Cambodia Efforts to Establish a Khmer Rouge Tribunal, 44 HARV. INT'L L.J. 551 (2003).
32 Id.
B. Years of Social and Economic Adversity Leave Cambodia in Need of Major Reforms

The impact of nearly two decades of radical regimes has complicated Cambodia's reform process. In particular, this process has highlighted the need to stabilize political processes and legal institutions. Long-lasting political divides have sparked erratic violence and concerns about more conflict. In addition to countless individual traumas resulting from the mass murders under the Khmer Rouge, the mass slaughter of the country's intellectuals created a tremendous knowledge gap that has plagued its government institutions, especially the judiciary. WTO membership negotiations have brought international attention to many of these problems because of the volume of assistance needed to address them. Moreover, the accession process has assisted in securing this vital international cooperation and assistance.

1. Cambodia's Recent Political Volatility has Threatened Reform

Despite a largely successful power sharing agreement between Cambodia's two main political parties, the country has experienced bursts of political killings and violence. In January 2003, riots led to the destruction of the Thai embassy, drawing U.N. concern. Foreign governments and human rights organizations have accused the Cambodian
government of human rights violations including torture, unfair trials, and limitations on free speech. A 2003 U.N. resolution noted that torture, illegal child labor, and inhumane prison conditions have persisted.

Political corruption at the highest levels of Cambodia's government has been another target of international criticism. Concerns over Prime Minister Hun Sen's rise to power prompted the United States to suspend foreign aid to the Cambodian government. Moreover, although the 2003 elections were an improvement over the violent 1998 elections, they still fell short of international standards.

2. Cambodia's Judicial and Executive Branches: The Lack of Lawyers, Corruption, and Structural Problems

One of the most fundamental problems facing Cambodia today is the paucity of trained lawyers and judges. Under the Khmer Rouge, law books were destroyed and judges, lawyers, prosecutors, and legislators were slaughtered. The Vietnamese subsequently installed a socialist judiciary that conducted farcical trials. After the U.N. intervention, the Cambodian bar formed with only thirty-eight members. Consequently, a lack of attorneys has remained a major problem; there are too few in general, and

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47 G.A. Res. 57/225, supra note 42, at 3-4.
51 See id.
53 DONOVAN & BRAND, supra note 36, at 84.
54 FERNANDO, supra note 18, at 54.
55 DONOVAN & BRAND supra note 36, at 114.
they are concentrated in the capital, away from most of the population.\textsuperscript{56} The Cambodian government has recognized the gravity of the problem but notes that the training of lawyers is a long-term goal.\textsuperscript{57} In response, international assistance has been targeted at developing legal curricula and Cambodian legal materials, providing legal education to Cambodians abroad, and creating and managing the bar association.\textsuperscript{58} As new lawyers have entered practice, however, they have joined a profession known in Cambodia for corruption.\textsuperscript{59}

Widespread judicial corruption has also been a problem for Cambodians and foreigners in Cambodia. It is the most significant deterrent to both Cambodian and foreign investors\textsuperscript{60} and it has thwarted attempts to reduce poverty.\textsuperscript{61} Adequate provisions against corruption and bribery simply do not exist.\textsuperscript{62} Cambodia is not party to any international anti-corruption agreements, nor has national legislation been enacted.\textsuperscript{63} Moreover, inadequate salaries\textsuperscript{64} leave judges unable to support their families' minimum needs, making them susceptible to corruption.\textsuperscript{65} The U.N. has called on Cambodia to increase its judiciary budget for this reason.\textsuperscript{66} In addition to budgetary concerns, the judiciary has suffered from excessive dependence on the executive branch.\textsuperscript{67}

Although the Cambodian Constitution explicitly withholds judicial powers from the executive and legislative branches,\textsuperscript{68} in reality the judiciary has struggled for independence.\textsuperscript{69} Constitutionally, the power of judicial and prosecutorial appointments lies with an "independent" body—the Supreme
Council of the Magistry ("SCM"). Pursuant to subsequent legislation, however, the SCM is governed by rules set by the Ministry of Justice ("MOJ")—an executive branch ministry—thus compromising the SCM's constitutional mandate. The SCM is also responsible for judicial oversight by investigating and punishing corruption, which it has failed to do. Moreover, the executive branch itself recognizes that its highest court is excessively political and dependent on the executive. Indeed, judges without adequate legal training regularly seek "opinions, suggestions, or legal interpretation regarding cases" from the MOJ. The U.N. has urged reform to eliminate the "corruption and interference of the executive with the independence of the judiciary." Thus, while Cambodia faces problems with its judiciary functioning within the framework of existing laws and mandates, other problems have arisen where no laws exist at all.

3. Cambodia is Attempting to Respond to the WTO's Concerns Regarding the Lack of Cambodian Laws and Law Enforcement

The complete absence of laws in many areas of Cambodian society has presented a dilemma for Cambodians and foreign investors alike. WTO Director-General Mike Moore noted during a 2003 visit that the country would have to pass forty new laws in order to be ready to join the WTO. The Cambodian Commerce Secretary has emphasized that laws are drafted and presented to the Senate and National Assembly on a regular basis. Indeed, several key laws have been passed, including laws on insurance, banking, and taxation. Other areas of concern have remained unaddressed, such as commercial dispute resolution.

In addition to the lack of fundamental laws, enforcement of existing laws has been inconsistent or even completely absent. For example,
notwithstanding a 2002 law on copyrights, the market for illegal pirated goods has flourished and the products have remained readily available. The Director of the Culture Ministry announced that crackdowns to enforce the new law would ensue until all illegal materials were seized or taken off the market. Remarkably, however, vendors say they were tipped off before a raid. Nevertheless, enacting the law was a step toward international norms initiated by WTO accession, and continued enforcement efforts should follow. Reliable law enforcement is essential to Cambodia's emerging economy.

C. Trade is an Indispensable Tool for Elevating Cambodia's Prosperity

Although Cambodia remains one of the world's poorest nations, its government has made significant progress in developing its economy since the early 1990s. The first piece of legislation passed by the new legislature was a liberal foreign investment law, providing generous incentives such as temporary tax exemptions, a low corporate tax rate of 9%, and duty-exempt imports for certain products. During the 1990s, Cambodia was more successful in attracting foreign direct investment than most other LDCs. Accordingly, the value of exports increased from US$ 86 million in 1990 to US$ 1.56 billion in 2001. Despite the Asian financial crisis, the gross domestic product ("GDP") of Cambodia grew by 4.8% between 1990 and 1999.

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83 id.
84 id.
85 U.S. EMBASSY IN CAMBODIA, supra note 40, at 3.
86 id. at 21.
87 WILL MARTIN, WORLD BANK, TRADE POLICY REFORM IN THE EAST ASIAN TRANSITION ECONOMIES 29 (2001).
89 UNCTAD, supra note 1, at 11.
91 In the late 1990s, the East Asian financial and currency markets experienced volatility leading to severe economic downturn. Duncan E. Williams, Note: Policy Perspectives On the Use of Capital Controls In Emerging Market Nations: Lessons from the Asian Financial Crisis & a Look at the International Legal Regime, 70 FORDHAM L. REV. 561, 564-6 (2001).
92 MARTIN, supra note 87, at 8.
Although Cambodia remains primarily a rural, agricultural-dependent nation,\(^9\) the rapid expansion of the garment industry has promoted most of the recent economic growth.\(^4\) In 1994, garment exports were US$ 4 million but by 1999, 89% of exports were garments and generated US$ 640 million a year.\(^5\) Despite difficult factory working conditions, the rise of this industry is an economic opportunity to help citizens escape rural poverty.\(^6\)

Cambodia needs continued brisk job creation in order to supply its growing labor force with employment. At its current rate of growth, the nation’s population will double within twenty-five years.\(^7\) Compared to the rest of Southeast Asia, its population is disproportionately young and the birth rate is high.\(^8\) The Cambodian government estimates that 150,000 jobs must be created each year in order to employ those who enter the labor market.\(^9\) Cambodia has turned to regional economic integration (the policy of active participation in the regional trade networks) as part of its strategy to promote economic growth.

Regional economic integration has facilitated modernization of Cambodian trade procedures\(^10\) and has served as a stepping stone for WTO membership.\(^11\) Cambodia acceded to the Association of Southeast Asian Nations\(^12\) ("ASEAN") in 1999, more than thirty years after the organization’s conception.\(^13\) Cambodia has adhered to ASEAN’s declarations, treaties, and agreements,\(^14\) including the requirement to lower

\(^9\) Agriculture accounts for approximately 70% of the Cambodian work force. ASIAN DEV. BANK, TECHNICAL ASSISTANCE TO THE KINGDOM OF CAMBODIA FOR FORMULATING A MASTER PLAN FOR NATIONAL AGRICULTURAL RESEARCH 1, ADB Doc. CAM 37252 (2003).

\(^4\) In the early 1990s there were only seven garment factories, compared to over 200 ten years later. U.S. EMBASSY IN CAMBODIA, FOREIGN ECONOMIC TRENDS: CAMBODIA 3 (2000), available at http://usembassy.state.gov/cambodia/wwwf0002.pdf (last visited May 1, 2004).

\(^5\) Id.


\(^7\) WORLD BANK, AGRICULTURE PRODUCTIVITY IMPROVEMENT PROJECT 1, World Bank Report No. 15984-KH (1997).

\(^8\) Forty percent of Cambodians are 14 years or younger, and the median age is 19.2, compared to Vietnam and Thailand which have median ages of 24.5 and 30.1, respectively. CIA, WORLD FACT BOOK (2003).


\(^10\) UNCTAD, supra note 1, at 127.

\(^11\) See WTO, supra note 14, at 94.

\(^12\) One of the most successful aspects of ASEAN has been its focus on economic matters, though cooperation also occurs in political, security, and functional matters. ASIAN DEV. BANK, TECHNICAL ASSISTANCE TO CAMBODIA & LAO PEOPLE’S DEMOCRATIC REPUBLIC TO PREPARE FOR MEMBERSHIP IN ASEAN 1, ADB Doc. OTH 30147 (Dec. 1996).

\(^13\) See Bangkok Declaration, Aug. 8, 1967, ASEAN, 6 I.L.M. 1233.

\(^14\) WTO, supra note 14, at 94.
Joining was also important in the WTO context because it signaled the government’s commitment to the liberalization of the Cambodian economy.\textsuperscript{106} Beyond Asia, Cambodia has concluded bilateral trade agreements.\textsuperscript{107} In order to protect its textile exports to the United States—its most important export market—the two nations concluded a unique 1999 agreement in which Cambodia accepted the monitoring of its labor practices in exchange for a quota on export goods to the United States.\textsuperscript{108} The U.N. International Labor Organization assisted in the agreement’s implementation by monitoring Cambodia’s obligations under the agreement.\textsuperscript{109} Under the agreement, the United States rewards Cambodia for improvements in labor conditions by raising the quota.\textsuperscript{110} Indeed, in 2004, the United States increased the quota due to improved labor practices.\textsuperscript{111}

Thus, trade has served as the most important element leading to Cambodia’s economic growth. This reflects the decision on the part of the Cambodian government to use trade to address the legacy of economic and social problems left behind by former regimes. In fewer than thirty years, Cambodia has transformed from a suffering nation isolated by its brutal leaders to a modernizing democracy attempting to attract foreign investment. While Cambodia has remained extremely poor and experienced systemic problems such as political instability and judicial corruption, its overall welfare has improved. Cambodian leaders have turned to trade, and consequently WTO membership, as a sustainable method for economic growth.

\textsuperscript{105} See Peter Kenevan & Andrew Winden, Flexible Free Trade: The ASEAN Free Trade Area, 34 HARV. INT’L L.J. 224, 227 (1993); Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area, Jan. 28, 1992, art. IV, ASEAN, 31 I.L.M. 513.

\textsuperscript{106} DONOVAN & BRAND, supra note 36, at 88-9.

\textsuperscript{107} Cambodia has bilateral agreements with, among others, Korea, Switzerland and Thailand. WTO, supra note 14, at 93.


\textsuperscript{109} See INT’L LABOR ORG., FIRST SYNTHESIS REPORT ON THE WORKING CONDITIONS SITUATION IN CAMBODIA’S GARMENT SECTOR (Nov. 2001).


\textsuperscript{111} The increase could have been higher under the agreement if more progress had been made. Press Release, Kingdom of Cambodia, USA Ups 2004 Import Quota to 14% (Dec. 5, 2003) (on file with author).
III. CAMBODIA'S WTO NEGOTIATIONS DEMONSTRATE THAT POOR NATIONS REMAIN DISADVANTAGED IN ACCESSION AND MEMBERSHIP

Because there is no standard WTO accession protocol,112 nations seek membership on terms they negotiate with the WTO based on their bargaining position.113 Given that WTO accession protocols have become more and more cumbersome compared to the obligations of the original WTO members,114 negotiating membership is now an especially burdensome process for LDCs.115 The WTO has attempted to address this problem.

The 2001 WTO Ministerial Conference in Qatar ended with the Doha Development Declaration,116 in which WTO members expressed their commitment to support developing nations like Cambodia.117 Despite WTO efforts to provide LDCs with preferential accession terms, Cambodia was unable to avail itself successfully of these potential benefits in its accession negotiations.118 Further, the experiences of other developing and LDC WTO members demonstrate that even as a member, Cambodia will continue to be marginalized because it is an LDC.119

A. The Doha Development Agenda Seeks to Facilitate LDC Accession

The special challenges that developing countries like Cambodia face during accession and membership have influenced the WTO since its formation. In fact, the WTO Agreement preamble states concerns about these nations achieving their share of growth and trade.120 Similarly, problems arising out of LDC marginalization surfaced at the first WTO Ministerial Conference held in Singapore in 1996121 and have resurfaced at each subsequent conference, as reflected by the ministerial declarations.122


113 ECON. & SOCIAL COMM'N FOR ASIA & THE PACIFIC, supra note 8, at 64.

114 See id. at 68.

115 See UNCTAD, supra note 1, at 230.

116 See Doha Ministerial Declaration, Nov. 20, 2001, WTO Doc. WT/MIN(01)/DEC/1 [hereinafter Doha Declaration].

117 See id. paras. 3, 42-3.

118 See infra Part IV.A.

119 For discussion on the role of developing nation WTO members in general, see ECON. & SOCIAL COMM'N FOR ASIA & THE PACIFIC, supra note 8, at 35, 57.

120 WTO Agreement, supra note 112, pmbl.

121 Singapore Ministerial Declaration, para. 5, Dec. 13, 1996, WTO Doc. WT/MIN(96)/DEC.

The 2001 Doha Ministerial Conference sought to remedy the concerns expressed by LDCs. The Ministerial Declaration ("Doha Declaration") referenced the Zanzibar Declaration—prepared by LDC trade ministers in advance of the overall WTO conference in order to adopt a common position—and recognized "the seriousness of the concerns expressed by" the LDCs. Issues highlighted in the Zanzibar Declaration include the need for realistic WTO demands and flexibility in the timeframe during which LDCs are expected to implement reforms.

Sufficient consensus at the conference existed for the Doha Declaration to recognize that the policy for LDC accession needed updating to better reflect the realities those nations face. The Doha Declaration broadly stated that more work "to facilitate and accelerate negotiations" was needed, and that it remained a priority for current members. Additionally, the declaration also contained relatively concrete actions to be taken in order to achieve this end. First, the ministers agreed that the WTO Secretariat should take LDC accession into account in formulating the annual technical assistance plans. Second, the ministers directed the WTO Sub-Committee for Least-Developed Countries to design a work program for LDCs. Third, they directed the Director-General of the Integrated Framework to prepare a report on "all issues affecting LDCs." Finally, they directed that Special and Differential provisions be reviewed "with a view to strengthening them and making them more precise, effective and operational."
B. Cambodia and Other LDCs Viewed Its WTO Accession as a Test of the WTO's Commitment to Fair Treatment Of LDCs

Because each WTO accession package is specific to each acceding nation, different nations can effectively achieve better accession terms than others. This creates disparate classes within the WTO as accession countries "get not what they deserve but what they negotiate." The U.N. observed that "[t]he aspiring member is often influenced to accept terms and conditions contrary to the spirit of the WTO." It is widely believed that the LDC accession process is excessively long and the terms too demanding. Many observers of trade issues now refer to membership commitments as "WTO-plus" to indicate that new acceding members agree to greater commitments than what the original members agreed to when the WTO originally formed. Viewed in the most positive light, WTO-plus commitments have ensured deeper economic and political integration into the WTO trading regime for Cambodia.

Cambodia viewed its accession process as a test of the WTO's oft-expressed commitment to treating LDCs favorably and fairly. Nine other LDCs were contemporaneously in the process of accession with Cambodia. As the first LDC to accede, and to do so after the Doha Conference, leaders of other LDC accession countries such as Vietnam have carefully observed Cambodia's process for indications of precedent or impact on their own accessions.

Cambodia's WTO negotiators were unsuccessful in obtaining accession terms that they believed to be reflective of their LDC status. The Cambodian Commerce Minister stated: "We believe that the package of concessions and commitments that we have to accept certainly goes far beyond what is commensurate with the level of development of a least

134 There are no set WTO accession terms; the WTO Agreement provides only that a nation join based on terms "to be agreed between it and the WTO." WTO Agreement, supra note 112, art. XII.
135 ECON. & SOCIAL COMM'N FOR ASIA & THE PACIFIC, supra note 8, at 64.
136 Id. at 68.
138 Id.
139 See infra Part IV.B.
140 ECON. & SOCIAL COMM'N FOR ASIA & THE PACIFIC, supra note 8, at 93.
141 They are Bhutan, Cape Verde, Ethiopia, Laos, Nepal, Samoa, Sudan, Vanuatu and Yemen.
142 Vietnam, for example, has not acceded as rapidly as Cambodia. This may be due in part to a strategic decision, but it is also because the government has not adopted necessary reforms quickly enough. See WTO Will Save Vietnam from Unfair Deals: UNDP Official, ASIA PULSE, Oct. 2, 2003, available at LEXIS, News Library, Asia Pulse File.
developed country like Cambodia." This candid statement belies any notion that the WTO has committed to fairly tailoring LDC accession packages.

On the other hand, the Doha Declaration failed to define what WTO members were committing to in agreeing to "facilitate" LDC accession. Subsequent WTO documents have referenced the Doha Declaration and attempted to elucidate the meaning of "facilitate." For example, in December 2002, the WTO declared that "WTO Members shall exercise restraint in seeking concessions and commitments ... from acceding LDCs, taking into account the levels of concessions and commitments undertaken by existing WTO LDCs Members." The document, however, does not define how members are to take into account relevant commitments. The document could have, for example, used the commitments of existing LDC members to establish the maximum commitment in a given area. Thus, despite its attempts, the WTO has not set forth a practicable method of veritably assisting LDCs through accession.

C. Cambodia Joins Other LDC Members as "Second Class WTO Citizens"

Although developing nations form the majority of member nations in the consensus-based WTO, maintaining their voice in the organization is a struggle. Only one-third of LDC members can afford permanent offices in Geneva—where the WTO is headquartered—and usually those offices are responsible for both U.N. relations and WTO responsibilities. This means that most LDCs are not represented at the nearly forty meetings per week that take place in Geneva to negotiate technical trade issues. Those LDCs that have representation in Geneva generally have only one official working on WTO issues. In comparison, the United States has over 250

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143 Cambodian Minister Issues Sharp Criticism of WTO after Accession Approval, AGENCE FR.-PRESSE, Sept. 12, 2003 (on file with author).
144 Doha Declaration, supra note 116, para. 42.
146 Id. at 2.
147 Eighty percent of WTO members are either developing, or transition economies. TOM BARRY, FOREIGN POL'Y. IN FOCUS, WHAT'S THIS ORG.: WTO, PART II (2002) (on file with author).
150 Id.
negotiators, and flies in technical experts for complex issues. Further, when LDCs do try to effectuate change in the WTO mechanism, they complain that their voice is ignored and not reflected in official positions and documents.

As a new LDC WTO member, Cambodia has joined the ranks of these disenfranchised members. While Cambodia theoretically should have benefited from the goals expressed at Doha, Cambodian negotiators were unable to obtain terms proportionate to their position. Correspondingly, the Doha Declaration provided a positive but hollow message to LDCs.

IV. DESPITE ITS ONEROUS WTO COMMITMENTS AND THE INFERIOR ROLE OF LDCs IN THE WTO, CAMBODIA WILL BENEFIT FROM MEMBERSHIP

While there have been valid concerns and criticism about the effects of Cambodia’s WTO commitments on its most vulnerable citizens, the overall benefits of WTO membership justify Cambodia’s pro-accession policy. WTO membership is crucial for Cambodia because it gives the country the right to take advantage of the trade terms embodied in the existing WTO agreements. Additionally, the process of accession to the WTO stimulated important reforms. Cambodia has made a great deal of progress since the early 1990s when the government adopted a pro-WTO stance and implemented policies aimed at joining the organization. Finally, the steps that Cambodia made toward WTO accession signal the country’s aim to integrate globally, which is important for Cambodia because it depends on international assistance simply to meet its basic needs. In order to address even basic non-WTO issues such as physical infrastructure improvements, Cambodia is reliant on foreign aid.

151 Id.
154 Such as GATT.
155 See infra Part IV.C.
A. International Humanitarian Agencies Denounce Cambodia's Accession on Behalf of the Poor, but the Costs Are Justified

Many major humanitarian organizations have condemned Cambodia's WTO accession, claiming that it will have detrimental effects on Cambodia's poorest citizens.158 For example, Médecins Sans Frontières ("MSF")—an international humanitarian organization providing aid in emergency medical crises and serving as an advocate for at-risk populations—accused the WTO of violating the spirit of the Doha Declaration by negotiating with Cambodia in bad faith and extracting an unduly one-sided accession agreement.159

MSF's main concern about the cost of WTO membership is that it may decrease access to medication for HIV/AIDS-infected individuals.160 Approximately 170,000 HIV-infected people live in Cambodia,161 constituting the highest HIV/AIDS rate in Asia.162 WTO members are bound by the Trade-Related Aspects of Intellectual Property Rights Agreement163 ("TRIPs"), which may preclude the legal use of generic medication to treat HIV/AIDS and other diseases.164 While the WTO provided for delayed implementation of TRIPs for LDCs until 2016,165 Cambodia tried unsuccessfully to negotiate for this benefit,166 conceding instead to implement it after 2007.167 Critics argue that in implementing

159 MEDECINS SANS FRONTIERES, supra note 11, at 2.
160 See id.
161 Macan-Markar, supra note 158.
167 WTO, supra note 7, para. 204.
TRIPs, Cambodia will limit the poor's access to HIV/AIDS medications because of the cost increase associated with using brand name drugs.\textsuperscript{168}

It would have been unconstructive, however, for Cambodia to abandon its pursuit of WTO membership in an effort to sidestep TRIPs and protect the availability of less expensive HIV/AIDS medications. First, the Cambodian government's efforts to stem the rate of new HIV/AIDS infection have been relatively successful.\textsuperscript{169} Second, this issue is an area of common concern for all LDC WTO members,\textsuperscript{170} creating an opportunity for successful cooperation. Finally, the WTO itself has recognized the need to interpret TRIPs in a manner sensitive to public health,\textsuperscript{171} which may create future inroads for resolving this problem.\textsuperscript{172}

Another criticism of Cambodia's WTO accession package is the allegedly negative impact on Cambodia's poor farmers.\textsuperscript{173} Oxfam International, a confederation of twelve organizations fighting global poverty globally, has emphasized that wealthier WTO members required Cambodia to open its agricultural market to a level of competition that will devastate domestic producers.\textsuperscript{174} Cambodia has agreed to bind its agricultural tariffs at zero,\textsuperscript{175} whereas the United States and the European Union have substantial protections in place for their own agricultural products.\textsuperscript{176} This arrangement raises the fear that, because working farmers are already deeply impoverished and disadvantaged, those who lose their livelihood due to competition with foreign goods will be even worse off.\textsuperscript{177}

Although the potential for harm to Cambodia's farmers is distressing, Cambodia's future does not lie in protecting its agricultural industry.\textsuperscript{178}

\textsuperscript{170} Zanzibar Declaration, \textit{supra} note 124, at 2.
\textsuperscript{172} Proponents of TRIPs have argued that generic drugs may still be sold in certain countries, keeping costs low. Bass, \textit{supra} note 164, at 200. This is a complicated issue facing large developing nations as well as small LDCs, and worthy of much greater discussion though it is not the topic of this comment.
\textsuperscript{173} OXFAM INT'L, \textit{supra} note 10, at 5.
\textsuperscript{174} Id. at 8.
\textsuperscript{175} WTO, \textit{supra} note 7, para. 164.
\textsuperscript{177} See OXFAM INT'L, \textit{supra} note 10, at 5.
\textsuperscript{178} Even with agricultural tariffs in place, the contribution of agricultural pursuits to GDP has fallen significantly. In 1995, agriculture produced 52% of Cambodia's GDP compared to 37% in 2000. U.N. CONFERENCE ON TRADE & DEV., \textit{supra} note 90, at 340.
Cambodian agricultural yields are inefficient and unproductive.\textsuperscript{179} Even today, the industry has not been successful enough to prevent widespread malnutrition,\textsuperscript{180} let alone serve to promote future economic welfare. Instead of protecting the current system, which has perpetuated poverty,\textsuperscript{181} Cambodia has successfully sought economic gain through exports and WTO membership.\textsuperscript{182}

Cambodia's best chance for long-term economic welfare is to follow the developed nations' successful model of decreasing agrarian output in favor of industrial production.\textsuperscript{183} Such a model need not signify the end of Cambodian agriculture because some level of sustainable agricultural production is essential to address rural poverty.\textsuperscript{184} It does, however, require diversifying crops in order to shift from producing solely for domestic consumption to exporting higher-value crops.\textsuperscript{185} Such a system will generate higher farmer incomes,\textsuperscript{186} and Cambodians can import less-expensive rice from neighbors who have a comparative advantage in its production.\textsuperscript{187} Therefore, Cambodia's policy of active participation in the WTO trading system has the potential to improve farmer welfare, while increasing trade and diversifying the economy.

\textbf{B. As a Small Developing Nation, Cambodia Will Derive Significant Benefit from Existing WTO Agreements}

Given Cambodia's limited resources and bargaining power, multilateral negotiations in the WTO are a more efficient investment of time, finances, and human resources than negotiating bilateral trade agreements with each partner.\textsuperscript{188} Additionally, WTO multilateral agreements will

\begin{thebibliography}{99}
\bibitem{181} Cambodians grow mostly rice—a low-price commodity—and do so with the inefficient use of labor and land. Chand, supra note 179, at 3; Asian Dev. Bank, supra note 93, at 1.
\bibitem{182} See supra Part II.C.
\bibitem{184} Asian Dev. Bank, supra note 97, at 1.
\bibitem{185} Chand, supra note 179, at 5.
\bibitem{186} See id.
\bibitem{187} Cambodia's neighboring countries with similar ecosystems have higher yield levels and cropping intensities. Asian Dev. Bank, supra note 93, at 1.
\end{thebibliography}
provide Cambodia with better terms than it could otherwise obtain for itself on a bilateral basis. The greater range of market access provided by WTO membership will be crucial to Cambodian economic expansion and prosperity.

One of the most important benefits WTO status can confer on Cambodia will be the ability to take advantage of the general GATT principles of most favored nation ("MFN") status and non-discrimination. The MFN standard requires, subject to certain exceptions, that all WTO members extend to Cambodia the same trade benefits they extend to any other nation. The non-discrimination rule requires that Cambodian goods be treated the same as domestic goods when imported to another WTO member.

Additionally, trade disputes within the WTO are handled by a structured, rule-based mechanism, which has been rather successful since its creation in 1995. The presence of a defined trade-dispute resolution process is a major benefit for Cambodia because it enables it to request the compulsory formation of a dispute panel in the event that it determines that another member has violated WTO rules. While the WTO dispute resolution mechanism is a benefit to all members, smaller members may especially benefit from it because the formation of expert independent panelists affords equal footing to the parties involved. Furthermore, special provisions exist to discourage WTO members from requesting

191 WTO, supra note 7, para. 6.
192 GATT provides that “any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.” GATT, supra note 190, art. 1.
193 Such as Free Trade Areas and Customs Agreements. Id. art. 24.
194 Id. art. III.
198 DSU, supra note 195, art. 4, para. 7.
199 See id. art. 8, para. 2.
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dispute panels against LDCs in order to take into account "the special situation" of LDCs.\footnote{200}

C. WTO Accession Stimulated Valuable "Indirect" Benefits in Cambodia

In addition to the benefits that are explicit in WTO agreements, membership negotiations have also conferred indirect benefits to Cambodia. Indirect benefits are those that were generated from the accession process, such as the stimulus for reforms and the flow of technical assistance. These two issues are interrelated because as much as the government is willing to institute technical reform, Cambodia often lacks the necessary experience and know-how to implement reform successfully.\footnote{201}

1. WTO-Inspired Legal and Economic Reforms

WTO accession serves as the ultimate progressive stimulus for Cambodia because it requires deep legal and economic reforms.\footnote{202} The WTO addressed this subject in its publication entitled "Guide to the WTO and Developing Countries," which stated among other things that "WTO obligations can help reform-minded governments resist protectionist pressures," and highlighted the "advantages of compliance with liberalizing principles."\footnote{203} WTO-related legal developments in Cambodia have entered into areas previously seen as being solely under domestic control, such as intellectual property rights and government subsidies.\footnote{204} Since its accession, Cambodia's policies in these areas will have to conform to liberal international standards that encourage investment and economic growth.

While liberal economic reform can lead to vulnerability due to increased dependence on the international financial and trading regimes,\footnote{205} it can also stimulate needed economic growth.\footnote{206} Even with the setbacks of the Asian Financial Crisis,\footnote{207} economic reform in the region\footnote{208} lifted 200

\footnote{200} Id. art. 24 para. 1.
\footnote{201} The Cambodian government has acknowledged international technical assistance as vital to its efforts to reform and modernize. See Responses from H.E. Sok Siphana, Sec'y of State, Ministry of Com., to the Inter-Agency Working Group (Sept. 6, 2001), available at http://www.moc.gov.kh/intergrated_framework/iawg_exper.htm (last visited May 1, 2004).
\footnote{202} See WTO, supra note 7.
\footnote{203} PETER GALLAGHER, WTO, GUIDE TO THE WTO & DEVELOPING COUNTRIES 14 (2000).
\footnote{204} See WTO, supra note 7.
\footnote{205} See JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS ch. 4 (2003).
\footnote{206} Id. at 4.
\footnote{207} For more information on the background and causes of the Asian Financial Crisis of the late 1990s, see STIGLITZ, supra note 205.
million people out of poverty during the 1990s.\textsuperscript{209} Although there are valid concerns about some of the drawbacks of globalization,\textsuperscript{210} economic experts and developed nations alike recognize a free and open international trading regime as an imperfect but unsurpassed way for developing countries to tackle poverty.\textsuperscript{211}

Since the early 1990s, the Cambodian government has been working on reforms designed to prepare for its WTO accession.\textsuperscript{212} For example, Cambodia designed an independent tribunal to review appeals of administrative decisions in matters governed by WTO agreements,\textsuperscript{213} as required by WTO rules.\textsuperscript{214} Additionally, Cambodia has drafted a law establishing commercial courts with specially trained judges.\textsuperscript{215} These judicial reforms were executed to provide more transparency and predictability for investors and to fulfill its WTO requirements.\textsuperscript{216} The improvements of the judicial system were undertaken with the aid of international technical assistance.\textsuperscript{217} Hopefully, these reforms will improve the problems identified as barriers to investment by foreign business ventures.\textsuperscript{218}

2. \textit{WTO Membership Will Ensure the Flow of Continued Aid}

With more than half of the government’s budget coming from foreign aid,\textsuperscript{219} Cambodia cannot afford to alienate donors by shunning reform. While key donor nations have recognized Cambodia as a compelling case

\textsuperscript{208} By, 2001, the following East Asian countries were WTO members: Bangladesh, China, Hong Kong, Indonesia, Malaysia, Myanmar, Philippines, Singapore, and Thailand.
\textsuperscript{210} See, e.g., ILO, \textit{A Fair Globalization: Creating Opportunities for All 7} (2004); STIGLITZ, \textit{supra} note 205, at 5-7.
\textsuperscript{212} WTO, \textit{supra} note 7, para. 6.
\textsuperscript{213} \textit{Id.} para. 36.
\textsuperscript{214} GATT, \textit{supra} note 190, art. X.
\textsuperscript{215} WTO, \textit{supra} note 7, para. 35.
\textsuperscript{216} \textit{Id.}
\textsuperscript{217} \textit{Id.} para. 35.
\textsuperscript{218} See \textit{supra} Part II B.2.
\textsuperscript{219} C.R.S., \textit{supra} note 49, at 4.
for foreign aid,\textsuperscript{220} much of the international aid for Cambodia has been appropriated specifically to support WTO-preparation activities.\textsuperscript{221}

The WTO accession process was complex, lengthy, and resource-intensive,\textsuperscript{222} but Cambodia has received significant financial and technical support throughout the process.\textsuperscript{223} Special accommodations for developing nations have included technical assistance from the WTO Secretariat before, during, and after accession,\textsuperscript{224} and participation in the Integrated Framework program.\textsuperscript{225} Cambodia was one of three nations first selected for assistance from the Integrated Framework on a pilot basis.\textsuperscript{226} Individual nations serving on the WTO Accession Working Party also provided valuable technical assistance.\textsuperscript{227} The country initially received large amounts of disaster-type humanitarian aid.\textsuperscript{228} Beyond emergency assistance at this stage, it must progress forward in order to receive lasting help.

Cambodia needs significant ongoing technical assistance to achieve its political and economic goals.\textsuperscript{229} Although many of these goals relate specifically to WTO obligations,\textsuperscript{230} Cambodia also needs aid to address non-WTO related fundamental problems such as poor physical infrastructure,\textsuperscript{231}

\textsuperscript{222} In the late 1990s, it was estimated that the average cost of implementing Uruguay Round provisions was US$ 130 million. In comparison, at that time, most LDC governments did not expend that much yearly on capital expenditures. UNCTAD, supra note 1, at 230.
\textsuperscript{223} See WTO, supra note 7, paras. 35, 89, 101, 205.
\textsuperscript{224} GALLAGHER, supra note 203, at 123.
\textsuperscript{225} Doha Declaration, supra note 116, para. 43. The IF is a group of six international agencies—the World Bank, the International Monetary Fund, the World Trade Organization, the U.N. Conference on Trade and Development, the U.N. Development Programme, and the International Trade Centre—collaborating to provide assistance collectively and efficiently. Integrated Framework, Working Together to Enable LDCs to Be Active Players and Beneficiaries of the Global Trading System: The Integrated Framework Explained, available at http://www.integratedframework.org/files/IF_explained.pdf (last visited May 1, 2004).
\textsuperscript{226} ECON. & SOCIAL COMM'N FOR ASIA & THE PACIFIC, supra note 8, at 39.
\textsuperscript{228} FERNANDO, supra note 18, at 52.
\textsuperscript{229} See, e.g., WTO, supra note 7, paras. 28, 35, 75, 85, 92 (requests by the Cambodian government for technical assistance to achieve its stated goals).
\textsuperscript{230} See id.
\textsuperscript{231} U.S. EMBASSY IN CAMBODIA, COUNTRY COMMERCIAL GUIDE 2002 CAMBODIA, supra note 40, at 8.
natural resource management, and poverty. For instance, the Asian Development Bank has funded assistance to improve Cambodia’s neglected electric supply system. These types of projects will benefit Cambodian citizens directly and complement WTO-related assistance. Arguably, this more general aid is tied to Cambodia’s WTO accession inasmuch as it is the result of donor nations’ goodwill, and these nations have been major proponents of Cambodia’s WTO bid.

Notwithstanding any potential negative effects on certain segments of the Cambodian population, WTO membership will improve overall Cambodian welfare. Cambodia will benefit from specific WTO agreement terms as well as its internationally-supported domestic policy initiatives.

V. WTO MEMBERSHIP WILL HELP CAMBODIA TO PROMOTE ECONOMIC GROWTH AND JUSTIFIES ACCEPTING THE STRINGENT ACCESSION TERMS

WTO membership does not automatically increase a nation’s prosperity; thirty LDCs are original WTO members and have remained economically disadvantaged. Most of the original LDC members of the WTO have remained poor because their domestic policies have not adequately supported an increase in trade. The Cambodian government’s pro-WTO stance recognizes this reality by viewing trade integration as one of several overall policy goals. Cambodia’s accession terms may be rigorous, but they represent not only a cost, but also an investment.

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233 See Hearing on Foreign Assistance Oversight, supra note 220 (justifying assistance to Cambodia due to its extreme poverty).


236 See WTO, supra note 3.

237 Seventy-four percent of all LDC exports are generated by only ten LDCs. UNCTAD, supra note 1, at 112.

238 WTO, supra note 7, para 5.
A. Cambodia's Success Depends on Domestic Policies as Well as WTO Membership

Despite its recent achievements, Cambodia will continue to confront political and economic difficulties. Six months following the July 2003 elections, the new government still was not formed because of stalled political negotiations.\(^{239}\) Cambodia requested an extension from the WTO in order to ratify its accession protocol later than WTO rules require.\(^{240}\) Moreover, current domestic political instabilities may threaten future economic gains.\(^{241}\) As much as donor countries have supported Cambodia's WTO bid, they have not offered unconditional technical support.\(^{242}\) Thus, as much as Cambodia's commitment to WTO accession was essential to attract necessary aid, so too is a continuous commitment to steadfast implementation of its accession requirements.

Importantly, Cambodian leaders do not harbor false hopes that membership will be a panacea for the country's problems and they are well aware of the difficulties that membership obligations will impose on Cambodia.\(^{243}\) This pragmatic approach acknowledges that WTO membership is not an end in itself and combines it with domestic policy. Instead of relying solely on WTO membership, the government has two other main strategic policies: restoring peace and ensuring sustainable development.\(^{244}\)

B. Cambodia's Burdensome Accession Protocol was a High but Appropriate Price to Pay

The WTO makes it clear that the membership negotiation process requires applicant countries to demonstrate what it has to offer the organization—not to demonstrate why it needs or wants WTO membership.\(^ {245}\) While the WTO is recognized as an important vehicle for

\(^{241}\) One of the main factors delaying Cambodian development is political instability. EUROPEAN UNION, supra note 235, at 12.
\(^{242}\) WTO members have warned Cambodia that it cannot make implementation contingent on technical assistance and must ensure implementation regardless. WTO, supra note 7, para. 128.
\(^{243}\) Cambodian Minister Issues Sharp Criticism of WTO after Accession Approval, supra note 143.
\(^{244}\) WTO, supra note 7, para 5.
development, it is first and foremost an organization aimed at liberalizing trade, setting rules to govern that liberalization, and providing a dispute resolution forum. It is a voluntary organization consisting of nations wishing to trade with each other on the most equal and fair basis that they can negotiate.

Although meeting its WTO commitments is likely to be challenging for Cambodia as it enters the implementation phase, it has decided that the challenges of being a non-member are worse. The government recently stated that it did not aim for membership at any cost and would not pursue membership as an end in itself. Commerce Minister Chain Prasidh accurately summarized Cambodia’s final accession position: “We managed to secure a package of commitments and concessions we feel was the most affordable and possible deal for Cambodia’s accession, bearing in mind Cambodia’s little political and economic weight and its current reliance on external assistance from the major donor countries who are also WTO members.”

As substantial as Cambodia’s accession commitments are, they result not from flaws in the WTO but from the realities of international power politics. Although larger trading partners such as the United States pressured Cambodia for concessions, these are the nations Cambodia depends on as markets for its exports. Fair or not, these major powers set the trade agenda and refusing to work within the established system simply removes the opportunity to take advantage of what the system has to offer. Given its options—retreating from international participation, inefficiently spending its diplomatic efforts on bilateral negotiations, or joining the WTO—Cambodia has pursued the best path to build on its progress and move beyond its past tragedies.

246 See supra Part IVC.
248 See STIGLITZ, supra note 205, at 16.
250 Officials identified WTO accession and integration as one part of a triangle, the other two being peace and sustainable development. WTO, supra note 14.
VI. CONCLUSION

Cambodia's political and economic systems have undergone drastic changes in the last two decades, transitioning from a foreign-backed communist regime to a democratically-elected government with an export-based economic growth policy. Despite some progress, Cambodians remain among the poorest people in the world, dependent mostly on inefficient agricultural production for employment. Judicial, economic, and political reforms remain vital for future growth, and Cambodia is dependent both on foreign technical and financial assistance.

Due to the demands of WTO accession, the country's leaders have pursued regional and international economic integration and liberalized investment laws to foster trade. WTO membership negotiations with Cambodia have been criticized as excessively demanding for a LDC, particularly because of the potential negative consequences on poor farmers and HIV/AIDS victims. Nonetheless, even the most vulnerable Cambodians would not be helped if Cambodia refused to engage the WTO and remained on the sidelines of the global trading regime. The country is dependent on imports for many services and products and has relied on exports to create jobs for the current generation. By adopting the path of reform and joining the WTO, Cambodia has invested in its future. Joining the WTO will also help Cambodia to ensure the continued flow of the international assistance on which it continues to depend. Cambodia's WTO accession obligations are certainly far-reaching and demanding, but it is the necessary price that the small and poor nation must pay to achieve its development goals and improve the welfare of its people.