

CAMBODIA

TRADE SUMMARY

The U.S. goods trade deficit with Cambodia was \$2.1 billion in 2006, an increase of \$417 million from \$1.7 billion in 2005. U.S. goods exports in 2006 were \$74 million, up 7.0 percent from the previous year. Corresponding U.S. imports from Cambodia were \$2.2 billion, up 23.9 percent. Cambodia is currently the 138th largest export market for U.S. Goods.

The stock of U.S. foreign direct investment (FDI) in Cambodia in 2005 was \$1 million, the same as in 2004.

In July 2006, Cambodia signed a Trade and Investment Framework Agreement (TIFA) with the United States that is intended to promote greater trade between and investment in the two countries, as well as to provide a forum to address bilateral trade issues and coordinate on regional and multilateral issues.

IMPORT POLICIES

Tariffs

Cambodia and the United States signed a Bilateral Trade Agreement (BTA) in October 1996. The agreement provides for reciprocal normal trade relations (NTR) tariff treatment. Cambodia acceded to the WTO in October 2004.

In January 2004, Cambodia launched a new customs tariff schedule that implements both the Harmonized System of Commodities Description and Coding System (HS) and ASEAN Harmonized Tariff Nomenclature (AHTN). Under the Common Effective Preferential Tariff (CEPT) scheme of the ASEAN Free Trade Agreement (AFTA), Cambodia will reduce or eliminate customs import duties on most AFTA-origin products by January 2015. Cambodia's MFN tariffs fall into roughly five bands: 0 percent, 7 percent, 15 percent, 35 percent and 40 percent; the simple average rate is below 20 percent.

Non-Tariff Barriers

Import prohibitions: Cambodia currently prohibits the commercial importation of the following products: narcotics, psychotropic substances and their precursors, toxic wastes and poisonous chemicals and substances, and pesticides.

Quantitative restrictions and non-automatic licensing: Some goods are subject to import restrictions and importers are required to have approval from relevant government agencies depending upon the nature of goods. For example, imports of pharmaceutical products are subject to prior permit from the Ministry of Health. Importers also need to secure import licenses from the Ministry of Agriculture, Forestry and Fishery for imports of agricultural inputs such as fertilizer and live animals and meat. Imports of weapons, explosives and ammunition require a license from the Ministry of Defense, while the National Bank of Cambodia approves imports of precious stones.

Foreign Exchange System: Although the riel is the official currency of Cambodia, the economy is heavily dollarized. Most commercial transactions are conducted in dollars. Under the Exchange Law of 1997, foreign direct investors are allowed to purchase foreign currencies freely through the banking

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system. The law specifically states that there shall be no restrictions on foreign-exchange operations, but the transactions must be conducted by authorized intermediaries; i.e., lawfully established banks in Cambodia. These banks are required to report to the National Bank of Cambodia all transactions in excess of \$10,000. The Council of Ministers approved a draft Anti-Money Laundering Law on August 14, 2006 and it is expected to be ratified by the National Assembly in 2007.

Customs: Cambodia is in the process of reforming its customs regime through a five-year (2003–2008) reform and modernization program to streamline and improve the effectiveness of customs operations and to facilitate trade. With assistance from the International Monetary Fund (IMF), a revised Law on Customs has been drafted and is awaiting National Assembly approval. As part of its WTO accession commitments, Cambodia will implement the WTO Customs Valuation Agreement by January 2009.

Although Cambodia has implemented some reforms, customs procedures remain complicated. Both local and foreign businesses have complained that the Customs and Excise Department generally engages in practices that are non-transparent and that often appear arbitrary. Importers frequently cite problems with undue processing delays, excessive paperwork and formalities driven by excessively discretionary practices.

On October 10, 2006, the new customs system was launched by the Customs and Excise Department in cooperation with United Nations Conference on Trade and Development. The reform has shortened the time and cost of importation from 55 days in 2005 to 45 days in 2006. Export processing time has been reduced from 43 days in 2005 to 36 days in 2006. In early 2007, the Single Administrative Document will be implemented under a pilot program in Sihanoukville port and is expected to further decrease processing time for imports and exports.

Taxation: Cambodia levies a 10 percent VAT on goods and services. In theory, the VAT is to be applied to all goods and services, but in practice the Cambodian Government has first imposed the VAT on major companies. It is now expanding the base to which the VAT is applied.

The corporate tax rate is within the range of 20 percent to 30 percent depending on the nature of business. A concessional tax rate, or exemption, will be applied for those firms granted a tax-exempt period. Resident branches of overseas companies or banks are taxed at 20 percent. The Cambodian Government also applies a withholding tax of 14 percent on dividends, royalties, rents and interests.

STANDARDS, TESTING, LABELLING AND CERTIFICATION

Standardization is at an early stage in Cambodia and only partially regulated. The country currently has no body of law governing standards for traded goods. The sub-decree on Industrial Standards, passed in 2001, provided the basis for rules and procedures for adopting a new standard, technical regulations and conformity assessment procedures. The Law on Industrial Standards is in draft form.

Cambodia is currently working on the establishment of standards and other technical measures based on international standards, guidelines and recommendations. The United Nations Industrial Development Organization (UNIDO) is presently providing assistance to the Department of Industrial Standards of Cambodia (ISC) of the Ministry of Industry, Mines, and Energy (MIME) in creating a new product certification scheme conforming to the requirement of ISO/IEC Guide 65.

Quality control of foodstuff, plant and animal products is under the Department of Inspection and Fraud Repression (CamControl) of the Ministry of Commerce. CamControl is the national contact point for Codex Alimentarius. Its primary responsibility is the enforcement of quality and safety of products and

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services relating to sanitary and phytosanitary (SPS) measures through the establishment of standards and labeling requirements. Cambodia has not yet notified the WTO of its official SPS inquiry point.

The responsibility for establishing industrial standards and certifications resides with the ISC of the Ministry of Industry, Mines, and Energy. The ISC has been assigned as the inquiry point for technical barriers to trade (TBT) and as the agency responsible for notifications and publications required by the WTO TBT Agreement. The Ministry of Health is charged with prescribing standards, quality control, distribution and labeling requirement for medicines.

The Ministerial Regulation on Measures Against Food Products Devoid of Appropriate Label requires detailed labeling of food products circulated in Cambodia. For many products, it is mandatory to have labeling, instructions or warnings in Khmer language. Enforcement of this regulation remains weak and inconsistent.

Cambodia maintains a pre-shipment inspection system for quality control. Société Generale de Surveillance (SGS) may inspect the quality of any goods shipped into the country.

Cambodia fully implemented the WTO TBT Agreement in January 2007 and was given a transitional period to fully implement the SPS Agreement by January 2008. Cambodia implemented a “Risk Management Strategy” for inspection of imported and exported goods in late 2006. The United States and Cambodia discussed progress being made to implement these commitments during TIFA consultations in February 2007 and Cambodia provided an update on the steps taken to date. The United States will continue to work with Cambodia to monitor implementation of these commitments through this ongoing dialogue.

Cambodia joined the International Organization for Standardization (ISO) in 1995 and is also a member of Codex Alimentarius, the World Organization for Animal Health, the International Plant Protection Convention, and the ASEAN Consultative Committee on Standards and Quality (ACCSQ). Cambodia has ratified the ASEAN Framework Agreement on Mutual Recognition Arrangements.

GOVERNMENT PROCUREMENT

Cambodia is not a signatory to the WTO Agreement on Government Procurement. Cambodia’s government procurement regime is governed by a sub-decree issued in 1995. Under the sub-decree, Cambodia’s procurement policies are open and well-defined. The sub-decree requires that all international purchases over 200 million riel (\$50,000) for civil work and 100 million riel (\$25,000) for goods must be made through public tender. The public tender will also be applied to domestic purchases below 200 million riel for civil works projects and 100 million riel for goods. Both international and domestic bidding is open to all interested bidders through public advertisement.

While Cambodia has clear regulations pertaining to government procurement, the conduct of procurement is often non-transparent. The Cambodian government often provides short time frames to respond to public announcements of tenders which frequently are not widely publicized.

EXPORT SUBSIDIES

The Cambodian government uses preferential tax incentives to attract investment and promote exports. Currently, Cambodia does not maintain programs for direct support to agriculture. The 1994 Law on Investment, amended in 2003, grants incentives and privileges including the exemption, in whole or in part, of customs duties and taxes to qualified investment projects (QIP), which refers to investment

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projects that have received a Final Registration Certificate issued by the Council for the Development of Cambodia.

The investment law provides an import duty exemption for construction materials, production equipment and production inputs used by export QIPs and domestic QIPs. Supporting QIPs are also entitled to the exemption, but the QIPs are required to pay customs duties and taxes on production inputs for the quantity that has not been supplied to the export industry or directly exported after review.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Cambodia has adopted legislation concerning IPR protection, including the Law on Copyrights and Related Rights and Patent and Industrial Designs. Cambodia became a member of the World Intellectual Property Organization (WIPO) in 1995 and became a member of the Paris Convention for the Protection of Industrial Property in 1998.

Cambodia is making progress in implementing the WTO TRIPS Agreement, but comprehensive enforcement remains problematic. The 1996 BTA contained a broad range of IPR obligations, which the Cambodian government is phasing in. The United States Government intends to continue work with Cambodia through the TIFA dialogue to assist in the full implementation of WTO and BTA commitments on IPR.

The Cambodian government has taken law enforcement action against the piracy of domestically-produced music or video products but not against piracy of foreign optical media. Cambodian copyright law allows IPR rights holders to file a complaint with the authorities to take action. However, rights holders requesting crackdowns on IPR pirating operations must pay support costs to the authorities for conducting the operations.

Trademarks

In 2002, the National Assembly passed a trademark law to implement Cambodia's TRIPS obligations. The law outlines specific penalties for trademark violations, including jail sentences and fines for counterfeiting registered trademarks. It also contains detailed procedures for registering trademarks, invalidation and removal of trademarks, licensing of trademarks, and infringement and remedies.

The Ministry of Commerce has taken effective action against trademark infringement in several cases since 1998. The Ministry has ordered local firms to stop using well-known U.S. trademarks. The Ministry of Commerce maintains an effective trademark registration system, registering more than 10,000 trademarks (over 2,900 for U.S. companies) under the terms of a 1991 sub-decree, and has proven cooperative in preventing unauthorized individuals from registering U.S. trademarks in Cambodia.

At least one U.S. company has brought legal action to protect its trademarks in Cambodia. The case reached the Supreme Court in Phnom Penh but the final ruling led to an ambiguous outcome that failed to provide clear protection of the company's trademark. The Phnom Penh Municipal Court handed down Cambodia's first trademark conviction in March 2006.

Patents and Industrial Designs

Cambodia has a very small industrial base and infringement of patents and industrial designs is not yet commercially significant. With assistance from WIPO, the Ministry of Industry, Mines and Energy (MIME) prepared a draft of a comprehensive law on the protection of patents and industrial designs in

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April 1999. The National Assembly adopted the law and it entered into force in January 2003. The law provides for the filing, registration, and protection of patents, utility model certificates and industrial designs. The MIME has also issued a sub-decree on granting patents and registering industrial designs.

Cambodia has not yet made significant progress in legislating commitments undertaken in its bilateral agreement with the United States on Trade Relations and Intellectual Property Rights Protection in the areas of encrypted satellite signals, semiconductor layout designs, and trade secrets. The United States will continue to work with Cambodia to implement these commitments.

Copyrights

Cambodia enacted a copyright law in January 2003. Responsibility for copyrights is shared between the Ministry of Culture, which handles phonograms, compact discs (CDs), and other recordings; and the Ministry of Information, which deals with printed materials. Although Cambodia is not a major center for the production or export of pirated CDs, videos, and other copyrighted materials, these products are widely available in Cambodian markets. Pirated computer programs, digital video discs (DVDs), and music CDs are widely used throughout the country.

SERVICES BARRIERS

Foreign participation in the services sector is generally not restricted. Cambodia's legislation regarding the services sector has generally complied with the principles and provisions of the General Agreement on Trade in Services (GATS). Cambodia provides market access or national treatment for the cross-border supply, consumption abroad, and commercial presence of almost all services.

Accounting, Consulting and Tax Services

Cambodia provides market access and national treatment to foreign firms providing accounting, auditing and taxation services. Major international accounting and consulting firms operate in Cambodia.

Legal Services

According to the Cambodian Law on the Bar adopted in 1995, foreign lawyers can only practice domestic law in commercial association with Cambodian law firms and cannot directly represent clients in court, conduct activities to attract clients, or publish commercial advertisements.

Telecommunications Services

Private participation in mobile services, e-mail, electronic data interchange and code and protocol conversion are allowed and national treatment is accorded. In addition, Cambodia is committed to permitting licensed suppliers of mobile communications services to choose which technology to use for such services.

Cross-border supply for fixed-line voice telephone services, circuit-switched data transmission and private leased circuit services is provided exclusively by Telecom Cambodia. This restriction will be eliminated by January 2009 at which time foreign participation of up to 49 percent equity will be allowed. Cambodia is taking steps to create an independent regulatory body.

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Courier Services

Cambodia does not restrict foreign ownership or participation for courier services. However, in 2006 Cambodia issued new regulations for the courier sector which included new licensing procedures and fees. U.S. providers of courier services have raised concerns with the United States and Cambodian Governments regarding this new regulation. Through discussions, several problematic provisions of earlier drafts were resolved; however, U.S. providers remain concerned that the Ministry of Posts and Telecommunications, a competitor in the field, has been established as the licensing authority under this regulation. Fees associated with the licensing are also high and, in U.S. industry's view, are not set at a reasonable level. The United States will continue to discuss this regulation with the Cambodian government under our TIFA.

Audiovisual Services

Cambodia does not prohibit foreign firms from distributing foreign films and videotapes. However, weaknesses in IPR enforcement have undermined the anticipated benefits of this policy.

Distribution Services

No limitation on market access or national treatment is imposed on foreign firms *i.e.*, wholesale trade and retailing services. Like other business activity, foreign firms are required to register with the Ministry of Commerce to obtain a business license.

Educational Services

Cambodia faces a shortage of qualified teachers and is in need of international-quality educators and education. Foreign participation in educational services is not restricted. Currently there are several foreign-owned schools in Phnom Penh.

Insurance Services

Licensed insurance companies including foreign companies can provide all types of insurance products. Cambodia's insurance sector is governed by the Law on Insurance of 2000. Several foreign insurance companies operate in Cambodia.

Banking services

Cambodia allows foreign banks to operate as either 100 percent foreign-owned subsidiaries or as branches. The 1999 Law on Banking and Financial Institutions and subsequent regulations guarantee foreign banks rights and obligations equal to local banks. The law imposes no restrictions on foreign ownership of banks. There are a few foreign bank subsidiaries operating in Phnom Penh.

Health-Related Services

Commercial presence, foreign ownership and management of private hospitals and clinics is permitted as long as at least one director for technical matters is Cambodian. Foreign firms are allowed to provide dental services through joint ventures with Cambodian legal entities.

Tourism and Travel-Related Services

Tourism is one of the most important sectors of the country's economy. Cambodia does not restrict foreigners' participation in this sector. Foreign companies may establish a commercial presence to operate hotels, restaurants, travel agencies, and tour operator services, provided that they register with the Ministry of Commerce for business licenses.

INVESTMENT BARRIERS

Although demonstrating modest improvement, Cambodia's investment climate remains poor. The World Economic Forum's 2006 competitiveness survey ranked Cambodia 103 out of 125 countries surveyed, up from 112 of 117 countries last year. The World Bank also ranked Cambodia near the bottom of the list, 133 out of 155, on business climate. Nevertheless, foreign direct investment (FDI) has sharply increased compared to 2004. Approved investment jumped to \$378 million in 2005 from \$61 million in 2004. The stock of U.S. investment in Cambodia was estimated to be \$4.3 million in 2005.

The Cambodian Government actively solicits foreign private investment to boost its economic development. Cambodia's 1994 Investment Law, amended in 2003, is liberal and accords national treatment to all foreign investors but the Constitution restricts foreign ownership of land. Foreign investors may use land through concessions, unlimited long-term land leases and renewable limited short-term leases.

Cambodia has one of the most liberal and competitive investment laws in the region, but potential investors are often deterred by excessive bureaucracy and corruption. Cambodia has the potential for business investment in almost all sectors. The Cambodian Government particularly encourages investment in agriculture and agro-processing industries, environmental protection, export-oriented industries, tourism and infrastructure.

Cambodia has attempted to boost foreign investment through reforms intended to improve the investment climate. Through its biannual Government-Private Sector Forum, Cambodia has reduced business registration fees from \$635 to \$177 and decrease the registration period from 30 days to 10.5 days. Other reforms are under way to improve the business environment, including a World Bank-funded trade facilitation reform program.

ELECTRONIC COMMERCE

Electronic commerce is a new concept in Cambodia. Online commercial transactions are extremely limited and Internet access is still in its infancy. No legislation exists to govern these sectors but no specific restrictions on products or services traded via electronic commerce have been imposed.

The exclusive right to operate a Voice over Internet Protocol (VoIP) service has been granted to one local company.

OTHER BARRIERS

Corruption and Governance

Corruption is pervasive throughout the Cambodian government and business sector. In 2005, Transparency International ranked Cambodia 139 out of 159 countries surveyed for graft. Both foreign

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and local businesses have identified corruption in Cambodia as a major obstacle to business and a deterrent to FDI.

Prime Minister Hun Sen has publicly emphasized the need to fight corruption and has acknowledged that corruption takes a toll on economic performance and poverty alleviation. During the National Conference on Good Governance in December 2004, he described the country's governance problem as "a landmine buried in Cambodia's path towards reform". Cambodia undertook efforts to draft and enact anti-corruption legislation in 2004. To date, the law remains in draft form and is delayed by the pending revision of the penal code.

Judicial and Legal Framework: Cambodia's legal framework is incomplete and unevenly enforced. Many business-related draft laws are still pending. The judicial system is often arbitrary and subject to corruption. Many Cambodian and foreign business representatives perceive the court system to be unreliable and susceptible to external political and commercial influence, which constitutes one of the most serious legal risks that investors face. Most commercial disputes are solved by negotiations facilitated by the Ministry of Commerce, Cambodian Chamber of Commerce and other concerned institutions.

The Cambodian government plans to establish a commercial court, independent of other courts, in 2007.

Smuggling: Widespread smuggling of commodities such as vehicles, fuel, soft drinks and cigarettes has undermined fair competition, legitimate investment, and government revenue. The Cambodian Government has issued numerous orders to suppress smuggling and created various anti-smuggling units within governmental agencies, particularly the Department of Customs and Excise. Enforcement efforts remain weak and inconsistent.