



## An Agricultural Law Research Article

### **Cambodia's Accession to the World Trade Organization and Its Impact on Agriculture**

by

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# CAMBODIA'S ACCESSION TO THE WORLD TRADE ORGANIZATION AND ITS IMPACT ON AGRICULTURE

*Jillian M. Young\**

|  |     |
|--|-----|
| I. Introduction.....                                     | 108 |
| II. The Agricultural Industry in Cambodia.....           | 110 |
| A. Agricultural Sectors of Cambodia .....                | 111 |
| B. The Economy and Labor Force in Cambodia.....          | 112 |
| 1. The Economy .....                                     | 112 |
| 2. Cambodian Labor Force.....                            | 113 |
| III. Political Structure From Khmer Rouge to WTO .....   | 113 |
| A. Cambodia Under the Control of the Khmer Rouge .....   | 114 |
| B. Cambodia Under the Control of the Vietnamese .....    | 116 |
| 1. The New Economic Policy and System.....               | 116 |
| 2. The First Plan, 1986-1990.....                        | 117 |
| C. Royal Government of Cambodia .....                    | 118 |
| 1. The Political System in General.....                  | 118 |
| 2. Agriculture Under the Monarchy .....                  | 119 |
| 3. Corruption and the Inability to Enforce Laws.....     | 121 |
| IV. WTO: An Overview.....                                | 123 |
| A. Agricultural Agreement.....                           | 123 |
| B. Least Developed Countries.....                        | 126 |
| V. Cambodia's Accession to the WTO .....                 | 127 |
| A. Reasons Behind Joining the Organization.....          | 127 |
| 1. Pressure from Western Countries.....                  | 128 |
| 2. Access to Markets .....                               | 129 |
| B. Accession Terms for Cambodia .....                    | 129 |
| C. Cambodia Forced to Make Concessions .....             | 130 |
| VI. The Impact of the WTO on Cambodia.....               | 131 |
| A. Possible Negative Outcomes from Joining the WTO ..... | 132 |
| 1. Governmental Reforms .....                            | 132 |
| 2. Threat to Agricultural Industry .....                 | 133 |
| 3. Negative Impact on Least Developed Nations.....       | 133 |

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|   |     |
|---|-----|
| 4. WTO Faced Tough Issues in Hong Kong .....            | 135 |
| B. Potential Positive Outcomes in Joining the WTO ..... | 137 |
| VII. Conclusion .....                                   | 138 |

## I. INTRODUCTION

The purpose of this Note is to explain the reasons why Cambodia joined the World Trade Organization ("WTO"), show the difficulties the country will have to overcome in order to become an active member state, and explain both the positive and negative impacts of its membership on Cambodian society.

The WTO was established in 1995 to liberalize trade around the world and provide a forum for governments to negotiate trade agreements in a variety of areas, including agriculture.<sup>1</sup> The Agriculture Agreement of the WTO was established during the 1986-1994 Uruguay Round.<sup>2</sup> The Agriculture Agreement is the first international agreement dealing with agriculture and is a significant first step toward fair competition and a less distorted sector.<sup>3</sup> The objectives of the Agreement are to reform the trade policies of nations and to make policies that are more market-oriented by creating rules and regulations dealing with market access, domestic support, and export subsidies.<sup>4</sup> The agreements passed by the WTO are signed by the government of each member nation and are passed to promote the ultimate goal of the organization: to improve the welfare of the citizens in each nation.<sup>5</sup> The passing of regulations help the producers of goods and services, importers and exporters conduct their business; the WTO is helping the citizens of each member nation earn a living.<sup>6</sup> The WTO is a large and powerful organization that continues to grow as more Least Developed Countries look to join the organization and open their economies to the world market.<sup>7</sup>

"Least Developed Countries" is a social and economic classification created and applied to fifty-one countries around the world by political scientists

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1. See Understanding the WTO: What is the World Trade Organization?, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact1\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm) (last visited Aug. 17, 2005).

2. See Understanding the WTO: Agriculture: Fairer Markets for Farmers [hereinafter Fairer Markets], [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm3\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm3_e.htm) (last visited Aug. 17, 2005).

3. *Id.*

4. *Id.*

5. See What is the World Trade Organization?, *supra* note 1.

6. *Id.*

7. See Understanding the WTO: Developing Countries [hereinafter Developing Countries], [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/dev1\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/dev1_e.htm) (last visited Aug. 23, 2005).

and economists who work for the United Nations Economic and Social Council.<sup>8</sup> These countries face extreme poverty, structural weaknesses in their economies, and a lack of capacity for growth and development. These situations are often compounded by geographical handicaps, all of which impede the nation's ability to improve the quality of life.<sup>9</sup>

On October 13, 2004, Cambodia became the 148th member of the WTO and the second Least Developed Nation to join through the full working party negotiation process.<sup>10</sup> Cambodia's accession to the WTO was a long and arduous process that has been met with both praise and criticism.<sup>11</sup> By joining the WTO, Cambodians hope the membership will jump-start the kingdom's economic development, but are fearful that the country is not capable of meeting the obligations of the agreement.<sup>12</sup> One of the industries the Cambodian government hopes will be jump-started by its WTO membership is agriculture, a major industry in Cambodia.<sup>13</sup> The WTO has passed numerous regulations and rules dealing with agriculture.<sup>14</sup> Cambodia's membership to the WTO requires that the government implement the rules and regulations passed by WTO members, however, the political history and the current state of the political system of Cambodia may create some problems in implementing and following those rules and regulations.<sup>15</sup>

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8. U.N. Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States: The Criteria for the Identification of the LDCs, <http://www.un.org/special-rep/ohrls/ldc/ldc%20criteria.htm> (last visited Jan. 18, 2006).

9. Third United Nations Conference on the Least Developed Countries, Brussels, Belg., May 14-20, 2001, *Programme of Action for the Least Developed Countries*, ¶1, U.N. Doc. A/CONF.191/11 (June 8, 2001) [hereinafter Conference].

10. Accessions: Cambodia, [http://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_cambodge\\_e.htm](http://www.wto.org/english/thewto_e/acc_e/a1_cambodge_e.htm) (last visited Aug. 22, 2005).

11. Conference, *supra* note 9.

12. See Murray Hiebert & Margot Cohen, *World Trade: WTO Membership Has Its Pitfalls*, FAR E. ECON. REV., Sept. 25, 2003, at 24; Rebecca Povarchuck, *Cambodia's WTO Accession: A Strenuous But Necessary Step for a Poor Nation Seeking Economic Prosperity*, 13 PAC. RIM L. & POL'Y J. 645, 645 (2004).

13. See Alan Boyd, *Poor Prognosis for Cambodia's Ailing Economy*, ASIAN TIMES ONLINE, Aug. 21, 2004, [http://www.atimes.com/atimes/Southeast\\_Asia/FH21Ae06.html](http://www.atimes.com/atimes/Southeast_Asia/FH21Ae06.html).

14. See generally Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, 33 I.L.M. 1125, 1154 (1994) [hereinafter Final Act], available at [http://www.wto.org/english/docs\\_e/legal\\_e/03-fa.pdf](http://www.wto.org/english/docs_e/legal_e/03-fa.pdf) (outlining the regulations passed by the WTO that deal with the agricultural sector).

15. See Understanding the WTO: Whose WTO is it Anyway?, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org1\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org1_e.htm) (last visited Jan. 17, 2006); see also FED. RESEARCH DIV. OF U.S. LIBRARY OF CONG., CAMBODIA: THE ECONOMY UNDER THE KHMER ROUGE, 1975-79 [hereinafter KHMER ROUGE], available at <http://countrystudies.us/cambodia/61.htm> (discussing Cambodia's turbulent political history and its effect on the country's economy); Povarchuck, *supra* note 12, at 646 (noting that Cambodian offi-

With pressure from other nations, Cambodia acceded to the WTO agreement and became a full fledged member of the organization.<sup>16</sup> Cambodia's accession will bring both positive and negative impacts on its political system and the agricultural industry.

As the newest member, Cambodia has much work to do internally in order to meet the rules and regulations established by the WTO.<sup>17</sup> The agricultural industry is of utmost importance to the economy and the citizens of Cambodia. In order to meet these regulations, Cambodia will have to overcome numerous political obstacles, which have plagued the country for decades.<sup>18</sup> There is a possibility for both negative and positive outcomes of a Least Developed Nation like Cambodia joining the WTO.

## II. THE AGRICULTURAL INDUSTRY IN CAMBODIA

Agriculture is the most important industry in Cambodia.<sup>19</sup> Eighty percent of the population live in rural areas and survive by substance farming.<sup>20</sup> The role of agriculture is not only important in providing jobs to the large rural population, but also in providing a driving force for industrialization through cheap food stuffs and savings in agriculture.<sup>21</sup> The Cambodian government has a strong interest in promoting the well-being of the agricultural industry because of the large percentage of its population that earns their livelihood from this industry.<sup>22</sup>

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cials have concerns as to if they will meet WTO membership obligations); Sok Siphana, Secretary of State for Commerce for Kingdom of Cambodia, *Legal and Judicial Reform Strategy for Cambodia* (2001) (source on file with author) (finding that because of its unstable history, Cambodia must make aggressive reforms to enjoy benefits of globalization).

16. Boyd, *supra* note 13.

17. See generally Final Act, *supra* note 14 (discussing the steps a country has to take in order to become a member of the WTO).

18. See MSN Encarta: Cambodia, [http://encarta.msn.com/text\\_761570298\\_\\_1/Cambodia.html](http://encarta.msn.com/text_761570298__1/Cambodia.html) (last visited Jan. 17, 2006) (discussing the changes in government throughout Cambodian history).

19. See *id.* (stating that agriculture is the largest sector of Cambodia's economy and also the largest employer).

20. *Id.*

21. Marideth R. Bravo, *Agrarian Reforms in Southeast Asia: The Role of NGO's and Other Actors*, in WHOSE LAND? CIVIL SOCIETY PERSPECTIVES ON LAND REFORM AND RURAL POVERTY REDUCTION 57, 58 (Krishna B. Ghimire ed., 2001), available at [http://www.landcoalition.org/pdf/whoseland\\_ch2.pdf](http://www.landcoalition.org/pdf/whoseland_ch2.pdf).

22. *Id.* (discussing large percentage of population working in the agricultural industry).

### A. Agricultural Sectors of Cambodia

Cambodia is a country filled with numerous natural resources which are used to create products for future sale in different markets. These resources include "forests, fisheries, a range of ecological zones suited to produce a wide variety of crops and livestock as well as other biological resources that have yet to reach their full productive potential."<sup>23</sup> Cambodia's total land area is 69,898 square miles with twenty-one percent of this land cultivated for farming and fifty-three percent of the land covered with forests.<sup>24</sup> The agricultural industry has been established as an important industry in Cambodia and has great potential for expansion.<sup>25</sup>

Rice is the most important crop in Cambodia because it is the staple crop of the Cambodian diet.<sup>26</sup> Ninety percent of the cultivated regions of Cambodia are covered with rice.<sup>27</sup> The production of rice accounts for approximately fifteen percent of the GDP, yet the overall yield is low.<sup>28</sup> Although the majority of the rice produced in Cambodia stays within the country for subsistence needs, the exportation of rice is the major source of income for farmers.<sup>29</sup> The rice-import demand in Asia alone is expected to grow by as much as seventy percent over the next thirty years, providing an export market for rice.<sup>30</sup> If the Cambodian government continues to promote the increase of rice production in the nation, the Cambodian farmers will be able to profit from the expected need for rice throughout Asia and the world.<sup>31</sup>

While rice is the staple crop in Cambodia, there are numerous other crops that are produced for export purposes.<sup>32</sup> "One of the most significant opportunities for growth in Cambodian agriculture lies in rubber production."<sup>33</sup> The

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23. COUNCIL FOR THE DEVELOPMENT OF CAMBODIA, AGRICULTURE: CAMBODIA [hereinafter COUNCIL FOR DEVELOPMENT] (source on file with author).

24. MSN Encarta, *supra* note 18.

25. *See id.*

26. *Id.*

27. OXFAM INTERNATIONAL, CAMBODIA'S ACCESSION TO THE WTO: HOW THE LAW OF THE JUNGLE IS APPLIED TO ONE OF THE WORLD'S POOREST COUNTRIES 5 (2003), <http://www.globalpolicy.org/soecon/bwi-wto/wto/2003/0903cambodia.pdf>.

28. COUNCIL FOR DEVELOPMENT, *supra* note 23.

29. *Id.*; *see also* FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, ALL ABOUT RICE: CAMBODIA, INTERNATIONAL YEAR OF RICE (2004) [hereinafter FAO], <http://www.fao.org/rice2004/en/p14.htm>.

30. COUNCIL FOR DEVELOPMENT, *supra* note 23.

31. *See id.*

32. *See generally id.* (discussing the different agricultural sectors of Cambodia's economy).

33. *Id.*

government is in the process of privatizing rubber plantations and is encouraging development in this sector through foreign investment.<sup>34</sup> The majority of the other crops cultivated in Cambodia are consumed within the country; however, the government is committed to pursuing a policy of crop diversification and has initiated a project to encourage the production of palm oil, cashews, coffee, tea, soybean, cassava, sweet potato, tobacco, cotton, maize, mung beans, and other vegetables for exportation.<sup>35</sup> The Cambodian government is committed to taking steps towards diversifying the production of crops in order to increase the number of agricultural exports.<sup>36</sup>

"Fisheries account for approximately 3.5 percent of Cambodia's GDP."<sup>37</sup> Freshwater fish are an important element of the Cambodian diet and most of the fish caught annually is consumed locally.<sup>38</sup> Cambodia has the most concentrated source of freshwater fish in Southeast Asia.<sup>39</sup> The Cambodian government's goal is to increase production in fishing while preserving environmental integrity.<sup>40</sup>

These agricultural sectors are important components of the Cambodian economy and will continue to be the focus of the government.<sup>41</sup> The government must maintain these diverse agricultural industries while increasing production, if Cambodia hopes to meet the requirements established by the WTO.

## B. *The Economy and Labor Force in Cambodia*

### 1. *The Economy*

As one of the poorest nations in the world, Cambodia's economy relies heavily on its agricultural industry.<sup>42</sup> Agriculture continues to dominate the Cam-

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34. *Id.*

35. *Id.* See generally FAO, *supra* note 29.

36. See generally COUNCIL FOR DEVELOPMENT, *supra* note 23 (discussing the different crops that could be cultivated in Cambodia).

37. *Id.*

38. MSN Encarta, *supra* note 18.

39. *Id.*

40. COUNCIL FOR DEVELOPMENT, *supra* note 23.

41. Hing Thoraxy, Cambodian Investment Bd., Address to Council for the Development of Cambodia: Cambodian Country Report (Aug. 16-17, 2002).

42. See MSN Encarta, *supra* note 18; see also *Children For Sale: Dateline Goes Under Cover With a Human Rights Group to Expose Sex Trafficking in Cambodia*, MSNBC, Jan. 9, 2005, <http://www.msnbc.msn.com/id/4038249/> (stating that the average yearly income of a Cambodian citizen is less than (US)\$300 forcing some parents to sell their children into sex).

bodian economy, accounting for thirty-three percent of the country's GDP.<sup>43</sup> Productivity levels in Cambodia are still lower than other Southeast Asian countries, but the potential for growth in the agricultural sector is tremendous.<sup>44</sup> The introduction of new technology and the addition of capital from both internal and foreign investment will produce rapid growth and significant gains.<sup>45</sup> To encourage growth in the agricultural sector, the Cambodian government provides generous incentives to foreign investors.<sup>46</sup> The economy in Cambodia is a long way from being stable, but with the government taking measures to increase foreign investments in this already major economic industry, the economy will only grow stronger.

## 2. *Cambodian Labor Force*

Seventy-five percent of Cambodia's population is employed in agriculture, yet many more could be working because the industry is operating well below potential.<sup>47</sup> Due to low productivity, complex land-ownership laws, and inadequate infrastructure, the agricultural sector only grew by two percent a year between 1997 and 2001, yet the industrial sector grew more than forty-three percent a year during the same time frame.<sup>48</sup> Cambodia has a young population that will be joining the workforce in the coming years, which could possibly help the farming sector grow.<sup>49</sup> Also, many of the employees of factories are moving back to the countryside due to the poor working conditions in the city. Agriculture will continue to be an important sector in Cambodia because of the possibility of employment and growth.

## III. POLITICAL STRUCTURE FROM KHMER ROUGE TO WTO

The people of Cambodia over the past thirty years have experienced brutal totalitarianism, devastating civil war, foreign invasion, and recently, democratization.<sup>50</sup> The political history has had a devastating impact on the society and

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43. Cooperation Committee for Cambodia Review, [hereinafter Cooperation Committee] <http://www.ccc-cambodia.org/About/CambodiaReview/CambodiaReview.htm> (last visited Apr. 5, 2006).

44. COUNCIL FOR DEVELOPMENT, *supra* note 23.

45. *Id.*

46. *Id.*

47. *See* Boyd, *supra* note 13.

48. *Id.*

49. *See* SOK HACH, ECON. INST. OF CAMBODIA, CAMBODIA ANNUAL ECONOMIC REPORT CH. 4 (2003), <http://www.eicambodia.org/publications/AER/partiv.php>.

50. Povarchuck, *supra* note 12, at 647.



has left numerous obstacles for the current government to overcome in order to make Cambodia a productive society.<sup>51</sup> During the 1990s, the country emerged from self-inflicted isolation and began an attempt to establish itself as a democratic Asian exporter through a major political and economic shift.<sup>52</sup> There have been numerous reforms in the government and society in order to become more compatible with the WTO; the majority of the reforms taken have moved Cambodia towards a society based upon Western ideals.<sup>53</sup> Several obstacles in politics, the judiciary, and the economy have been overcome by the government in order to implement democratic ideals and to help achieve the level of liberalization necessary to integrate globally, but Cambodia has not fully recovered from its brutal past.<sup>54</sup> The political structure of Cambodia has moved forward over the past thirty years to a more democratic system, however, there are still many remnants of the old political systems intact today which are causing problems in the agricultural sector and society as a whole.

#### A. Cambodia Under the Control of the Khmer Rouge

Until the 1970s, Cambodia was ruled by a monarchy, ending when a civil war ensued in 1975 led by a Communist-dominated group known as the Khmer Rouge, which took control of the country.<sup>55</sup> Under the leadership of the Khmer Rouge, Cambodia underwent a brutal and radical revolution.<sup>56</sup> The immediate goals of the Communist group were to overhaul the social system and to revitalize the national economy.<sup>57</sup> The regime was pursuing radical transformation of the country, with the agricultural sector as the base, while using the revenues from this industry to build up an industrial sector to produce goods that would allow for the expansion of the agricultural sector.<sup>58</sup> The new communist government called for a total collectivization of agriculture and for a complete nationalization of all sectors of the economy.<sup>59</sup>

The Khmer government established a society based upon self-reliance, an important aspect to communism.<sup>60</sup> The theory of self-reliance is a pillar of the

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51. *See id.*

52. *Id.*

53. *See id.*

54. *See id.*

55. *See* MSN Encarta, *supra* note 18.

56. KHMER ROUGE, *supra* note 15.

57. *Id.*

58. *See id.*

59. *Id.*

60. Dan Skidmore, Speech before Drake University Law School's International Law Society (Mar. 14, 2005) (on file with author).

North Korean philosophy known as Maoism, which describes industrialized nations as exploiting third world countries.<sup>61</sup> Maoist leaders believe that in order for third world countries to survive and become truly independent, these countries must shed all ties with industrialized nations.<sup>62</sup> In an attempt to reduce foreign influence, the Khmer Rouge regime announced it would not allow foreigners to remain in Cambodia and informed the UN General Assembly that the country was economically self-sufficient and would not ask for international aid.<sup>63</sup> Under "[t]he policy of self-reliance . . . the government organized the entire population into forced-labor groups . . ."<sup>64</sup>

"Cambodia's economic revolution was much more radical and ambitious" than any other revolution undertaken by another communist country.<sup>65</sup> The government developed an economic system that was unique in at least two respects.<sup>66</sup> "First, the government abolished private ownership of land" advocating that "Cambodia should be a classless society of 'perfect harmony' and . . . private ownership."<sup>67</sup> Second, "Cambodia [became] a cashless nation [as] the government confiscated all republican era currency" and paid workers in the form of food rations.<sup>68</sup>

Although the Khmer Rouge was only in power for a few years, the government brutally destroyed Cambodian society and economy.<sup>69</sup> Its policies prevented the economy from growing because the society was to be self-sufficient, cutting Cambodia off from the rest of the world.<sup>70</sup> If a citizen did not follow the rules established by the Khmer Rouge, they were tortured, raped, or executed.<sup>71</sup> The majority of the genocide victims were the intellectuals and educated members of society because they threatened the peasant lifestyle advocated by the Khmer Rouge.<sup>72</sup> This short experiment in social reconstruction devastated Cambodia.<sup>73</sup> The Khmer Rouge attempted to create a stronger country by removing

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61. *Id.*

62. *Id.*

63. KHMER ROUGE, *supra* note 15.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. MSN Encarta, *supra* note 18.

70. KHMER ROUGE, *supra* note 15.

71. See generally Bill Ong Hing, *Detention to Deportation - Rethinking the Removal of Cambodian Refugees*, 38 U.C. DAVIS L. REV. 891, 916 (2005) (discussing occurrences of deaths under the regime).

72. Skidmore, *supra* note 60.

73. See generally Povarchuck, *supra* note 12, at 647 (discussing the policies of the Khmer Rouge and how they effected both the economy and citizens of Cambodia).

Cambodia from the international scene and relying solely on the agricultural industry to provide the country with the means necessary to survive.<sup>74</sup> The transformation of Cambodia into a country whose economy relied only upon agriculture did not strengthen the country but instead destroyed the nation.<sup>75</sup> Although the irrigation system did expand under the Khmer Rouge, the agricultural industry did not expand and numerous crop shortages occurred due to the policies implemented by the government.<sup>76</sup>

### B. *Cambodia Under the Control of the Vietnamese*

In 1978, Vietnam invaded Cambodia and removed the Khmer Rouge from control, establishing a political system that positioned itself against American hegemony and the capitalist system.<sup>77</sup> The new government implemented two different economic policies during their twelve years of control, which were less restrictive than the governmental policies of the Khmer Rouge.<sup>78</sup>

#### 1. *The New Economic Policy and System*

The Vietnamese political system advocated a gradual transformation to socialism through a "planned economy with markets."<sup>79</sup> This transformation restored the banks, currency, and trade; abolished forced labor; and introduced an eight-hour workday and pay based on work performed.<sup>80</sup> In order to move towards the policy of socialism, the Vietnamese government created "production units of seven to fifteen families," which were "united in a common endeavor to raise food or to produce goods."<sup>81</sup> The government also bought agricultural products from the peasants and sold manufactured goods at free-market prices.<sup>82</sup>

At its Fourth Party Congress, the Vietnamese government further clarified its economic policy by declaring that the nation's economic system had three main parts - the state economy, the collective economy, and the family econ-

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74. Hing, *supra* note 71, at 914.

75. See KHMER ROUGE, *supra* note 15.

76. *Id.* (measuring the economic performance of the Khmer Rouge is impossible because no bookkeeping was carried out).

77. Povarchuck, *supra* note 12, at 648.

78. See generally FED. RESEARCH DIV. OF U.S. LIBRARY OF CONG., ECONOMIC ROLE OF THE KPRP: NEW ECONOMIC POLICY & SYSTEM [hereinafter KPRP], available at <http://countrystudies.us/cambodia/62.htm> (discussing the policies established by the Vietnamese in Cambodia).

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

omy.<sup>83</sup> The state economy dealt with large-scale agricultural production, all levels of industrial production, communication and transportation networks, domestic and foreign trade, and finance.<sup>84</sup> The Vietnamese government acknowledged that the state economy was small and determined that it should be expanded.<sup>85</sup> The collective economy was delegated an important role in agricultural rehabilitation and development that consisted of groups dealing in agriculture, fishing, forestry, and handicrafts.<sup>86</sup> Each group worked in an agricultural field as well as assumed the task of collective purchase and sale.<sup>87</sup> The family-run economy incorporated the home economies of the peasants, the majority of retail businesses, individual artisans, handicrafts, repair shops, and small trade allowing for the development of a modest private industry.<sup>88</sup> Cambodians were given more rights under this new political system, yet were not totally free of oppression and a weak economy.

## 2. *The First Plan, 1986-1990*

The First Plan, which was created by the political heads of Vietnam, Laos, and Cambodia to coordinate their economic plans with each other, was intended to open a new phase of the Cambodian revolution by giving highest priority to agricultural production, calling it "the first front line," and focusing on the four sectors of food, rubber, fishing, and timber.<sup>89</sup> During this time period, food production was to increase seven percent each year; by 1990, rubber farming would produce 50,000 tons of latex; timber production would reach 200,000 cubic meters; jute production would increase to 15,000 tons; and fish production would amount to 130,000 tons.<sup>90</sup> By exporting these products, the government hoped to lower the national deficit.<sup>91</sup> The First Plan, like so many of its predecessors, labeled both agriculture and forestry as the real forces of the national economy, while basically ignoring the industrial industry.<sup>92</sup> Cambodians were urged to undertake the task of economic restoration "in the spirit of mainly relying on

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83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *See id.*

88. *See id.*

89. FED. RESEARCH DIV. OF U.S. LIBRARY OF CONG., ECONOMIC ROLE OF THE KPRP: FIRST PLAN, 1986-90[hereinafter FIRST PLAN], *available at* <http://countrystudies.us/cambodia/62.htm>.

90. *Id.*

91. *See id.*

92. *See generally id.* (discussing the importance of agriculture while not discussing industry).

one's own forces," but Vietnamese leaders stressed economic and technical cooperation with Vietnam because they believed such cooperation would be "an indispensable factor" in the development of agriculture and forestry in Cambodia.<sup>93</sup>

The move to a more socialist society helped to improve the economy of Cambodia and liberalize the agricultural industry, but Cambodia was still under an oppressive government that caused both death and exile of its citizens for failure to conform to the wishes of the Vietnamese control.<sup>94</sup> For the Cambodians to truly establish a well-working economy and society, the Vietnamese needed to be removed in order to end the civil wars.

### *C. Royal Government of Cambodia*

#### *1. The Political System in General*

In 1993, the new Royal Government of Cambodia, a constitutional monarchy, was established through a national legislative election.<sup>95</sup> When the new government was established, Cambodian society lacked the crucial institutions and structures needed to protect fundamental human rights and a functional free-market economy; those structures included an independent judiciary, legal professionals, an effective non-political administration, a free press, a broadly educated professional class, and indigenous human rights and other non-governmental organizations able to promote and defend popular interests.<sup>96</sup> To reach its developmental vision, the Royal Government of Cambodia wished to establish a socially cohesive, educationally advanced, and culturally vibrant society without poverty, illiteracy and disease.<sup>97</sup> In order to realize this vision the government created developmental strategies:

(1) to foster broad based sustainable economic growth with equity, with the private sector leading the role; (2) to promote social and cultural development by improving access of the poor to education, health, water and sanitation, power, credit markets and information and appropriate technology; (3) to promote sustainable management and use of natural resources and the environment; and (4) to improve the governance environment through effective implementation of the Governance Action Plan.<sup>98</sup>

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93. *Id.*

94. *See id.* (discussing implementation of the First Plan).

95. MSN Encarta, *supra* note 18.

96. Siphana, *supra* note 15.

97. Cooperation Committee, *supra* note 43.

98. *Id.*

The strategic message of the government was that economic growth is necessary for the reduction of poverty and that the key to economic growth is development within the private sector.<sup>99</sup> A constitution was created by the Cambodian government that outlined the country's political and social goals.<sup>100</sup> A written constitution will enable the judicial and political system to refer to the document when making decisions on how to approach different situations that may arise.<sup>101</sup>

The Constitution of Cambodia was ratified in September 1993 and amended in 1999.<sup>102</sup> From the first legislative period, 1993-1998, and through the second period, 1998 to present, the overriding goal of the government has been to ensure peace, stability, and national unity.<sup>103</sup> The Cambodian government also considers human rights policies and the promotion of liberal democracy as matters of utmost priority.<sup>104</sup> The government is further convinced that by strengthening the laws of Cambodia, it will be able to preserve political stability conducive to economic and social development, eradicate poverty, and protect the environment.<sup>105</sup> The Constitution is the supreme law of the land and outlines the political and judicial structure of Cambodia, as well as granting certain rights to the citizens of Cambodia.<sup>106</sup> The government has established numerous agencies to ensure that the articles of the Constitution are followed.<sup>107</sup>

## 2. Agriculture Under the Monarchy

Under the Constitution of Cambodia, the Ministry of Agriculture, Forestry and Fisheries was created to direct and manage the agricultural sectors of the Kingdom of Cambodia and is just one of the many organizations created to better the country.<sup>108</sup> Some of the responsibilities of the Ministry include:

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99. *Id.*

100. *See* Siphana, *supra* note 15.

101. *See* The Royal Gov't of Cambodia, Ministry of Commerce, Law Making Process: Problems Confronting the Law Making Process [hereinafter Law Making Process], [http://www.moc.gov.kh/laws\\_regulation/legal\\_reform\\_strategy-fnal\\_draft2.htm](http://www.moc.gov.kh/laws_regulation/legal_reform_strategy-fnal_draft2.htm) (last visited Apr. 21, 2006).

102. MSN Encarta, *supra* note 18.

103. COUNCIL FOR DEVELOPMENT, *supra* note 23.

104. *Id.*

105. *See id.*

106. *See* MSN Encarta, *supra* note 18; *see also* Constitution of Cambodia ch.1, art.31-50 available at [www.constitution.org/cons/cambodia.htm](http://www.constitution.org/cons/cambodia.htm).

107. *See* The Royal Gov't of Cambodia, Organization, Ministries, <http://www.cambodia.gov.kh/unisql1/egov/english/organ.ministry.html> (last visited Jan. 18, 2006).

108. The Royal Gov't of Cambodia, Ministry of Agriculture, Forestry and Fisheries: Mission and Organization, <http://www.maff.gov.kh/aboutus.html> (last visited Mar. 15, 2006).

- Organize and operate agricultural development policies in agriculture sector which aimed at the improvement of the living standards of the population;
- Participate in the preparation of land reform and utilization policies;
- Direct and establish the agriculture sector development plans;
- Coordinate, [monitor] and evaluate the implementation of policies and activities for development of agriculture;
- Monitor and manage the natural resources of the agricultural sector and facilitate activities of exploitation on these resources to meet domestic demands with respect to the stability of ecology system;
- Enact legislation and regulations on management, maintain and protect the natural resources of agriculture sector and monitor on implementation;
- Evaluate and develop human resources for participation in the development of agriculture with promoting the technical skills and knowledge and make an effective use of these human resources;
- Necessarily support and advise to the farmers on technologies to improve production and increase productivity;
- Set up principles and monitor on implementation to enhance and improve the process of concerned professional organizations, associations involved in agriculture sector;
- Conduct research, study and extension on agricultural technology, science and economics for all subsectors;
- Advise on agricultural land development, soil quality improvement, and appropriate utilization of land, seed, breeds, fertilizer, chemicals to the conditions of geographic manner and regional climate and this leads to ensure the increasing high yield and maintain the balancing of natural environment;
- Coordinate and cooperate with internal and external organizations, non-governmental organizations for the development of agriculture sector;
- Participate in enhancing and acceleration of investment, export of food and agricultural products...<sup>109</sup>

The Ministry is divided into numerous departments to ensure that the agricultural needs and goals of Cambodia are met.<sup>110</sup> Local institutions were created

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109. *Id.*

within each municipality and province to implement and facilitate the Ministry's activities on a local level.<sup>111</sup> The general departments are to be responsible for coordinating and monitoring activities of the central entities, local institutions, and public establishments under the Ministry's jurisdiction and facilitating the achievement of objectives defined in the agricultural development policies by harmonizing laws and regulations related to the agricultural sector.<sup>112</sup> These departments also coordinate the activities of entities under the Ministry with other entities on matters related to administration, evaluation, reporting, filing, staffing, planning, finance, facilitation and development of strategic policies, and developmental programs for agriculture.<sup>113</sup> Another responsibility of the general departments is to prepare laws and regulations related to the agricultural sector.<sup>114</sup>

In a country that relies heavily on its agricultural sector, there must be strong policies and regulations in place to ensure the industry does not collapse. The Ministry of Agriculture, Forestry and Fisheries will enable the government to improve the standard of living and increase the economic growth of the sector, both of which were goals of the Constitution and Royal Government.<sup>115</sup>

### 3. *Corruption and the Inability to Enforce Laws*

Although the Cambodian government has taken major strives to make improvements throughout the entire social, political, and economic sectors, there are still obstacles the government must overcome in order to reach the goals of the Constitution and shed the country of the horrors created by prior governments. One of the major problems facing Cambodia today is the lack of trained lawyers and judges and the concentration of these professionals in Phnom Penh, the capital of Cambodia, far from the majority of the population. This leaves citizens with few options to ensure that their rights are protected.<sup>116</sup> The Khmer Rouge destroyed law books and killed judges, lawyers, prosecutors, and legislators, totally devastating the legal system and making it difficult to reestablish a working system for the Royal Government.<sup>117</sup> The Cambodian government is aware of the problem but states that the training of lawyers is a long term goal and not something that can occur overnight.<sup>118</sup> Foreign countries and international

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110. *See id.* (listing ministry departments).

111. *See id.*

112. *See id.*

113. *See id.*

114. *Id.*

115. *See id.*

116. Povarchuck, *supra* note 12, at 650.

117. *Id.*

118. *See id.* at 651.



organizations have offered assistance in training attorneys by developing a legal curriculum, creating Cambodian legal documents, allowing Cambodians to obtain a legal education abroad, and the creation and management of a Cambodian Bar Association.<sup>119</sup> Not only must the government deal with the lack of a legal profession but they must also deal with widespread judicial corruption, which has been a problem for both Cambodians and foreigners and is the most significant deterrent to internal and external investors.<sup>120</sup>

There is no program established in Cambodia to deal with legislative reform issues, there is a limited capacity to create and manage an agenda for these reforms, and complete lack of a system to coordinate the legislative reform process.<sup>121</sup> Lawmaking is not a straightforward practice in Cambodia but instead is a drawn out process that can be rather confusing at times and is a practice that does not facilitate the adoption of laws.<sup>122</sup> The majority of the problems facing the Cambodian legal system today stem from the historical 'melting pot' of legal influences that were forced upon Cambodia throughout history. Those influences include the presence of France during colonial times, the basic tenants of Cambodia's socialist legal system of the 1980s, and the influence of the United States and Europe in the areas of economic and commercial laws during the late 1990s.<sup>123</sup> The legal framework of the country is incomplete and full of problems which need to be fixed.<sup>124</sup> There is unwillingness by the judiciary and legislature to draft laws that are comprehensive and enforceable in their own right; typically the laws drafted only contain general statements of purpose, principles, and structure.<sup>125</sup> The few laws that have been adopted lack the implementing decrees necessary to implement them into society, so these laws are not being enforced.<sup>126</sup>

The newly developed legal and judicial professions are plagued with corruption, yet the government has no provisions against this corruption and bribery.<sup>127</sup> The Cambodian government is not a signatory to any international anti-corruption agreement, nor has national legislation been enacted to combat these situations.<sup>128</sup> Since there has been little progress in legal and judicial reform, the

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119. *Id.*

120. *Id.*

121. Law Making Process, *supra* note 101.

122. *Id.*

123. *Id.*

124. *See id.*

125. *Id.*

126. *Id.*

127. Povarchuck, *supra* note 12, at 650.

128. *Id.* at 651.

advancement of the democratic process has been constrained and the reform of the social sector has been undermined.<sup>129</sup>

The legal, judicial, and legislative instability of Cambodia will continue to be a major obstacle to the goals laid out in the Constitution. In order for laws and regulations to be upheld, there must be a system in place to enforce them. Without a well functioning judicial and political system the future of Cambodia may be in danger. Major reforms need to be implemented in the legal and political systems in order for the goals of the Royal Government to be achieved. A possible stepping stone towards reaching the goals outlined in the Constitution could be the WTO.<sup>130</sup>

#### IV. WTO: AN OVERVIEW

The WTO was created as the international police in areas of trade, including agriculture. "The WTO's overriding objective is to help trade flow smoothly, freely, fairly, and predictably."<sup>131</sup> The WTO reaches these objectives by:

- Administering trade agreements,
- Acting as a forum for trade negotiations,
- Settling trade disputes,
- Reviewing national trade policies,
- Assisting developing countries in trade policy issues,
- Cooperating with other international organizations<sup>132</sup>

##### A. Agricultural Agreement

The Agricultural Agreement of the WTO established "a framework for the long-term reform of agricultural trade and domestic policies."<sup>133</sup> The organization takes "a decisive move towards the objective of increased market orientation in agricultural trade" and has strengthened the rules governing agricultural trade, "which will lead to improved predictability and stability for importing and exporting countries alike."<sup>134</sup> The agreement also addresses issues of vital eco-

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129. Cooperation Committee, *supra* note 43.

130. *See id.*

131. The WTO in Brief: Part 2: The Organization, [http://www.wto.org/english/thewto\\_e/whatis\\_e/inbrief\\_e/inbr02\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr02_e.htm) (last visited Mar. 15, 2006).

132. *Id.*

133. Legal Texts: The WTO Agreements, A Summary of the Final Act of the Uruguay Round, Agreement on Agriculture, [http://www.wto.org/english/docs\\_e/legal\\_e/ursum\\_e.htm](http://www.wto.org/english/docs_e/legal_e/ursum_e.htm) (last visited Mar. 15, 2006).

134. *Id.*

nomie and political importance including "provisions that encourage the use of less trade-distorting domestic support policies" and "the introduction of tightly prescribed provisions that allow some flexibility in the implementation of the commitments" necessary to join the WTO.<sup>135</sup>

In order to gain market access in agricultural products, the only restriction a government can use is a tariff.<sup>136</sup> The new tariffs and tariff quotas, covering agricultural products, took effect in 1995.<sup>137</sup> Developed countries are to cut the tariffs by an average of thirty-six percent over six years, developing countries are to make twenty-four percent cuts over ten years and least-developed countries do not have to cut their tariffs at all.<sup>138</sup> "Several developing countries also used the option of offering ceiling tariff rates in cases where duties were not committed under GATT or WTO regulations."<sup>139</sup> For those products whose non-tariff restrictions have been converted to tariffs, governments are permitted to take special safeguards to prevent swiftly falling prices or surges in imports from creating harsh consequences for farmers.<sup>140</sup>

Because countries are concerned that internal policies which support domestic prices or subsidize production in some other way encourage overproduction, the WTO has established rules governing domestic supports.<sup>141</sup> These domestic policies can "squeeze out imports or lead to export subsidies and low-priced dumping on world markets."<sup>142</sup> "The Agriculture Agreement distinguishes between support programs that stimulate production directly and those programs which are considered to have no direct effect."<sup>143</sup> The WTO forces nations to cut back on domestic policies that have a direct effect on production and trade.<sup>144</sup> Developed countries agreed to reduce domestic support by twenty percent over six years starting in 1995, while developing countries agreed to make a thirteen percent cut over ten years.<sup>145</sup> WTO members that fall into the category of least-developed countries do not have to make any cuts.<sup>146</sup> Those measures that have a minimal impact on trade can be used freely and include such categories as direct

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135. *Id.*

136. Fairer Markets, *supra* note 2.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *See Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

income support, assistance to help farmers restructure agriculture, and direct payments under environmental and regional assistance.<sup>147</sup>

Under the Agricultural Agreement, "export subsidies on agricultural products are prohibited unless the subsidies are specified in a member's list of commitments."<sup>148</sup> If they are listed, the agreement requires WTO members to cut both the amount of money they spend on export subsidies and the quantities of exports that receive subsidies.<sup>149</sup> Developed countries agreed to cut the value of export subsidies by thirty-six percent over six years starting in 1995, while developing countries must cut the value of export subsidies by twenty-four percent over ten years.<sup>150</sup> Developed countries also agreed to reduce the quantities of subsidized exports by twenty-one percent over the six years, while developing countries agreed to reduce the quantities by fourteen percent over ten years, and least developed countries do not need to make any cuts.<sup>151</sup>

The least developed countries and those depending on food imports are not required to make the major cuts on imports and exports that the developed and developing countries are forced to implement under the WTO.<sup>152</sup> Least developed countries

Depend on supplies of cheap, subsidized food from the major industrialized nations . . . and although their farming sectors might receive a boost from higher prices caused by reduced export subsidies, they might need temporary assistance to make the necessary adjustments to deal with higher priced imports, and eventually to export. A special ministerial decision [of the WTO] sets out objectives, and certain measures for the provision of food aid and aid for agricultural development in these countries, [and] [i]t also refers to the possibility of assistance from the International Monetary Fund, World Bank to finance commercial food imports.<sup>153</sup>

Both the International Monetary Fund and the World Bank are organizations with goals to erase poverty and improve the standard of living in least developed countries.<sup>154</sup> These organizations provide loans and technical support to

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147. *Id.*

148. *Id.* (alteration in original).

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. See generally International Monetary Fund, About the IMF [hereinafter IMF], <http://www.imf.org/external/about.htm> (last visited Mar. 15, 2006); The World Bank Group, About Us [hereinafter World Bank], <http://web.worldbank.org> (follow "About Us" hyperlink) (last visited Mar. 15, 2006).

low and middle income countries, which may help to improve the lifestyle of Cambodian citizens.<sup>155</sup>

Without the status as a least developed nation, it is unlikely that Cambodia would be able to reach the lofty goals established in the Agricultural Agreement of the WTO.<sup>156</sup> In a nation based solely on agriculture, an influx of cheap food and products would devastate the local economy. Also, the inefficient and corrupt political and judicial systems would be obstacles to reaching the goals of the WTO because there would be no internal enforcer of the agreement, causing the country to be in violation of the agreement.<sup>157</sup>

### B. Least Developed Countries

The WTO pays extra attention to nations fitting into the category known as least developed countries. All of the WTO agreements acknowledge that least developed nations "must benefit from the greatest possible flexibility, and better-off members must make extra efforts to lower import barriers on least developed countries' exports."<sup>158</sup> The WTO also recognized there was a need for certain steps to be created in order to ensure that the least developed nations are able obtain a share in the growth of international trade and that this growth is in line with their need for economic development.<sup>159</sup>

Since the Uruguay Round agreements in 1994, several decisions in favor of least developed countries have been made.<sup>160</sup> WTO ministers agreed on a Plan of Action for least developed countries, which included "technical assistance to enable [the countries] to participate better in the multilateral system and a [promise] from developed countries to improved market access for least-developed countries' products."<sup>161</sup> In 2002, the WTO adopted a work program for least developed countries containing several broad elements created to benefit the countries.<sup>162</sup> Those elements include improved access to different markets around the

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155. See generally IMF, *supra* note 154; World Bank, *supra* note 154.

156. See generally Developing Countries, *supra* note 7.

157. See generally Understanding the WTO: The Agreements Overview: A Navigational Guide, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm1\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm1_e.htm) (last visited Mar. 15, 2006) (requiring governments to make their trade policies clear to the WTO by notifying it about current laws and adopted measures in regular reports).

158. Developing Countries, *supra* note 7.

159. World Trade Organization, *Preferential Tariff Treatment for Least-Developed Countries*, WT/L/304 (June 15, 1999) [hereinafter *Preferential Treatment*], available at [http://www.wto.org/english/docs\\_e/legal\\_e/waiver1999\\_e.doc](http://www.wto.org/english/docs_e/legal_e/waiver1999_e.doc).

160. See *id.*; Developing Countries, *supra* note 7.

161. Developing Countries, *supra* note 7.

162. *Id.*

world, technical assistance, support to agencies devoted to the diversification of the country's economy, assistance in following the procedures and practices of the WTO, and speedier negotiations in the membership process for least developed countries wanting to join the WTO.<sup>163</sup> In order to receive the preferential treatment under the WTO, a least developed country must apply to receive a waiver and list all the agricultural products they would like exempt from the GATT tariff.<sup>164</sup> An exemption would last until June 30, 2009 allowing the least developed countries to facilitate and promote trade and not raise barriers or create undue difficulties for the trade of any other member nation.<sup>165</sup> Each year the General Council will review whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met.<sup>166</sup>

The special treatment of Cambodia as a least developed country would allow the country to ease into the WTO and not have a total economic meltdown.<sup>167</sup> Treatment as a least developed nation allows Cambodia to seriously contemplate joining the WTO because they would be guaranteed certain protections not granted to industrialized nations.<sup>168</sup>

## V. CAMBODIA'S ACCESSION TO THE WTO

### A. Reasons Behind Joining the Organization

Before a country can accept or deny membership to an international organization, the leaders of the country must weigh the positive and the negative outcomes that could occur from the membership.<sup>169</sup> There were two major factors the Cambodian government took into consideration before accepting membership to the WTO; outside pressure from western nations and access to the world market.<sup>170</sup>

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163. *Id.*

164. *Preferential Treatment, supra* note 159.

165. *Id.*

166. *Id.*

167. *See generally id.* (discussing the goal of sharing in the growth of international trade commensurate with the needs of their economic development).

168. *See id.*

169. *See generally* World Bank, Cambodia's WTO Accession: Risks and Benefits [hereinafter Risks and Benefits], <http://siteresources.worldbank.org/INTCAMBODIA/Resources/WTO.pdf> (last visited Mar. 15, 2006) (discussing the advantages and disadvantages of joining the WTO).

170. *See id.*; *FOCUS: Cambodia's Entry in WTO Hoped to Hasten Pace of Reforms*, ASIAN ECON. NEWS, Sept. 15, 2003, [hereinafter *FOCUS*] available at [http://www.findarticles.com/p/articles/mi\\_m0WDP/is\\_2003\\_Sept\\_15/ai\\_107745470](http://www.findarticles.com/p/articles/mi_m0WDP/is_2003_Sept_15/ai_107745470).

### 1. *Pressure from Western Countries*

Cambodia's economy is still in its formative years due to the political history of the nation.<sup>171</sup> In order to build up the economy, the government has relied heavily on international aid and exports.<sup>172</sup> When the government was deciding whether or not to join the WTO, the threat of losing international aid was a major concern.<sup>173</sup> Cambodian products gain relatively easy access to the markets of Southeast Asian nations, which comprise 500 million consumers. However, the region's economic conditions and products are very similar, making it difficult for Cambodia to export its products to its neighbors because those regions already produce the same products.<sup>174</sup> Cambodia is forced to sell its products in distant countries where its products have comparative advantages, such as the markets of the United States, the European Union, Japan, and South Korea.<sup>175</sup> Cambodia's overall export performance has been declining since the United States began offering preferential access to Latin American nations under NAFTA and from the U.S. bringing other low-cost Asian producers, such as Vietnam, into trading schemes.<sup>176</sup> Since Cambodia lost major exports to the United States, it relies heavily on international aid from Japan, Australia, and Western Europe, which accounts for twelve percent of the gross domestic product.<sup>177</sup> Even with this reliance, "foreign direct investment has been falling steadily since 1999, and global development agencies have forecast that it will not return until the political and investment environments have been improved through sweeping bureaucratic and institutional reforms."<sup>178</sup> One way for Cambodia to improve the political and economic sectors was to join the WTO, which would allow free trade and an increase exports.<sup>179</sup>

Why would a foreign investor continue to trade with Cambodia as a non-member in the WTO when it could trade freely with a member state? It is unlikely that a member state would opt to trade with a non-member state that has a corrupt legal system. Thus, if Cambodia wanted to continue exporting goods to foreign countries it had to join the WTO and receive foreign aid and investments.

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171. MSN Encarta, *supra* note 18.  
172. See Boyd, *supra* note 13.  
173. Risks and Benefits, *supra* note 169.  
174. FOCUS, *supra* note 170.  
175. *Id.*  
176. See Boyd, *supra* note 13.  
177. *Id.*  
178. *Id.*  
179. *Id.*

## 2. Access to Markets

As a member of the WTO, Cambodia will be treated as a “most-favored nation” and therefore cannot be discriminated against unfairly by other members in accordance with the rules and principles of the organization.<sup>180</sup> This status provides Cambodia with superior market access to a wide range of products and in numerous countries – an achievement that would have been impossible on a regional basis let alone a global one.<sup>181</sup> Cambodia's diverse agricultural sector produces numerous crops and products every year which could be exported to foreign nations across the world.<sup>182</sup> Access to these markets would allow the agricultural industry to expand, helping economic growth.<sup>183</sup>

Another industry that will benefit from the access to markets across the globe is the garment industry.<sup>184</sup> This industry is the fastest growing industry in Cambodia and without markets to send its goods to, Cambodia will be unable to expand and succeed.<sup>185</sup> Market access is a major incentive for the Cambodian government in joining the WTO because its two major industries rely heavily on exports, and without this access Cambodia would most likely fail in the international market.<sup>186</sup>

### B. Accession Terms for Cambodia

In October 1994, the Kingdom of Cambodia applied for accession to the World Trade Organization; actual accession did not occur until October 13, 2004.<sup>187</sup> Accession to the WTO was one of the highest priorities of the Cambodian government because “[c]loser integration into the world economy was seen as a powerful instrument to alleviate poverty and the main driving force for socio-economic development.”<sup>188</sup> Members of the WTO welcomed Cambodia's

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180. Risks and Benefits, *supra* note 169.

181. *Id.*

182. See generally COUNCIL FOR DEVELOPMENT, *supra* note 23.

183. Risks and Benefits, *supra* note 169 (discussing the benefits a country receives for joining the WTO).

184. See Boyd, *supra* note 13.

185. See *id.*

186. Risks and Benefits, *supra* note 169.

187. World Trade Organization, *Report of the Working Party on the Accession of Cambodia*, WT/ACC/KHM/21/Add.1 (Aug. 19, 2003) [hereinafter *Working Party*], available at <http://docsonline.wto.org> (follow “Simple Search,” enter document title); CHEA SAMNANG & SOK HACH, ECONOMIC INSTITUTE OF CAMBODIA, WTO'S ACCESSION FOR CAMBODIA: OPPORTUNITIES AND CHALLENGES (2003), available at [http://www.eicambodia.org/downloads/files/WTO\\_Accession\\_for\\_Cambodia.pdf](http://www.eicambodia.org/downloads/files/WTO_Accession_for_Cambodia.pdf).

188. *Working Party*, *supra* note 187.



application to join the organization because membership was seen as an important step for Cambodia in becoming a more developed nation as well as being integrated into the world market.<sup>189</sup> The WTO members appreciated the actions already undertaken by the Cambodian government to comply with the rules and principles of the WTO, but noted that further work was still necessary for complete compliance.<sup>190</sup> In order for Cambodia to meet the task of becoming completely compliant with all the rules and regulations of the WTO, members agreed to work with Cambodia in a constructive manner to accomplish this goal, while other members offered technical assistance in facilitating Cambodia's accession into the organization.<sup>191</sup> The members looked forward to Cambodia's early accession into the WTO but agreed that the accession must be made on appropriate and relevant terms due to the fact that Cambodia is considered a least developed nation.<sup>192</sup>

### C. Cambodia Forced to Make Concessions

WTO members succeeded in persuading Cambodia to make greater concessions than those made by current least developed countries.<sup>193</sup> The larger nations such as the United States were aware that impoverished nations like Cambodia are willing to concede certain issues such as tariff barriers in exchange for the acceptance into organizations.<sup>194</sup> Countries like Cambodia believe that by joining organizations such as the WTO their best interests will be served, but the main goal of wealthy nations is to prove that these organizations are working for the benefit of all.<sup>195</sup> For instance, Cambodia was forced to immediately halt the use of affordable generic medicines, a practice that went far beyond what the United States and the European Union are willing to commit to.<sup>196</sup> Tariff peaks are a perfect example in which least developed countries such as Cambodia are given tougher restrictions than countries such as the United States and Canada.<sup>197</sup> In a country where eighty percent of the population is employed in the agricul-

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189. *Id.* The term "least-developed country" was created by the United Nations to replace the term "third world country."

190. *Id.*

191. *Id.*

192. *Id.*

193. OXFAM INTERNATIONAL, *supra* note 27, at 1.

194. Alan Boyd, *The Heavy Price of WTO Membership*, ASIA TIMES, Sept. 30, 2003 [hereinafter *Heavy Price*], available at <http://www.globalpolicy.org/soceccon/bwi-wto/wto/2003/0930nepalcamb.htm>.

195. *Id.*

196. OXFAM INTERNATIONAL, *supra* note 27, at 1.

197. *Id.*

tural sector, Cambodia has been asked to provide less protection to its agricultural sectors than the US, EU, and Canada are allowed to provide to theirs.<sup>198</sup>

Furthermore, there is a risk that Cambodia's accession will serve as a template model for the accession of other least developed countries into the WTO.<sup>199</sup> The creation of a precedent would substantiate the trend of demanding increasingly higher levels of commitments from those countries that have not yet entered the WTO, which would be a complete contradiction to the current WTO principle of providing countries with trade opportunities commensurate with their development needs.<sup>200</sup>

Despite the concessions, Cambodia's accession to the WTO is seen as a necessary step "towards breaking away from its image as a poor, war-stricken country, isolated from the international community."<sup>201</sup> As stated earlier, the government has a strong desire to improve the life of Cambodian citizens through economical, political, and judicial reforms.<sup>202</sup> The government feels that by joining the WTO and accepting its membership in October, 2004, they will be able to reach these goals more easily.<sup>203</sup>

## VI. THE IMPACT OF THE WTO ON CAMBODIA

In general, when becoming a member in any organization, there is always the possibility of both negative and positive outcomes, and these outcomes need to be taken into consideration prior to accepting the membership. However, the outcomes are not always readily visible to a perspective member and thus they must learn from their experience. Like any other organization, the WTO has both positive and negative incentives to becoming a member.<sup>204</sup>

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198. *Id.* Cambodia is allowed a sixty percent maximum tariff whereas the EU is allowed a 252 percent maximum tariff peak.

199. *Id.* at 2.

200. *Id.*

201. *Id.* at 6.

202. See Cooperation Committee, *supra* note 43.

203. See Povarchuck, *supra* note 12, at 655 (stating that Cambodian leaders have turned to WTO as a sustainable method for economic growth).

204. See Ten Benefits of the WTO Trading System [hereinafter Ten Benefits], [http://www.wto.org/english/thewto\\_e/whatis\\_e/10ben\\_e/10b00\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/10ben_e/10b00_e.htm) (last visited Mar. 16, 2006) (discussing the benefits of the WTO); *but see* Hiebert & Cohen, *supra* note 12 (discussing the possible negative outcomes to joining the WTO).

*A. Possible Negative Outcomes from Joining the WTO**1. Governmental Reforms*

The WTO has outlined numerous rules and regulations with which member states must comply in order to be in good status and avoid litigation against them for violation of the treaty.<sup>205</sup> In order for a country to meet the goals of the WTO, it must have a strong political and judicial structure in place so it can enforce and implement the tenets of the WTO.<sup>206</sup> Cambodia will have to reform its institutions speedily to improve its governance and thus strengthen its administration, so that all the commitments the country has made to the WTO can be implemented during the transition period of five years.<sup>207</sup> To fight corruption in Cambodia, promulgation and enforcement of laws and regulations is important. To achieve this, it is important to speed up reforms of the civil service, the military, the police, and the judicial system. The government had to adopt forty-six individual pieces of legislation, ranging from judicial reform to trade-related property rights to be allowed accession to the WTO, and although this legislation has been passed there is widespread skepticism that these edicts will be properly enforced.<sup>208</sup> The latest reforms package did not address underlying structural defects and has probably come too late to avert a drastic economic slowdown.<sup>209</sup> The Cambodian government will also have to take steps toward tackling such "chronic problems as red tape, monopolies, nepotism and lack of enforcement of laws."<sup>210</sup> The passing of laws is a long and arduous process in even the most politically and judicially advanced nations, and since Cambodia's judicial and political system is plagued with corruption, their ability to pass laws will be even more difficult. If the government is unable to pass laws or enforce them, it will be difficult for the government to meet the rules and regulations outlined by the WTO.<sup>211</sup> The government will have to spend a lot of time and money to make sure it can meet its obligations to the WTO and in the process may neglect other

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205. See generally Final Act, *supra* note 14 (discussing the steps a country must take in order to become a member of the WTO).

206. Understanding the WTO: The Organization: Membership, Alliances and Bureaucracy, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org3\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org3_e.htm) (last visited Apr. 21, 2006).

207. Hach Sok, *WTO Accession for Cambodia*, ASED THEMES (2004), available at [http://www.ased.org/artman/publish/article\\_527.shtml](http://www.ased.org/artman/publish/article_527.shtml).

208. See Boyd, *supra* note 13.

209. See *id.*

210. FOCUS, *supra* note 170.

211. See generally Final Act, *supra* note 14 (agreement to enter into the Uruguay Round).

important government issues which could create even more problems for the nation.<sup>212</sup>

## 2. Threat to Agricultural Industry

In a country where the major economic industry is agriculture, a blow to this industry would devastate the nation. Many Non-Governmental Organizations (NGO's), such as OXFAM, warn that "reducing tariffs on Cambodia's imports will prompt a surge of cheap food products from neighboring [countries] that will devastate small farmers."<sup>213</sup> The livelihood of farmers in least developed nations such as Cambodia depends upon whether the WTO can fully regulate agricultural trade.<sup>214</sup> Currently, governments such as those of the United States and the EU subsidize their farmers in an unfair manner causing a distortion in trade and making it virtually impossible for farmers in least developed countries to participate in subsidized markets.<sup>215</sup> Small farmers in countries like Cambodia also may not be able to meet the health and safety requirements established by the U.S. and E.U., thus being denied access to those markets.<sup>216</sup> If these farmers feel that they are unable to make a living under these situations they may flood urban areas, thereby driving down the wages in those areas as well as increasing unemployment.<sup>217</sup> The flooding of an urban area with laborers could devastate the economy both rurally and in the city.<sup>218</sup> The opportunity for work in the city is already limited because the government has been cracking down on strikes, and 47,000 factory workers have been fired in the past year without compensation.<sup>219</sup> Any negative impact on agriculture could be devastating to the Cambodian economy and to the living conditions of the Cambodian people.

## 3. Negative Impact on Least Developed Nations

The proponents of the WTO argue that the organization was established to protect all of its members, but opponents argue that the organization was es-

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212. See generally *FOCUS*, *supra* note 170 (explaining the political and economic burdens in complying with WTO rules).

213. Hiebert & Cohen, *supra* note 12, at 24.

214. Susan Ariel Aaronson, *Is Equity in Trade an Attainable Goal?: International Reform Efforts May Ultimately Prove Mixed Blessings*, DAILY STAR, Sept. 20, 2004, available at [http://www.dailystar.com/lb/article.asp?edition\\_id=10&categ\\_id=3&article\\_id=8515](http://www.dailystar.com/lb/article.asp?edition_id=10&categ_id=3&article_id=8515).

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. Samantha Brown, *U.S. and EU Safeguards help Cambodia Textiles Rebound*, TAIWAN NEWS ONLINE, July 25, 2005 (source on file with author).

tablished in a way that only its rich members are able to benefit both economically and in trade matters.<sup>220</sup> Democracy was one of the tenets upon which the WTO was established, however, many NGOs argue that the organization instead institutionalizes and legitimizes the inequalities found throughout the world both socially and economically.<sup>221</sup> Under the WTO regime, the least developed nations as a whole were worse off by (US) \$600 million during 1995-2004.<sup>222</sup> The Uruguay Round gave the least developed countries hope that they would be able to benefit from agricultural liberalization, but these countries have found themselves taking liberalization commitments while the developed nations increase their level of protection.<sup>223</sup> NGOs argue that the WTO is not a democratic organization based upon rules established to protect the weaker and poorer countries from the unilateral actions of powerful nations in the trade arena, but instead an organization that “systematically protects the trade and economic advantages of rich countries.”<sup>224</sup> The least developed nations are exempt from so much, they have little to offer fellow members at the negotiation table and therefore their voices are not heard.<sup>225</sup> “[M]any of the sectors in which [least developed nations] enjoy a comparative advantage, such as agriculture, textiles and clothing,” are routinely neglected at trade rounds.<sup>226</sup> Some argue the WTO “demands too little of its poorer members, is often superseded by regional trade agreements, and has historically neglected agriculture, textiles and clothing.”<sup>227</sup> If the WTO does not allow the voices of least developed nations to be heard, their special interests will not be protected and they will not be able to compete competitively in trade.

An issue that has currently come to the table is the liberalization of tariffs in the fisheries industry.<sup>228</sup> An organization of fishery NGO's in Southeast Asia is calling for further review of the WTO policy liberalizing tariff rates.<sup>229</sup> The Southeast Asia Fish for Justice Network (SEAFISH) recommends the exemption of fisheries from the WTO comprehensive tariff reduction formula because there is fear that Southeast Asian fish products would not be able to compete under this

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220. Yong Tiam Kui, *Portraying Undemocratic Side of WTO*, NEW SUNDAY TIMES, Sept. 7, 2003.

221. See generally *id.* (discussing the undemocratic side of the WTO).

222. *Id.*

223. *Id.*

224. *Id.*

225. *Is There Any Point to the WTO? Does the World Trade Organisation Promote Trade? A Reprise*, ECONOMIST, Aug. 4, 2005, available at [http://www.economist.com/finance/displaysStory.cfm?story\\_id=4251046](http://www.economist.com/finance/displaysStory.cfm?story_id=4251046).

226. *Id.*

227. *Id.*

228. See Beverly T. Natividad, *Review of WTO Tariff Reduction Schedule Urged*, BUS. WORLD (Phil.), May 31, 2005, available at 2005 WL 8568948.

229. *Id.*

program.<sup>230</sup> Under this formula, the WTO prescribes a blanket tariff reduction and elimination even as the nations leading in fish products continue to maintain enormous fishery subsidies.<sup>231</sup> To fisheries in least developed nations, this formula is grossly unfair because it prevents these unsubsidized and backwards fisheries from competing with fishery giants like the EU, United States, China, and Taiwan.<sup>232</sup>

The NGO also explained that in order for least developed nations to be productive in the fishing industry, they must be able to maintain domestic protection and the flexibility to apply these protections through the application of tariffs and quantitative restrictions to prevent the flood of fishery products into the market.<sup>233</sup> If the liberalization of the fishery sector is allowed to pass in the WTO, Southeast Asian countries like Cambodia will be negatively impacted. Small scale fisheries account for five to ten percent of the GDP of Southeast Asian countries, as well as eight billion dollars worth of exports.<sup>234</sup> The liberalization of the fisheries sector in least developed nations would cause major economic harm to Southeast Asian countries and their citizens. Hopefully, Cambodia will not find itself in a situation where the more developed nations take advantage of them, and situations like the fishery issue will be handled in a way that protects the interest of least developed nations.

#### 4. *WTO Faced Tough Issues in Hong Kong*

In December, 2005, Hong Kong hosted the WTO round and many critics feared that this meeting would be the beginning of the end.<sup>235</sup> The issues left to be discussed at the December meeting were all categorized as difficult.<sup>236</sup> The “central drama” in the WTO talks was agriculture, which is an extremely politicized topic and the talks in Hong Kong focused upon trade liberalization on farm products.<sup>237</sup> This focus on agricultural issues is because the tariffs on these products imposed by importing countries now range from zero to seven hundred percent and if this was not settled it was feared that many trade disputes would arise in

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230. *Id.*

231. *Id.*

232. *Id.*

233. Othel V. Campos, *SE Asia Fishery Network Seeks Industry Safeguards*, MANILA STANDARD, May 31, 2005, available at 2005 WL 8632535.

234. *Id.*

235. Hembree Brandon, *Hong Kong Trade Talks Will Be Tough*, SOUTHEAST FARM PRESS, June 15, 2005, available at 2005 WL 9609948.

236. *See id.*

237. *Id.*

the future.<sup>238</sup> The WTO hoped that the member countries would agree on the reduction of farm subsidies at the ninth Doha Round of multilateral talks in Hong Kong because the organization believes it is a major factor which will help stimulate global economic activities and growth.<sup>239</sup> There are 2.5 billion people in the developing world that rely on agriculture, and if the issues surrounding agriculture were not resolved these countries would be negatively impacted.<sup>240</sup> Resolving the agricultural policy inequalities would have been a major step in addressing poverty that the least developed countries face.<sup>241</sup> The meeting in Hong Kong was the first time that all the WTO ministers had met since they gathered in Cancun two years ago; that meeting ended in disaster, as the new group of prominent developing nations stood up against a range of demands from the EU and other rich countries.<sup>242</sup> The number of members in the WTO has increased since the meeting in Cancun, so there were more countries looking to ensure their needs were met. Many people believed that the global economic prospect depended on the result of the new Doha Round and, therefore, the livelihood of least developed nations relied heavily on those decisions.<sup>243</sup> The decision at the Hong Kong round was not at all what the least developed nations had hoped it would be; the members decided to wait on a final decision on the tough issues dealing with agricultural until March 2006.<sup>244</sup> There is a fear in the world that if the WTO members do not conclude the Doha Round, multilateral trade liberalization will come to an end and countries would move toward a more regional and bilateral trade.<sup>245</sup> Least developed nations such as Cambodia will have to wait until March to see how their countries will be impacted and whether the promise of Doha is fulfilled. If the Doha promise is not fulfilled, then Cambodia's accession into the World Trade Organization may have been for nothing. If the country is forced into bilateral or regional agreements they may find themselves in a better situation than they would have been under the WTO, or may find themselves worse off. The economic future of Cambodia is dependent upon the decision made in March as to whether the promise of Doha will be fulfilled.

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238. *World Economy Depends on New Doha Round: WTO Chief*, THAI PRESS REPORTS, Aug. 15, 2005 [hereinafter THAI PRESS], available at 2005 WL 12708319.

239. *Id.*

240. See Brandon, *supra* note 235.

241. *Id.*

242. *Doha Back on Track?*, PRESS (N.Z.), Aug. 13, 2005, available at 2005 WL 12802691.

243. THAI PRESS, *supra* note 238.

244. Editorial, *Kicking the can in Hong Kong*, CHI. TRIB., Dec. 24, 2005, available at 2005 WL 20912649.

245. *Id.*

### B. Potential Positive Outcomes in Joining the WTO

The goals of the WTO in the field of trade and economic endeavors are to raise the standard of living, ensuring full employment and a large and steadily growing volume of real income, expanding the production of trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development.<sup>246</sup>

One of the main reasons to join the WTO is to reap the benefits guaranteed to its members.<sup>247</sup> Historically, wars have erupted over trade disputes between countries. It is argued that by joining the WTO these disputes would not arise because countries would have to follow the rules and regulations passed by the organization and any disputes that arise under the agreement would be brought to a dispute panel.<sup>248</sup> By creating a more peaceful world, the WTO is helping trade flow smoothly, and providing countries with a constructive and fair outlet for dealing with disputes over trade issues.<sup>249</sup> Also, by joining the WTO all members have equal rights to challenge each other in the dispute settlement procedures allowing smaller countries to enjoy increased bargaining power without powerful countries being able to impose their will unilaterally on smaller trading partners.<sup>250</sup> Since there is a single set of rules applying to all members, the entire trade regime is greatly simplified.<sup>251</sup>

Trade barriers in the WTO's global system are lowered through the process of negotiation which applies the principle of non-discrimination.<sup>252</sup> This results in the reduced cost of production and reduced prices of finished goods and services, and thus a lower cost of living.<sup>253</sup> Imports allow people more choices of goods and services and a wider range of quality in those products.<sup>254</sup> If trade allows a country to import more, it also allows increased exportations so other countries can purchase their goods.<sup>255</sup> Imports and exports increase incomes, providing people with the means of enjoying the increased choice.<sup>256</sup> Economists estimate that cutting trade barriers in agriculture, manufacturing, and services by

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246. Final Act, *supra* note 14.

247. See Ten Benefits, *supra* note 204.

248. *Id.*

249. *Id.*

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.*



one-third would boost the world economy by \$613 billion.<sup>257</sup> Another benefit of the WTO is that it can help reduce corruption and bad governments by providing clearer criteria for regulations dealing with the safety and standards of products, and non-discrimination also helps by reducing the scope for arbitrary decision-making and cheating.<sup>258</sup>

## VII. CONCLUSION

Most economists agree that Cambodia's membership in the WTO will accelerate the economic development process and raise the living standards of people through access to the world market, especially for garments and agricultural products.<sup>259</sup> Although economists agree that Cambodia's membership will be a positive influence for the country, many NGOs believe that in the long run Cambodia's membership will not be in the country's best interest and that the more developed nations like the United States will take advantage of the least developed countries.<sup>260</sup> Only time will tell if Cambodia's membership will increase the standard of living, improve the economy, and legitimize both the government and the judicial system. For a country with such a tumultuous past, the world can only hope that the WTO will in fact bring peace and tranquility to this nation.

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257. *Id.*

258. *Id.*

259. *See generally id.* (discussing the economic benefits of free trade with respect to goods and services including garments and agricultural products).

260. *See FOCUS, supra* note 170 (questions of Cambodia's entry into the WTO when no domestic products are made); *see also* Hiebert & Cohen, *supra* note 12.