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REPORT ON WTO IMPLEMENTATION AND LINKAGES TO REGULATORY REFORM AND RURAL, VALUE-CHAIN DEVELOPMENT IN CAMBODIA

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1. Introduction and Summary of Key Findings

Given the recent opening of direct USAID technical assistance and policy dialogue with the Cambodian government, this report provides an initial analysis of the potential for USAID and the Cambodia MSME Project to support implementation of WTO requirements, and to use WTO requirements as leverage for regulatory reform in general, and, in particular, for improving the business environment in the six provinces and three value-chain sectors that the Cambodia MSME Project has been targeting. Since this is a new area for the Cambodia MSME Project and USAID/Cambodia, the research focused on:

1. Understanding the current political economic context for WTO implementation and regulatory reform in Cambodia;
2. Information sharing and training with Cambodia MSME Project staff who will follow up work in this area;
3. Making contact with key Cambodian officials responsible for WTO implementation and legal reform, and donors and donor projects that are supporting those efforts; and,
4. Developing initial ideas based on requests by reform-minded government counterparts for technical assistance programs that can add value over the remaining months of the Cambodia MSME Project and that also lay the basis for productive, longer-term USAID/Cambodia-led technical assistance.

This report first summarizes a strategic approach with preliminary findings and recommendations, which is followed by a series of annexes and appendices that provide more in-depth information and analysis.

1. Annex 2: The WTO Accession Protocol and WTO implementation, the U.S. Trade and Investment Agreement (TIFA), and other trade agreement processes;
2. Annex 3: The Trade Sector-Wide Approach (Trade SWAp) process of government priority setting for policy/legal reforms and trade capacity building, and donor coordination to support implementation of those priorities, which includes the important WTO Work Program;
3. Annex 4: Cambodia's legislative process for legal reform/development, stakeholder inputs and the role of donors; and
4. Annex 5: Insights from the USAID/SEA-CLIR Report on Commercial Law and Trade Reform in Cambodia.

Given the early stage of engagement, this report provides a first step for organizing thinking and analysis, and to vet preliminary ideas. The goal at this early stage of program development regarding WTO implementation and policy/legal/regulatory reform is to develop a common framework/language for thinking about problems, and to stimulate discussion and interchange among the Cambodia MSME Project team, the USAID/Cambodia team and key reform-minded government leaders.

All analysis and recommendations are developed to build a foundation for USAID/Cambodia support of legal and policy reform in Cambodia over the next four years, but with a particular focus on accomplishing specific results in the remaining months of the Cambodia MSME Project. As the USAID/Cambodia policy dialogue program advances over time, one would expect the analysis to become deeper and more refined, the possible demand-driven technical assistant activities to become more numerous and better developed, the capacities of the Cambodia MSME Project team to work in these areas to become more developed, and relationships with key reform-minded counterparts and related donors to strengthen.

Key Findings of This Report

Cambodia has made substantial progress in improving its basic legal system for commercial activity, stimulated importantly by its WTO accession process. But, considerable challenges remain to further deepen and systematize its legal framework, to develop effective implementing regulations for recently promulgated laws, and most fundamentally, to improve the institutional capacity for implementing the laws and regulations more effectively.

Cambodia has organized the development of most of its commercial legal reform and capacity building under an over-arching umbrella of activities and donor assistance related to WTO implementation. These are summarized and monitored in an evolving WTO Work Program Matrix, which is part of a broader trade enhancing program called Trade SWAp. In addition to the legal reforms, Trade SWAp includes programs to support exports from a wide range of sectors and to support trade capacity building. This decision was made by the Cambodian Government and the supporting donors to leverage political attention and support for WTO implementation to a broader range of commercial law reforms important for economic development.

The WTO Work Program is the result of an inter-agency effort among Cambodian ministries, facilitated by a range of donor-funded advisors. A key point is that the WTO Work Program includes not only those legal/policy reforms directly required by the WTO Agreements, but also a wide range of reforms required to strengthen market and private-sector activity in Cambodia that will allow Cambodia to regulate and compete more effectively in the more open economic environment required under the WTO. This also means that USAID-assisted support for legal reforms either to support WTO implementation or to improve the regulatory environment for private-sector development throughout Cambodia will in large part be organized and monitored by the Cambodian government as part of the WTO Work Program. This in turn requires active engagement by USAID/Cambodia and the Cambodia MSME Project in the WTO Work Program effort, involving both close cooperation with Cambodian agencies and other donor projects.

The legal development process in Cambodia is reasonably well structured, although the number of stages and reviews can be slow and tedious. As well, there tends to be an over-reliance on foreign donor experts in the initial drafting stages of new laws and regulations, and probably too little role by foreign experts in the final stages of legislative approval by the National Assembly and Senate for laws, or by the Government for sub-decrees and prakas. There tend to be workshops to discuss draft laws, typically supported by donors, and almost always in Phnom Penh. Rarely if ever are there discussions on draft laws with provincial officials or businesses, unless they come to Phnom Penh for a seminar. Draft laws, as well, are often posted on web pages for comment. The publication of promulgated laws in the Official Gazette (Royal Krum)

before coming into effect is required straightforward, but access to the Official Gazette by businesses and citizens is limited – too few hard copies and limited electronic exposure. Critically, there is no easy way to gain access to prakas and other types of ministerial-level decisions, which often provide the details that most affect business activity. As well, even though these rules can be the most important for businesses, donors rarely provide experts to help draft prakas – which is reflected to some degree by the poor drafting of many prakas and other operational decisions.

Although the legal system of Cambodia is gaining breadth and depth, the links between national laws and regulations and the legal framework employed by local government authorities for business activity in provinces and local areas is still weak. First of all, there is limited transparency and access to laws and regulations in the provinces. This means that there is often little legal recourse to ad hoc and arbitrary actions by local officials, which can be most damaging to small business activity. Fees and costs for business services and licenses, for example, are rarely clearly posted. Second, provincial officials and businesses rarely have the opportunity to participate in drafting new laws and regulations at the national level, which limits representation of their substantive interests and insights, but also which limits their knowledge of forthcoming legal reforms, which give them less time to adapt business decisions to new laws and regulations (potentially favoring larger and more “well-connected” firms).

Although more study is needed, there are important linkages between the national legal reforms and the business environment for smaller firms in the provinces. First, the national laws provide the general framework for operating a business – including company registration and corporate governance for those formal firms, contract law for business transactions, banking and collateral regulations for raising capital, and rules on taxation and trade. Over time, we can expect that more and more rural firms will operate in a formal legal environment, but currently, most small and micro firms operate informally. In many cases, however, it is not entirely informal. Many smaller firms have a permit or provincial registration that allows them to operate legitimately under the law, and with the protection of the law. Maybe most importantly at this early stage of development in Cambodia is the need to increase legal transparency in rural areas – that is, to improve access by businesses and their representatives, including lawyers, to laws and regulations, especially to regulatory and licensing procedures, and related fees and costs. Local businesses cannot protect their rights and fight against abusive and arbitrary actions by local officials without having access to the correct legal rules, regulations and fees.

The findings of this report benefited greatly from discussions with a number of Cambodian government officials, private-sector experts and stakeholders, other donor and donor-project experts, and Cambodia MSME Project team. It is clear from these discussions that Cambodians are quite receptive to working with U.S. technical advisors, but, on the other hand, given the only recently opened dialogue between the Cambodian government and U.S. government-supported activities, there is an equally clear lack of understanding by the Cambodians of how to work most effectively with U.S. technical-assistance programs. This challenge holds as well for how U.S. technical assistance efforts, as essentially new entrants into the legal/policy reform field, can most effectively cooperate with other, existing donor projects within the system of priority setting and donor coordination established by Trade SWAp, and supported by a multi-donor trust fund.

2. Developing a Basic Strategy for Cambodian MSME Project and USAID/Cambodia Support of WTO Implementation and Regulatory Reform

Since joining the WTO in 2004, Cambodia has made substantial strides in developing a more modern and systematic legal system for commercial activity, and to open its market for foreign trade and investment. A core set of commercial law largely in line with international best practice is being established. This will serve as the foundation for long-term, market-oriented, private-sector-led economic growth. The list of major laws promulgated over the last four years include the core civil code, key laws on commercial activity, such as the laws on commercial enterprises, secured transactions, negotiable instruments, customs, standards, intellectual property and commercial arbitration, and key laws guiding court operations, including laws on civil and criminal procedures. Implementing regulations in some cases have been passed, while in other cases are still under development. A number of additional laws are being drafted, including a law on commercial courts, commercial contracts, competition law, bankruptcy law, trade remedy laws, and the criminal code.

While the letter of the law is taking form, effective implementation of the law lags considerably in practice, in terms of the development of effective implementing regulations, of adequate institutional and human resource capacities in both the government and private sectors, and of access to legal information and the broader public understanding of the rights and responsibilities of government/political officials, citizens and businesses throughout the country. Advancing the political commitment by leadership for more effective economic governance is critical.

Ambitious agendas and plans are in place to improve Cambodia's legal framework and implementation capacity, in large part organized under the Trade Sector-Wide Approach (Trade SWAp) program, which is as a core component of the Cambodian 2007 Trade Integration Strategy. A WTO Work Program has been developed to align Cambodian law to WTO requirements, but also as a political-economic umbrella that includes a wide range of important commercial law reform beyond what is formally required by the WTO Agreements. The WTO, as well, has reinforced Cambodia's policy of maintaining a relatively open trading system in terms of market access for foreign goods, services and investment. Other legal reform initiatives, particular those that may deal with a specific sector, are proceeding through on-going technical working groups led by various ministries.¹

The positive impact of these policy innovations, with WTO accession serving as a key catalyst for much of the reform, has increased the confidence of domestic and foreign businesses that Cambodia is moving in a positive direction to establish a more modern, rules-based legal/policy regime. The impressive acceleration of economic growth recently to around 10 percent is one of

¹ For example, MSME work on the legal environment for swine and fish producers has centered on legal development of laws and implementing regulations led by the Ministry of Agriculture, Forestry and Fisheries. These sectoral reforms, which are focused on domestic trading activity with limited if any exporting, have not been included under the WTO Work Program.

the most tangible and positive indicators of this progress, and is all the more impressive given the extreme difficulties facing Cambodia just a decade ago.²

As is obvious to anyone involved with Cambodia, however, challenges to continually improve Cambodia's legal and governance systems, its capacities to implement these systems, and the abilities for the private sector to respond to improved systems, are profound. One such challenge is to continue to improve the integrity of the national legal and policy framework for economic growth, since this provides the foundational legal/policy structure for economic growth throughout Cambodia. This is currently being done largely through implementation of the WTO Work Program. A second key challenge is the uneven development among cities and rural areas in Cambodia. The strong economic growth has not been well distributed between booming Phnom Penh and rural areas, however, because of weak investment in physical and social infrastructure, and poor governing institutions, which have limited progress in rural, agricultural-based provinces. Permeating much of daily business life in Cambodia is a problem of costly and unpredictable rent seeking.

USAID's Cambodia Micro, Small and Medium Enterprise (MSME) Project is widely considered to be one of the leading donor projects working to expand economic opportunities in rural Cambodia, generating tangible results in terms of higher revenues for firms/farmers/traders in rural provinces. The Cambodia MSME Project is well positioned to continue to advance efforts to improve business capabilities in rural areas.

With the change in policy last October to allow U.S. government programs to work directly with the Cambodian government on reform and institution capacity programs, the Cambodia MSME Project and USAID/Cambodia now have the exciting but challenging opportunity to support reform-minded government leaders at both the national and local levels to improve their legal/policy framework and implementation capacities. In particular, the Cambodia MSME Project can help bring real concerns of smaller, rural business people to the fore in the national regulatory and policy discussion. It is especially important to focus on issues that matter enough to these small business people that they and their associations will be motivated to have a voice, and speak out for reforms that will foster their growth.

The following proposes a strategic approach for building a foundation for delivering effective, sustained U.S. technical assistance activities to support WTO implementation (which, as noted above, is used to organize legal and policy reform for almost all commercial activity at the national level) and regulatory reform in Cambodia, with an emphasis on those reforms that would translate most directly to improve the business environment in rural provinces. Based on meetings with a number of key Cambodian government counterparts whom we perceive as being committed to reform, we offer several initial program activity ideas that are demand driven and that could build toward potentially productive longer-term USAID programming efforts. It will be important to continually expand engagement with government officials and private stakeholders in order to enlarge and refine the possibilities for effective demand-driven support for policy reform, capacity building and improved policy implementation.

² Most economic forecasts for Cambodia project that growth will moderate somewhat to a still strong 8 to 9 percent in 2008 through 2010.

Proposed Five-Step Strategy

1. Understand the Political Economic Context for WTO Implementation and Legal Reform
Mobilize the Cambodia MSME Project team to make a difference
2. Build Credible Working Relationships with Reformers
3. Develop Demand-Driven Programming Initiatives to Support WTO Implementation and to Improve the Domestic Business Environment
4. Coordinate Effectively with Other Donors, Especially with Regard to TradeSWAp
5. Conduct detailed analysis underpinning each recommended strategic step is included in a series of Annexes. We emphasize that the findings in this report will need to be refined and updated based on more discussions with potential counterparts and experts, and greater research. Information is relatively sparse in Cambodia, and it takes time to build credibly and trustworthy relationships with local partners.

Strategic Step 1: Understand the Political Economic Context for WTO Implementation and Legal Reform

Our approach starts with an analysis of WTO implementation in Cambodia within the broader context of Cambodia's efforts to develop a more modern, systematic legal and administrative system. It includes assessing the legislative and institutional process for legal and policy reform within a broader political economic environment of stakeholder interests at the national and provincial levels. Where possible, links are provided from national policy reform efforts to problems in the business environment for small and medium businesses operating in the six MSME Project-assisted provinces, and vice versa. For this initial report, however, we are not able to look closely at any one specific issue, but we do present useful information on general procedures.

We attempt to build upon dynamic synergies between intensive engagement with national policy reformers who lead the process for establishing Cambodia's legal and policy framework (top down), and equally intensive involvement with firms operating in rural provinces (bottom up), who must operate in the "real world" business environment affected by both the quality of the national legal system and how those laws and regulations are implemented in practice. Cambodia's current legislative development system and public-private dialogue forums do not provide an easy way for raising problems and generating solutions regarding the business environment in rural provinces. A focus in this report will be to understand better the "implementation gap" between revising the letter of the law, which has made progress over time, and implementing effectively the new laws and regulations on the ground, which has lagged in practice.

Key Findings

A. WTO Requirements Are Extensive and Timely.

WTO accession is providing a valuable, substantive roadmap of legal, policy and administrative reforms with deadlines at a critical early stage of legal/policy development in Cambodia. WTO

accession requirements, which introduce many fundamental principles of an internationally-accepted, rule-based system of economic governance, carry the added weight of being a treaty obligation and being responsive to monitoring by foreign governments and donors. Annex 1 provides a more in-depth analysis of WTO requirements for Cambodia.

B. To Mobilize Political Attention, WTO Implementation in Cambodia Includes Direct WTO Requirements and Critical Improvements in Commercial Law Not Directly Required by the WTO.

WTO implementation has been used astutely by the Cambodian government (with support by donors) to organize a systematic approach to legal development through a WTO Work Program agenda, which has been developed as a key element of the Trade SWAp program. The WTO Work Program provides a positive, proactive political-economic umbrella for most major reforms affecting commercial activity in Cambodia, including those reforms required directly by the WTO (such as customs reform) and those legal reforms needed to improve the business environment for firms operating in Cambodia but that are not directly required by the WTO (such as secured transactions and contract law). The WTO Work Program can be expanded to include new reform initiatives directly affecting regulation and licensing of rural commercial activity, which could serve to initiate long-term, more systematic reform in response to problems raised by rural constituents. Annex 2 provides a more in-depth analysis of the Enhanced Integrated Framework approach that includes the Trade SWAp process and the WTO Work Program. There are other legal reform efforts of relevance to the domestic business environment for rural business that are not under the WTO Work Program – which the MSME Project can support, and which Trade SWAp resources could potentially be applied as appropriate.

C. Implementing the WTO Work Program Affects the Rural Business Environment, Especially Looking Forward As Cambodia's Economy Develops and Modernizes.

WTO requirements (as supplemented under the WTO Work Program) for greater market access and legal and administrative reforms can have a potentially important, systematic effect on Cambodia's business environment in rural areas, especially looking forward toward providing a solid foundation for the development of a more modern, rules-based, enabling business environment throughout the country. For example, the WTO Work Program aims not only to develop a level and open playing field for foreign firms in Cambodia (as required by the WTO), it also is being used to establish legal fundamentals for much commercial activity in Cambodia (and thus directly for all Cambodians) related to contracts, legal transparency, protection of basic property rights, secured transactions, dispute settlement, financial, legal and telecommunication services, and so on. The WTO Work Program not only should have an important long-term, developmental impact, it should also improve the business environment (including in the rural provinces) in the near-term – for example, by improving legal transparency. Currently, there is limited private sector input to draft laws, almost no such input to drafting implementation regulations, and limited access to some laws and most implementing regulations for businesses, especially in rural areas. Improved legal transparency in line with WTO rules could be used so that businesses, government administrators and reform advocates can more easily access and understand the current laws and regulations (particularly to match prakas and other detailed implementing regulations with higher level sub-decrees and laws), rural businesses and their

advocates can more easily advocate for their rights, can pay legal fees for services, and can provide better developed input to the drafting of new laws and regulations.

On the other hand, national legal reforms as included in the current WTO Work Program are not a panacea for all regulatory actions that may constrain the MSME Project's swine, fish and tile producers. Formally, the WTO requires only that foreign firms are treated equally with national firms, as long as certain trade and regulatory rules are followed. It does not necessarily require better economic governance for domestic firm activity that has limited exposure to foreign trade and investment. For example, the WTO Work Program would not directly affect problems involving excessive and costly inspections, or extra-legal fees charged for transporting products to distant markets. Better access to legal instruments (as required by the WTO) should make more clear what the authority of government officials and the official changes that can be applied, which could provide local business groups with a stronger grounding to resist extra-legal applications of the law.

D. The Cambodia-U.S. Trade and Investment Agreement (TIFA) Includes Official Requests for Technical Assistance that the MSME Project or /USAID/Cambodia Could Support As Part of a Systematic, Demand-Driven Program.

A TIFA process of regular dialogue on trade and investment issues between Cambodian and U.S. government officials has generated a range of Cambodian requests for U.S. technical assistance to support WTO implementation. (see Annex 1 for a more detailed description of the TIFA process and Annex Table 3 for a list of Cambodian requests for TA through the TIFA process). As part of the U.S. Government response to these requests, MSME/USAID could integrate technical assistance activities that respond to the Cambodian TIFA requests into a more general, systematic, demand-driven set of TA support for WTO implementation and regulatory reform. For example, TIFA requests include support for commercial law reforms (which includes contract law and trade remedy law), intellectual property enforcement, and improvement in sanitary and phyto-sanitary (SPS) and technical barriers to trade (TBT) capabilities, all of which fit within the WTO Work Program and all of which could be incorporated into a MSME/USAID systematic program to support WTO implementation and regulatory reform in Cambodia. As well, to various degrees, these could support improved business environments in rural provinces.

E. Cambodia Has a Relatively Transparent, Structured Process for Developing, Debating, and Approving Laws and Regulations, But It Can Take Many Years for this Process to Produce Results.

Annex 3 provides a detailed description of how laws and regulations are developed, approved, promulgated, published and then implemented in Cambodia. There are opportunities throughout these legislative stages for donor-funded technical assistance to: a) support development of stronger (and importantly, clearer and better written) laws and regulations; b) to improve understanding of the new laws and regulations by government officials and businesses throughout the country; c) to upgrade the capacity of government institutions to implement the reforms more effectively; and, d) to facilitate input by key stakeholders, especially those representing business interests, including from rural sectors.

Two critical challenges are to accelerate the speed and quality of legislative development and implementation at all stages of this process, and, in particular, to strengthen and make more

transparency the process of developing ministerial regulations such as prakas and other decisions, which often contain the details that most affect business activity, and which currently receive the least attention by donors and are often poorly written, biased toward special interests and are rarely well vetted with the private sector or with other parts of the government.

Recommendation 1: Continuously Improve Our Understanding of WTO Implementation and Regulatory Reform Issues and Processes.

Strategic Step 2: Mobilize the MSME Team to Make a Difference

The MSME team has been instrumental in breaking new ground in facilitating productive relationships among the private sector in six rural provinces in Cambodia. Similarly, the MSME team will need to lead efforts to develop relationships with reformers in the national and local governments. This will require developing responsive technical assistance programs that support reformers to improve laws and regulations and to build the capacities and supporting institutions to implement the new laws effectively in practice, particularly on the ground at provincial and local levels where such reforms interact most directly with business activity. MSME's Cambodian experts in many ways are the eyes, ears and mouths of the project in terms of interaction with hundreds of Cambodian businesses, farmers and local government officials. At the first stages of engagement on legal reform that may be related to WTO implementation, it will make sense to include as a focus training on issues presented as important by the project's current value chain clients and where champions in government show an interest in moving forward such reforms.

Recommendation 2: Enhance MSME Staff Capacities to Support WTO Implementation, Legal Reform and Policy Advocacy.

A first step, which has already begun, is to enhance the MSME team's understanding of key issues related to WTO implementation and legal/regulatory reform, including linkages between national laws and implementation at local levels. This will involve developing strong working relationships with local lawyers, economists and other relevant technical experts, and will include working in some cases with international experts to provide relevant perspectives from international experience and best practice. Findings in this report can provide a basis for improving understanding of the WTO and national legal processes, which have been reinforced through a number of discussions with MSME staff on these issues. As well, participation by MSME staff with their Cambodian counterparts in study programs to other countries provides an excellent opportunity for gaining expertise and learning about international best practice. Mobilizing MSME capacities for legal/policy reform will be an on-going, dynamic process of give-and-take learning between top down WTO principles and international best practices and bottom up realities of how policies are implemented and business is conducted in practice in Cambodia.

Strategic Step 3: Build Credible Working Relationships with Reformers: Create a Basis for a Demand-Driven Policy Reform Program

Within the context of building the credibility and responsiveness of U.S. assistance after the opening of engagement with government authorities about one year ago, it is critical to identify and develop relationships with reform-minded leaders at the national and provincial levels of the government and parliament to form the basis for a demand-driven approach for delivering technical assistance to support legal and policy reform. In parallel and in coordination, strong working relations should be built with key private-sector stakeholders, focusing on developing a common ground of communication and understanding of problems and solutions between the government and private stakeholders, particularly (Cambodian and foreign) businesses and associations. MSME has been working over the last year to identify and reinforce relations with reform-minded officials among the six targeted provinces. That process has been extended over the last several months to national government leaders as well. One of the greatest values of the MSME can be to help better articulate private-sector concerns and to help policy makers understand and respond more effectively to those concerns – a process of dialogue that happens in many countries, but still not yet often in Cambodia, especially with regard to smaller and rural businesses.

Recommendation 3: Organize A Follow-Up Meeting with the High-Level Cambodian Team that Attended the USAID/SEA-CLIR Workshop on Commercial Law and Trade Reform.

This meeting was organized two weeks after the SEA-CLIR meeting in Siem Reap, resulting in a proposal to develop stronger working relations between MSME and Cambodian reformers.

Recommendation 4: Organize an “Exchange Of Ideas” Program for Key Cambodian Trade and Investment Policy Officials with Vietnamese Counterparts.

A potentially effective way of advancing Cambodian strategies for further legal and policy reforms and for MSME to strengthen relationships with key reformers would be to organize a program for key Cambodians involved with legal and trade reform to exchange ideas with Vietnamese counterparts who are advancing rapidly themselves to implement WTO accession requirements and to build a modern commercial law framework. This could be done with a one-week trip to Vietnam, which could be organized in cooperation with USAID programs supporting WTO implementation and legal reform in Vietnam. This trip would also provide a useful opportunity for the Cambodians to learn more about how USAID projects have effectively supported large-scale trade and legal reforms in Vietnam since 2001. Relationships established and nurtured during this trip could form the basis for on-going discussions on key technical issues of mutual concern.

Recommendation 5: Conduct Workshops in MSME-Targeted Provinces on Private Sector Development, Legal Reform and WTO Implementation.

MSME is rapidly building upon its strong relations with local businesses in their targeted provinces to engage more aggressively with local government officials, with the goal of developing programs that work with both local government officials and businesses to improve provincial business environments. As well, MSME is beginning to engage more directly in national legal reform capacity building efforts. The confluence and timing of these approaches

provide a good opportunity for MSME to play a leadership role in legal and regulatory reform efforts in targeted provinces. Initial discussions with provincial government leaders have revealed interest on their part to understand better how private-sector development can improve economic conditions in their provinces, how a provincial economic/investment report could be helpful to benchmark progress and to promote reform, and to learn more about the successful approach used by MSME to help local firms improve sales and productivity. Furthermore, local government officials and businesses have expressed a desire to learn more about national legal reform initiatives, to have the opportunity to be more involved in making those reforms, and to understand better how WTO accession affects economic and legal development for their provinces. A series of one-day seminars in the targeted provinces could be organized with the support of provincial government and business leaders. Each seminar could spend the morning focusing on promoting private-sector growth and the afternoon on the legal/policy enabling environment for private-sector development, including how the WTO and national legal initiatives affect the provincial enabling environment for private-sector growth. This can form the basis for an on-going program of public education on legal and regulatory reform for provincial government officials and private stakeholders, and could include enhancing their capabilities to comment on national reforms as they are being drafted, rather than being expected to just respond after the fact to national initiatives (the latter currently being the case).

Recommendation 6: Establish an Advisory Group to Help Guide MSME/USAID Technical Assistance Support for WTO Implementation and Regulatory Reform.

As a new entry among donors to provide support for legal/policy reform, a potentially useful way to engage and create ownership among key government and private counterparts would be to create a MSME Advisory Group. This could provide a regular forum for discussing evolving problems and initiatives, and to gain feedback on the effectiveness of MSME/USAID assistance.

Strategic Step 4: Develop Demand-Driven Programming Initiatives to Support WTO Implementation and to Improve the Domestic Business Environment

After discussions with a number of government officials and donor-supported advisors in the development of this report, the following technical assistance opportunities to support WTO implementation and improve the domestic business environment have been raised as being potentially productive, both in establishing the credibility of MSME/USAID technical assistance in the short-term and building a basis for longer-term TA activities on key issues. More detailed explanations of these activities are presented in Annex 1.³

Legal Transparency Initiative. Improving the transparency of the legal system, by developing a cataloging system with the Official Gazette and by requiring that ministries report prakas to the Council of Ministers for publication in the Official Gazette; this meets key WTO requirements,

³ We have met with a number of officials in the Ministry of Commerce, and with officials in the Council of Ministers, the Ministry of Economics and Finance, and the Ministry of Agriculture, Fisheries and Forestry. It will be important to meet with additional officials to broaden the potential for demand-driven TA support, and to meet again to refine possibilities with those officials whose programs appear to be most promising.

supports regulatory reform and enhances the potential for business advocacy, and fundamentally improves governance and respect for the rule of law.

Improve Commercial Laws. Provide comments on mature drafts of several key commercial laws and regulations: including the Law on Commercial Contracts and the Law on Commercial Courts, and implementing sub-decrees for the Law on Secured Transactions and Law on Commercial Arbitration; draft key implementing regulations (primarily prakas) for agricultural laws (such as the laws on livestock and regulations on slaughterhouses).

Develop a Trade Remedy Law. Support initial stages of drafting a trade remedy law that could include rules-based, WTO-consistent procedures for implementing safeguard, anti-dumping and countervailing duty actions. Currently, responses to unfair trade or surges in imports are handled on an opaque and unpredictable way.

Enhance Intellectual Property Protection. Advance public understanding and enforcement of intellectual property right protection (much more analysis and engagement is needed to determine specific proposals for IPR issues);

Build Commercial Arbitration Capacities. Provide public education and training on commercial arbitration in line with developing a functioning National Arbitration Center; and,

Strengthen Capacities in the Ministry of Commerce and Other Ministries. Build the capacity of targeted government officials to support trade, investment and business policy reform and implementation, particularly in the Ministry of Commerce, in line with major institutional reforms in the MOC that include the enhancement of salaries of key officials through merit-based pay initiatives and programs developed under Trade SWAp. Capacity building programs could also be directed to other ministries, especially those most directly related with rural business, although we understand that institutional reform processes are most well developed in the MOC.

Develop, on a More Timely Basis, Well-Written Implementing Regulations. Our initial analysis shows that under the often thin veneer of donor-financed, high-level law, much of the framework of implementing regulations and procedures that provide the critical details for how laws affect businesses and citizens in practice are poorly written and hard for the public and even government officials to access. This makes business unpredictable, governing difficult and contributes to endemic corruption, since it is so easy for officers to claim “color of law” for their action. This is a level of legal technical assistance largely ignored by most other donors, but which is key for business development. Several ineffective regulations have been identified (for example, related to regulation of slaughterhouses or implementing regulations for the new fisheries law), but the lack of legal transparency and often translation into English of ministerial regulations makes it almost impossible to carefully evaluate the problems in detail without sustained effort and strong cooperation on a ministry-by-ministry basis. As well, many of the current on-going legal reforms have not laid out plans for what regulations will be needed for effective implementation. Next steps will require identification of key deficiencies and development of working relations with key government officials responsible for these prakas and ministerial decisions. It relates closely as well to the legal transparency initiative that will include a focus on greatly increasing access to drafts and finalized ministerial regulations.

Recommendation 7: Initiate Several Technical Assistance Activities to Support Legal Reform and Capacity Building that Advance WTO Implementation and Regulatory Reform.

From the list of possible TA activities noted above, which could be expanded and refined steadily over time as engagement with key government counterparts and our private-sector clients intensify, several TA activities could be implemented in the near future that could generate positive results and that could lay a solid basis for follow-up USAID assistance over the next five years.⁴ Each of these would contribute to WTO implementation, to the TIFA mandate, and would at least eventually have an important impact on rural business activity in MSME's targeted provinces. From this list and at this stage of engagement, we would recommend that priority be given to the following three TA activities (each of which is described in more detail in Annex 1):

1. support improved legal transparency;
2. support the first stages of the development of a trade remedy law; and,
3. provide an in-depth technical review of the current drafts of a range of commercial law initiatives, with an emphasis on how this set of existing and draft laws and regulations provides a consistent and systematic foundation for commercial activity by the private sector well into the future (it is important to assess these various legal reforms as a group, not individually, since the effectiveness of any one law will be dependent in many instances on the effectiveness of another law).

Key Findings

Several Cambodian officials have noted that it is important to combine any support of legal drafting with effective training and capacity building so that Cambodian officials can have full ownership of the draft, and so that implementation of the new law can be done most effectively. This can involve:

1. Training programs/workshops with drafters and National Assembly staff (and private stakeholders) on specialized, technical issues;
2. On-the-job training by USAID experts with their Cambodian counterparts on legal drafting (e.g., foreign and local experts working as a team to draft laws); and,
3. Follow-on public education and training programs to support effective implementation of new laws and regulations after they have been promulgated, particularly in the provinces.

Furthermore, it will be important to research more carefully how MSME/USAID technical assistance can reduce the currently quite lengthy time taken to develop, approve and implement most legal and policy reforms in Cambodia—can our TA help accelerate the process for developing laws and regulations?

⁴ Although this report focuses on laws and regulations included under the WTO Work Program umbrella, MSME through a team including Paul Dodd and MSME Cambodian staff are developing important legal and regulatory reform efforts that deal directly with the swine and fish sector, and which have not been included in the Trade SWAp process. These two efforts reflect the top down, and bottom up, approaches to legal reform, and should evolve quickly into a systematic, well-coordinated approach that fully exploits synergies from both approaches.

Strategic Step 5: Coordinate Effectively with Other Donors, Especially with Regard to Trade SWAp

Cambodia is one of first, and is perceived as one of the most successful countries worldwide, to use an Integrated Framework (IF) Approach to support both WTO implementation and trade and investment development. The now Enhanced IF Approach has provided the basis for the development of the multi-donor-supported Cambodia 2007 Trade Integration Strategy. Under this is the Trade Sector-Wide (Trade SWAp) approach by which the Cambodian government, led by the Ministry of Commerce, and various donors prioritize and coordinate their technical assistance efforts, with the promise of a substantial increase in donor assistance over the next several years (possibly \$20-30 million implemented in large part through a multi-donor trust fund) to support Trade SWAp activities. A key result of this process has been the development of the WTO Work Program, under which all key legal reforms related to commercial activity and judicial process are included (see Appendix Table 2).

Although Trade SWAp represents a major advance in the WTO implementation process, it poses a challenge for MSME/USAID as a new entry into the area of donor support for national legal reform and capacity building. The problem is that a number of donors have already staked out their support for many of the key legal reforms being developed by Cambodian counterparts. The matching of one donor to one law has meant in the past that Cambodian's have rarely had access to perspectives from other donors, especially from a range of bilateral donors, on what are often major legal reforms. As a result, for example, given the past ban on U.S. government engagement with Cambodian law makers, a number of key laws and regulations in Cambodia were developed without the full benefit of U.S. inputs and perspectives.

Given the important role that U.S. markets and firms will play in Cambodian development, it is critical that Cambodian officials have the opportunity to learn from and interact with U.S. experts as they develop new laws and regulations. Furthermore, it is important for U.S. policy objectives that American input be provided, which in turn can be included as part of the U.S. contribution in the TIFA dialogue. Finally, USAID has the distinct capability, given the strong engagement by MSME in provincial business, to more effectively enable Cambodian partners to raise the needs of rural businesses in the context of national reforms.

Recommendation 8: Coordinating with Donors Without Losing Initiative and Responsiveness.

It will be important for MSME to work effectively with the Ministry of Commerce-led Trade SWAp process to coordinate government and donor activities, without MSME/USAID losing its ability to respond quickly, effectively and independently to initiatives and requests by our Cambodian counterparts. As a new entry into the area of legal and policy reform amongst donors that have already established areas of focus, it will require a tactful approach to ensure that the Trade SWAp process allows "programming space" for USAID initiatives, especially in the context that it is critical that Cambodian counterparts have access to perspectives from many countries on many fundamental legal reforms, especially from the U.S., given the importance of the U.S. market and firms to Cambodia's long-term development prospects. MSME staff will need to become regularly involved with all key donor and Trade SWAp meetings to help the Cambodians set priorities, to help coordinate most effectively with other donors, and to gain appropriate space and independence for effective MSME/USAID programming.

Annex 1: More In-depth Descriptions of Possible Technical Assistance Programs to Support WTO Implementation and Regulatory Reform

The Basic Strategy Section above proposes eight recommendations for MSME initiatives to support WTO implementation and regulatory reform that could provide a productive basis for MSME and USAID to expand its programming to support WTO implementation and regulatory reform.

In this Annex 1, we provide more in-depth descriptions of the three most highly recommended technical assistance activities to support legal reform related to WTO implementation and regulatory reform.

A Proposed Legal Reform Initiatives

1. Program to Advance Legal Transparency: A Fundamental for Implementing the WTO, Improving the Business Environment, and Advancing Good Governance and the Rule of Law.

A senior official in the Council of Ministers has requested MSME to consider supporting an effort to improve access to and organization of the Official Gazette (the Royal Kram). The senior official reported that the RGC would be supportive of this initiative.

No other donors are providing assistance to support this important effort. We would recommend this legal transparency initiative as the top priority for building a stronger legal environment for businesses, traders and investors in Cambodia, both meeting a key WTO requirement and improving the business environment throughout Cambodia, while at the same time staking out a key area of technical assistance for successful MSME/USAID support.

The Royal Kram is the official weekly government journal that publishes all legal instruments signed by the King or the Prime Minister. It is in chronological order and not indexed or cross referenced properly. It is only partly in electronic format, and not yet been set up as an on-line searchable data base. Critically, it also excludes all regulations such as prakas and ministerial decisions, either draft or proposed, many of which provide the detailed guidelines that most effect day-to-day business activity.

The aim of this effort is to make it easier for the public and government officials to find laws and related regulations. Publication in an official journal before a law or regulation comes into effect supports a key WTO requirement, and easier access to Cambodia's laws and regulations can help provide businesses with a better understanding of their legal rights and the legal authorities of government officials. Legal transparency is a cornerstone for good governance and the rule of law.

A legal transparency program could include the following:

- Catalog laws and regulations published in the Royal Kram.
- Assess the current situation and develop a Council of Ministers’ plan to improve public access to law.
- Develop an electronic, searchable version of the Royal Kram.
- Work to have the Royal Kram publish draft laws and regulations, and receive public comments.
- Propose needed legal reforms to establish an electronic Royal Kram as legally binding.
- Strive to include unofficial English translations wherever possible.
- Support a Prime Minister decision that ministerial normative documents (such as prakas) must be submitted to the Royal Kram before becoming effective.
- Catalog, link and organize all implementing acts that relate to each specific law.
- Develop non-binding summaries of key laws and regulations in lay terminology.
- Print and distribute several hundred copies of every key new law and regulation among provincial and local agencies, business and civil society groups.
- Promote a national public outreach campaign to raise understanding and usage of the new initiative. If possible, get top government officials to announce the campaign.

2. Program to Support Development of a Trade Remedy Law.

The MOC is at the initial drafting stage to develop a law on trade remedies, which is required in the WTO Work Program. This law will need to be consistent with WTO procedures for implementing safeguards to alleviate economic distress resulting from a temporary surge in imports, and for applying two key “unfair trade” processes, anti-dumping procedures against companies that sell products in Cambodia below prices that they sell the same product for in their own country, and countervailing duty procedures to deal with imports that benefit unfairly from export-country government subsidies. The justification for supporting this law is that domestic interest groups, one way or the other, will apply pressure for the Cambodian government to use trade policies to counter perceived import surges or “unfairly” priced imports.⁵ It is clearly best that such requests be processed in a transparent and open way, in line with WTO guidelines, such that foreign producer (and hopefully consumer) interests can be fairly

⁵ For example, when the Thai Baht devalued significantly following in the Asian Financial Crisis, the price of Thai exports to Cambodia fell by almost 50 percent, creating a temporary and drastic reduction that could cause major disruptions to Cambodia’s domestic producers. In a case such as this, the WTO allows countries to go through a formal procedure to limit a surge in imports, on a temporary basis. There is currently pressure by a Cambodian cement producer who claims that Thai companies are selling cement at prices in Cambodia that are lower than prices charged for the same product in Thailand. Although anti-dumping or safeguard procedures are inherently difficult to implement, and can be used more as a protective instrument than a truly unfair trade remedy, the key point is that powerful domestic producers will lobby to have the government act against such under-priced or surging imports, and it is much better for this to be done in a reasonably transparent way in line with WTO and international standards, than to be done opaquely and without good oversight, due process and the right to appeal.

represented in any such procedure, and that there is an opportunity to appeal any such ruling to an independent court system.

Since few Cambodians understand how trade remedy procedures operate or what the WTO requirements are for these procedures, the MOC has suggested that the first step of possible MSME support should be a workshop for Cambodian officials and business leaders to help understand the technical issues underpinning a trade remedy law. Building upon a workshop, model laws and examples of trade remedy laws in other countries could be provided. Apparently, an initial draft of a trade remedy law was provided several years by a GTZ consultant to the MOC, but this draft has not been circulated or reviewed. MSME would work with key Cambodian counterparts to review whether this draft serves as a useful basis for advancing the law, or whether a new draft should be developed. Implementation of trade remedy procedures require a considerable investment in training and expertise, and is often done in conjunction with a competition authority related to implementation requirements for a Law on Competition. Following the initial training workshop, MSME could develop a TA plan to support development and review of drafts of a trade remedy law, working first with a drafting team in the MOC, and gradually expanding the reach of the TA to other relevant ministries, local stakeholders and the parliament. Focus would be on developing Cambodian expertise on the underlying technical issues, and supporting their lead in drafting the law and implementing regulations

3. Program to Support Key Commercial Law Reforms.

The Ministry of Commerce would welcome MSME Project support on a range of legal reforms on commercial laws and regulations on which the MOC is currently working. These will have a direct impact on the business environment throughout Cambodia and is included as part of the WTO Work Program.

The various improvements in Cambodian commercial law are at different stages of development; none will be approved by September, 2008, the end of the current MSME Project. Key commercial laws under development include: a) the Law on Commercial Contracts; b) the Law on Commercial Courts; and, c) sub-decrees on secured transactions and commercial arbitration. As well, important guidelines for commercial transactions were provided in the recently approved Civil Code and laws on negotiable financial instruments and secured transactions.

Other donors have been providing support for these laws (although there is limited support to date on the commercial contract law), but none have looked at this group of laws and regulations as a unified set of commercial law, each of which would have important implications for the other. All too often, donors and their counterparts who concentrate on a particular law lose perspective on the importance of the overall legal structure, and fail to stress key, systematic linkages among commercial laws and regulations.

Based on discussions, an important contribution by MSME and USAID at this stage would be to work with Cambodian authorities and local lawyers to review the full set of commercial law – those already in place, and those still in development. The goal would be to identify conflicts or gaps among the law, and to build an understanding among the government/national assembly, legal and business communities that Cambodia is developing a unified and systematic set of commercial law

This review and evaluation of Cambodia's commercial law could be lead by a group of international and local legal experts.

The MOC has listed a need for support of their initial stages of drafting of the new Law on Commercial Contracts (which will focus on commercial contracts, and include franchising and agency), for comments on the relatively mature draft of the Law on Commercial Courts, and for advice on developing an implementing sub-decree on secured transactions. A foreign advisor with support from a local Cambodian lawyer, would be able to provide solid legal comments on a number of key draft laws, initiating U.S. technical assistance in commercial law reform and advancing laws and regulations that would improve the business environment and advance WTO implementation. This work could be culminated in a major policy seminar to present and vet the findings, and to gain feedback from public and private experts.

Annex 2: Cambodia's trade agreements: the WTO Accession Requirements, the U.S.-Cambodia Trade and Investment Framework (TIFA) Dialogue, and AFTA and Sub-Regional Agreements

Since WTO implementation and its link to regulatory reform is new issue for MSME and USAID, it is important at this early stage of program development to develop a strong substantive understanding of the WTO implementation process in Cambodia. This starts with an understanding of WTO Accession requirements, and includes a status report on the current state of WTO implementation. It also requires an understanding of how Cambodia develops and implements its laws and regulations, including formal legislative procedures and inputs by non-government stakeholders.

Key Findings

1. The WTO Accession Provided an Important Roadmap of Legal, Policy and Administrative Reform Requirements with Deadlines at a Critical Early Stage of Legal Development in Cambodia—Cambodia acceded to the WTO on October 13, 2004, a time when Cambodia had only recently established political stability and was only in the initial stages of developing a modern legal system. At that time, there was a quite limited foundation of existing laws, and equally limited social trust and capital. WTO requirements for comprehensive legal and administrative reform in line with international best practice provided a roadmap of substantive priorities and deadlines to guide the building of a systematic, modern foundation for Cambodia's legal system.⁶ These were in addition to liberalizing market access for the import of foreign goods and foreign services providers.
2. WTO accession required that Cambodia rewrite its laws and administrative systems to conform to the international norms, standards and best practices incorporated in WTO and related agreements. These requirements affect laws and procedures related to trade in goods and services, protection of intellectual property, development of investment, trade facilitation, and transparency, right to appeal government decisions and dispute settlement. As a least developing country, Cambodia was allowed to accede to the WTO after completing only a few legal reforms. In large part, accession was approved based upon promises by Cambodia that further reforms would be completed over several years following accession, based on Action Plans provided in Cambodia's Working Party Report for WTO Accession. The Trade SWAp and WTO Work Program, noted above, evolved as the focus for cooperation among Cambodian officials and donors to meet WTO requirements after accession.
3. This Annex provides background on the following trade agreement processes for:
4. A relatively in-depth analysis of WTO accession requirements;
5. A general overview of the impact of ASEAN and various sub-regional trade agreements; and
6. A summary of the Cambodia-U.S. Trade and Investment Agreement (TIFA) process.

⁶ The important role played by WTO accession (and increasingly through FTAs) to help modernize legal/administrative systems in developing countries is often understated. It can be argued that modernization of the legal environment, especially for transition economies, may be more important to the long-term advance of developing countries than the market-opening requirements.

A. Cambodia's WTO Accession Opportunity: Rights and Responsibilities

Cambodia acceded to the WTO on Oct. 13, 2004 as a least developed country, which provided them with certain favorable treatment relative to other acceding countries, primarily in terms of more time to phase in various legal reforms. As a post-conflict government in the first stage of developing a modern legal and administrative system of governance and a market-oriented, private-sector-driven economy increasingly internationalizing into the global economy, the WTO accession provided Cambodia with a quite useful roadmap and reference to international best practice as it developed its laws and market institutions.⁷

The WTO is built on a number of agreements that are applied to all WTO members and that are built upon the following key principles:

1. **MFN Treatment**—Cambodia must treat all WTO members equally, for example, imports from all WTO members should pay the same tariff duty on a particular good.
2. **National Treatment**—Cambodia must afford firms and traders of all WTO members the same treatment as like Cambodian firms and traders.
3. **Transparency and Right to Appeal**—Cambodia must publish all laws and regulations of general application related to trade before they come into effect, and must provide drafts of all such legal instruments for public comment before approval. Cambodia must provide an objective and open process by which a business can dispute or appeal a government decision.
4. **Steadily Lowering Formal Trade Barriers**—Cambodia commits to bind current barriers to trade to be no greater than levels negotiated in the WTO Accession Protocol; to steadily lower tariff rates over time; and to eliminate quantitative barriers to trade.
5. **Developing Trade-Related Procedures That Facilitate and Do Not Hinder Trade**—Cambodia agrees to not use non-tariff measures to offset the liberalizing effects of reductions in tariffs and quotas, and to apply administrative and regulatory processes in transparent and uniform ways that facilitate trade.
6. **Dispute Settlement**—Cambodia agrees to abide by strong WTO dispute settlement processes, and to develop processes to resolve commercial disputes in Vietnam effectively.

The specific terms of Cambodia's Accession Protocol are available on the WTO webpage. These involve a more than 80-page "Report on the Working Paper on the Accession of Cambodia" that reviewed the economic, legal and regulatory environment in Cambodia and lays out commitments that Cambodia made for legal reforms, which in some cases go beyond the formal requirements included in WTO Agreements. It also includes two schedules of concessions, one for tariffs on goods and one for liberalization of services.

Appendix Table 1 in the Protocol presents a list of 57 legal reform actions that Cambodia committed to reform, with a schedule for when Cambodia promised to complete the reforms. The Working Paper provides interpretations of many of the reforms needed to be included in these

⁷ In the questions and answers session at a recent "Economic Outlook" in Phnom Penh, resident U.S. lawyer noted that the WTO provided a critical way to determine priorities and establish deadlines to develop the fundamental legal framework for a developing economy.

laws to conform to WTO requirements, but further attention is needed to assure that these laws comply with the full set of WTO agreements. This list, which is daunting in itself, also does not include additional sub-degrees and regulations needed to implement fully the revision or development anew of more than 40 laws. It also understates the need to develop full systematic laws and regulations dealing with domestic activity that go beyond WTO requirements. For example, in developing such new fundamental laws as the Civil Code and Civil Procedure Code, although there are several key WTO requirements that must be met in these laws, the vast bulk of these laws relate to domestic activities outside the direct purvey of the WTO, but which are nevertheless critical for a well-working domestic economy and society.

To provide some conceptual organization to these many legal and administrative reforms listed in the Appendix Table 1 of the WTO Accession Protocol, they can be grouped around several key functional requirements, as follows:

Facilitate Trade in Goods—complying with WTO agreements on customs valuation, technical barriers to trade (TBT), sanitary and phyto-sanitary barriers to trade (SPS), fundamental elements regarding trading rights, transparency and more as included in the GATT; trade remedy procedures related to anti-dumping, countervailing duties and safeguards; and commercial dispute settlement.

Key Cambodian legal reforms for trade in goods (from Appendix Table 1): laws and regulations on customs, forestry, animal and plant quarantine, fisheries, safeguards/anti-dumping/countervailing duties, inquiry points, and rules of origin.

Facilitate Trade in Services—complying with the General Agreement on Services (GATS), which provides guidelines in particular on acceptable regulatory practices for service sectors that do not restrict trade in services, and key sectoral annexes and reference papers, particularly in telecommunications and financial sectors.

Key Cambodian legal reforms for trade in services (from Appendix Table 1): laws and regulations on civil aviation, commercial leasing, telecommunications, merchant shipping, securities and exchange, tourism, postal services.

Protecting Intellectual Property Rights—complying with stringent requirements in the WTO's Agreement on Trade Related Intellectual Property Protection (TRIPs), and acceding to and complying with key international IP conventions; TRIPs has requirements regarding court procedures and capabilities, and for criminal enforcement of infringement at commercial levels of activity.

Key Cambodian legal reforms for IP protection (from Appendix Table 1): laws and regulations on trademarks and unfair trade, patents and utility models, copyrights and related rights, layout designs for integrated circuits, plant variety protection, geographic indications, protection of undisclosed information, civil procedure code, civil code, criminal code, and the criminal procedure code.

Facilitating Trade-Related Investment—complying with the requirements in the WTO Agreement on Trade-Related Investment Measures (TRIMs).

Key Cambodian legal reforms for investment (from Appendix Table 1): laws and regulations on investment, ICSID (binding international investment dispute resolution), land, business enterprises, export processing zones,

Cambodian Legal Reforms That Cut Across Most Commercial Activities (from Appendix 1) laws and regulations on commercial arbitration, accounting, negotiable financial instruments, land traffic, water resources, insolvency, secured transactions, commercial contracts, commercial courts, much of the criminal and civil codes and criminal and civil procedures codes, commercial agency and competition law.

The “Schedule of Accession for Goods” provides WTO bound tariff rates for all 8-digit Cambodian tariff lines. In less than 50 tariff lines, Cambodia has agreed to phase in cuts in bound rates, typically by 2008 and then by 2013 (this applies mainly to computer and related equipment, which are covered by the WTO Information Technology Agreement). Cambodia has bound almost all of its tariff rates at 40 percent or below, with tariff rates up to 60 percent for tobacco and alcohol products. All quantitative barriers for trade were to be eliminated, except for a small set of products where Cambodia can maintain state control of trading, or where certain imports are banned outright.

A WTO accession requires only the acceding country to make legal changes and to liberalize its barriers to trade. As a result, acceding to the WTO does not open markets for exports, but it does open markets for imports. For Cambodia, however, WTO accession occurred just months before the WTO mandated the elimination on January 1, 2005 of the Agreement on Textiles and Apparel, which allowed some countries to use quotas to restrict imports of textiles and apparel. As a result, as a full WTO member, Cambodia benefited from the elimination of quotas on its apparel exports, which was particularly important for the U.S. market.⁸

The “Schedule of Specific Commitments on Services” covers a full set of services activities, and in general requires that Cambodia provide full market access for service providers from WTO members. Full market access is provided upon accession for most sectors. It includes some “horizontal” commitments among all services sectors with regard to limits of foreign ownership of land (foreign businesses can only do long-term leases with property rights that can be bought and sold) and with regard to more liberal visa and residency and working permits. Full market access is phased in, typically by December 31, 2008 for several sectors, including dental services, advertising, telecommunications joint ventures, and franchising. The opening of many parts of the financial sector will depend upon development of new Cambodian laws to regulate these activities, but commercial bank and life insurance access was opened upon accession. Some restrictions are maintained in several sectors: for telecommunications, basic services must be purchased through Telecom Cambodia; and in the maritime sector, commitments are unbound, but some additional guidance is provided. In general, Cambodia’s service commitments for market access are quite liberal and far reaching.

Once the WTO Accession Protocol was been approved by the National Assembly and signed by the King, it became Cambodian law. This, however, raises a confusion about where the treaty may differ from domestic law—in principle, the treaty or accession outranks domestic law, but

⁸ Note that the U.S. maintained a quota on exports of apparel and textiles from Vietnam until it acceded to the WTO in January 2007. This restriction on Vietnamese exports tended to benefit Cambodian exports.

judges, for example, typically apply only domestic law to a case, not law determined by treaty. To avoid confusion, Cambodia has agreed to redraft its domestic laws and regulations to conform to the Accession/treaty requirements. This is the core of the WTO Work Program process.

A concern noted in many sections of the Working Party Report relates to the difficulty that Cambodia will have to implement its laws effectively. This relates to the regulation of services, as well as the general capacity by the government to apply/enforce the law on a uniform basis throughout the country. This “implementation gap” occurs in many developing countries, and for that matter, is a challenge for most developed countries. For Cambodia, implementation problems arise in part because of the need for clearer and better written laws and regulations, but also critically because of poor public administration processes and court capabilities, low civil servant salaries, limited public education and understanding of the law, and overall human resource capacities throughout the country. The WTO cannot, obviously, deal with all of these fundamental constraints to development in Cambodia, but these linkages reinforce the systematic nature of a comprehensive, sustained development process, and the important catalytic role that WTO requirements can have in the process.

B. ASEAN and Other Regional Trade and Development Agreements Affecting Cambodia’s Legal, Trade and Development Policies

Cambodian legal, trade and development policy is affected importantly by a number of primarily regional agreements that have been agreed to in parallel with its WTO commitments. Discussions with Cambodians government officials note that various regional arrangements are influencing domestic policy.⁹

Most important is Cambodia’s commitment to abide by the ASEAN Free-Trade Agreement (AFTA), which requires Cambodia and the other nine ASEAN economies to reduce almost all tariff rates to a preferential rate of between zero and five percent for trade among ASEAN economies. It requires as well that Cambodia modernize and adjust its tariff classification system to conform to the common 8-digit ASEAN Harmonized Tariff Nomenclature (AHTN). AFTA preferential tariffs are being extended in AFTA-Plus extensions to China, with negotiations advancing for similar AFTA-Plus arrangements with Korea, Australia/NZ, the EU and Japan. Furthermore, ASEAN has established a wide range of agreements and working groups aiming to improve intra-regional trade and investment flows, movement of skilled labor, and socio-economic objectives. ASEAN’s increasing ambitions to develop the region into a single, unified market were recently laid out in the ASEAN Economic Blueprint, which was approved in December 2007.

As well, Cambodia is involved with a range of sub-regional agreements, including one involving countries along the Mekong River, and a growth triangle between Cambodia, Laos and Vietnam.

⁹ The below is a quite general summary of how regional and sub-regional trade agreements affect Cambodia. When needed, more detailed analysis can be provided. These regional agreements do not conform to the WTO requirement for most favored nation treatment (e.g., equal treatment for all WTO members), but in recognition of the value of such regional arrangements (historically particularly the EU), WTO members have allowed an Article XXIV exclusion for regional trade agreements, but they must meet certain criteria to qualify for this exception.

All of these regional and sub-regional agreements require Cambodia to be involved actively in negotiations among ASEAN economies to develop and approve the terms of the agreement, which then require Cambodia to adjust its domestic laws, regulations and administrative procedures to conform to with the commitments in these agreements. This creates an additional stimulus but also challenge for domestic legal reform, and for improving domestic regulations to compete with regional suppliers.

C. U.S. Trade and Investment Framework Agreement (TIFA) Opportunities for Technical Assistance

Following WTO accession, the U.S. and Cambodian governments developed a regular dialogue process built around a Trade and Investment Framework Agreement (TIFA). This is a typical bilateral mechanism used by the USG with many developing countries, as bilateral trade relations evolve from WTO accession to potentially a free-trade agreement.

At the 2nd Cambodia-US TIFA on November 21, 2007 in Siem Riep, Cambodia requested a broad range of technical assistance from the U.S. to support development in the following issue areas (see Appendix Table 3 for the full list):

- I. Trade (especially related to utilizing fully U.S. GSP tariff preferences)
- II. Food safety and quality control
- III. Intellectual property rights
- IV. Agriculture and sanitary and phyto-sanitary (SPS)
- V. Finance and banking
- VI. Public works and transport
- VII. Ministry of Economy and Finance issues
 - a) insurance
 - b) customs valuation, rules of origin, anti-smuggling, TRIPS border measures, trade facilitation, trade security, and action plans for joining the Revised Kyoto Customs Convention and ATA Convention
- VIII. Technical Barriers to Trade (TBT)
- IX. Labor market studies and building institutions for worker rights
- X. Ministry of Justice issues
 - a) build capacity in commercial laws and dispute settlement
 - b) court administration and IT case management systems
 - c) support for IT hardware and improved office space
 - d) developing a IT system for criminal records and forensics

To date, Cambodian officials note that there has been no USG response to these requests. Apparently, the U.S. response is constrained first by the lack of resources available to USTR to respond directly to the requests, and by the quite general and varied list of Cambodian requests.

The expansion of MSME into national policy reform and capacity building provides the USG with the opportunity to have USAID respond to some of these requests, as part of a broader USG response. There could be advantages to the larger USG engagement with Cambodia if USAID and MSME could provide technical assistance that would meet USAID development objectives as well as responding to the Cambodian TIFA requests channeled through the USTR.

The immediate issue is whether MSME can provide technical assistance to the Cambodian government that would be productive and that would be perceived by the Cambodian's as being responsive to their TIFA requests. This raises the challenge of choosing a priority or two among this long TIFA list for which MSME could commit to provide technical assistance over the next several months.

In our initial discussions with RCG counterparts, we have received interest in MSME providing support for IPR enforcement issues, for support in the development of commercial laws and dispute processes, and we have received the same long-list of requests for support in the agriculture sector (this long list is not perceived as a priority, at this stage in our engagement). As well, we have requests to support the development of trade remedy laws and improve legal transparency, which we would presume the Cambodians would be happy to include in the TIFA-TA list.

Although any decision in this regard clearly must be led by the U.S. Embassy, USAID, and USTR, we note that the current development of initial MSME technical assistance on WTO implementation and regulatory reform could be used in as a USG response to Cambodian requests within the TIFA process. Clear possibilities, as noted above, include support for legal transparency, commercial law and dispute settlement development, trade remedies, and potentially IPR enforcement.

Annex 3: The “Trade SWAp” Process and Cambodia’s WTO Work Program

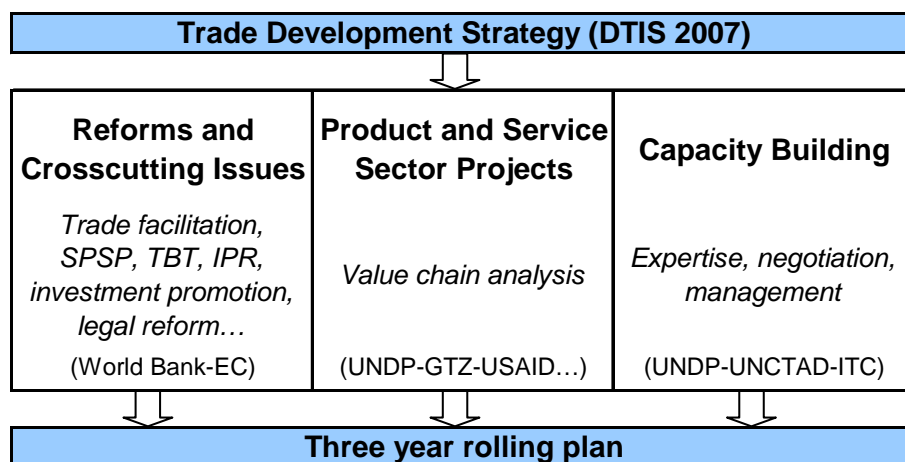
- Key Finding: WTO Implementation Has Been Used to Organize a Systematic Approach to Legal Development in Cambodia through a WTO Work Program Agenda: A number of key reforms have been developed, approved and are being implemented, while a number of other important reforms appear to be lagging —WTO accession required that Cambodia phase in a number of legal and administrative reforms over time, based initially upon Action Plans provided in the WTO Working Party Report (see Appendix Table 1). The Cambodia Government and a number of donors transformed these Action Plans into a WTO Work Program, supported by an “Integrated Framework” process of priority setting and the mobilization and coordination of donor assistance. The Enhanced IF has evolved into the Cambodia 2007 Trade Integration Strategy, with the Trade Sector-wide (Trade SWAp) approach serving as the prime operational modality.
- Cambodia and the WTO Working Party included both commitments specifically required in WTO agreements, and other commitments for legal reform that are not required

directly in WTO agreements, but that are critical to developing a legal framework to promote private-sector development in a well functioning, competitive and open-market economy. For example, progress has been made to reform Cambodia’s customs system, in line with clear requirements in WTO agreements. Other relevant WTO reforms are related to IPR enforcement, technical barriers to trade for industrial goods (TBT) and agricultural goods (SPS). On the other hand, key legal reforms mentioned in the Working Report but not directly required by WTO agreements have been promulgated, including the civil code to establish a stronger legal basis for contracts, the law on secured transactions to make it possible for businesses to use movable assets as collateral for loans, and a law on negotiable instruments to facilitate and leverage payments on business transactions.

- While a number of key legal reforms included in the WTO Work Program have been completed, many additional laws and implementing regulations are behind schedule. Furthermore, the legislative development process is excessively lengthy, relative to the urgent need to improve the domestic business environment and to meet overdue WTO deadlines. As well, attention and resources needed to build public awareness of the new laws and institutional capacity to implement the new laws effectively remain limited. It appears that the urgency of legal reform to implement WTO accession commitments may be lagging.

The Integrated Framework and Trade SWAp Process. The Trade Sector-Wide Approach (Trade SWAp), a Ministry of Commerce (MOC)-led and multidonor-funded initiative to organize and coordinate WTO implementation and trade facilitation efforts, offers an useful framework for developing USAID-funded activities in the areas of economic growth and trade-related policy reform. The Trade SWAp program is supporting systematic reforms along three pillars: reforms and crosscutting issues for trade development (which includes WTO implementation, the WTO Work Program, and legal reform work); export development for 19 targeted goods and service sectors; and capacity building and management for trade development (see Figure 2).

FIGURE 2: TRADE DEVELOPMENT STRATEGY



Providing the analytical framework on trade issues for the Trade SWAp, the recent Diagnostic Trade Integration Study (DTIS) 2007 identified 19 priority sectors, or value chains, which cover 12 products already exported plus seven services and products not yet exported. Products, or value chains, include garments and a wide range of agricultural products, as well as tourism, light manufacturing, and labor services.

Developing Cambodia's WTO Work Program

With regard to WTO implementation requirements, as a least developed country, Cambodia received some favorable treatment in the accession process, including allowing Cambodia to phase in a number of legal and administrative reforms after accession to the WTO, not before.¹⁰ In the Working Party Report, Cambodia provided several Action Plan tables that represented their plans to complete reforms after accession, and WTO members agreed to approve Cambodia's accession based on those promises (see Appendix Table 1).

Cambodia under the leadership of the Ministry of Commerce and with support from a broad range of donors have developed a Work Program for WTO implementation, which notes WTO requirements and tracks the status of implementation of legal and institutional reforms to comply with those commitments (see Appendix Table 2 for the recently updated matrix). In order to focus political attention, several additional laws have been added to the Work Program compared to the Working Party Report list shown in Appendix Table 2. This Work Program is part of a process of Cambodian and donor coordination started with an Integrated Framework Report in 2004 and an update in the 2007 (DTIS).

The WTO Work Program as updated on February 15-16, 2008 identifies those legal reforms that have been completed and then notes those reforms that are in process of completion, including a set of comments about each law as relevant (see Appendix Table 2).

Key reforms that have been completed include (although in some cases additional implementing regulations are required):

- Transparency—basic regulations on publication and public comment of laws and regulations.
- Law on Commercial Arbitration—requires a sub-degree for implementation
- Law on Commercial Enterprises—provides key rules for establishment and operation of enterprises
- Law on Insolvency
- Law on Secured Transactions—requires a sub-degree for implementation
- Law on Trademarks and Acts of Unfair Trade—with sub-decree in place, including for border measures
- Law on Copyright Protection
- Law on Patents, Utility Models and Industrial Designs
- Law on Customs—with 35 implementing regulations drafted and in some cases approved
- Law on Government Securities
- Law on Fisheries

¹⁰ Recent acceding countries, such as Vietnam and the Ukraine, had to make almost all legal reforms required for accession before accession was approved, not after.

- Law on Standards in Cambodia—with key sub-degree drafted and under consideration
- Civil Code—lays the foundation for civil relations, including for contracts and IPR
- Civil Procedure Code—with key procedural requirements to meet IPR enforcement requirements
- Criminal Procedure Code
- Law on Road Traffic—with 20 regulations required, some of which are drafted
- Law on Negotiable Instruments—with three prakas in effect
- Law on Investment
- Law on Civil Aviation

Key Question: Is There a Link Between WTO Commitments and Domestic Regulatory Reform, Particularly with Regard to Improving the Business Environment for Rural Small and Micro Businesses?

The essence of the WTO is to establish a level, non-discriminatory playing field for foreign and domestic businesses to compete in an economy. The WTO emphasizes principles of most-favored-nation treatment, which requires that firms from all WTO members be treated equally, and of national treatment, which requires that foreign and domestic firms be treated equally as they compete in an economy. It also emphasizes that countries should steadily liberalize foreign access to its markets, that its economy run on basic market/commercial principles, and that administrative or non-tariff measures not be used to offset liberalization of tariffs and quotas at the border with internal barriers that protect or favor domestic interests. Critically, it also has strong transparency requirements for domestic laws, regulations and administrative procedures at both the national and local levels so that foreign and domestic firms have equal access to information required to do business in an economy, and it requires that foreign firms have adequate and equal access to dispute settlement procedures in a country.

Although WTO requirements can have a deep impact on how a country runs its economy, it does not fundamentally have requirements for how domestic firms, traders and farmers operate unless it can be shown to impact international trade and investment. This boundary between domestic policy and regulation and what affects foreign interests, of course, is at the heart of many WTO disputes. In practice, whether a domestic regulation is important enough to generate opposition by foreign businesses and governments can determine whether it becomes a WTO-related dispute. The WTO has an increasingly robust system for resolving disputes between countries. As a result, for example, whereas a large foreign-invested agri-business could have its home country raise an issue of concern where a domestic regulation (say in Cambodia) may be restricting their business operations, often within the context of the WTO, it is not possible for a small Cambodian swine producer to raise problems with restrictions in local markets that constrain their business opportunities in a WTO context.

Nevertheless, WTO requirements for greater market access and legal and administrative reforms can have a critical, systematic effect on Cambodia’s business environment. This is particularly the case in Cambodia because the WTO implementation process has incorporated all key legal reforms affecting commercial activity and judicial procedure under its “political-economy umbrella”.

Thus, developing the legal foundations for a private-sector-driven, market-based economy is directly linked to the WTO implementation program. For example, legal fundamentals related to contracts, legal transparency, secured transactions, dispute settlement, financial, legal and telecommunication services, and so on, will all be determined as part of the WTO Work Program. In the short run, these legal fundamentals may not help small rural businesses as much as, say reducing extra-legal fees and red tape from local officials regarding business operation and transportation. Ultimately in the long run, however, reducing such unproductive government intrusions will require stronger and clearer laws (a transparent, rules-based regulatory system), supported by the greater political will to improve enforcement.

To deal with this challenge, MSME has adapted a top-down and bottom-up approach to improving the business environment for rural enterprises and farmers. As noted, WTO implementation provides a key top-down approach to developing a stronger legal framework for business activity, from farmers and traders in rural areas to the largest Cambodian and foreign-invested firms. MSME is also helping local farmers and business interests to identify key regulatory constraints that can be raised effectively in policy dialogue with the local and national governments to bring about needed changes. The combination of MSME's work on WTO implementation and on advancing reforms specific to sectors and industries operating in rural provinces provide a strong, synergetic capacity to improve the business environment in Vietnam.

A key issue that has clear immediate links between WTO implementation and improving the business environment in rural provinces is legal and regulatory transparency. Increasingly, authority to implement policies and laws are being delegated to provincial agencies, but these officials have limited access and training regarding the new laws. Furthermore, local businesses can better represent their interests for reforms if they can back their grievances with references to legal documents. And, the WTO requires that national and local laws be made easily accessible to businesses.

Over the longer term, in addition to transparency, there are a number of legal reforms that can improve the business environment for rural businesses, including the increasing use of written contracts (which will require a specialized Law on Commercial Contracts that is currently just beginning to be developed), using movable assets as collateral (which will require an implementing regulation for the new Law on Secured Transactions, which is just beginning to be developed), having access to commercial arbitration services to resolve disputes (which will require an implementing regulation to the new Law on Commercial Arbitration) and substantial training of professional arbitrators and public education of how arbitration can benefit firms).

In our initial evaluation, there is considerable but not complete linkage between WTO implementation and the business environment for rural businesses. The optimal strategy is to have a coordinated program that both supports the development of stronger, long-term legal foundations in Cambodia as part of the WTO implementation process, and that works intensively at the local level to bring local business constraints affecting business on a daily basis to levels where reforms can be made.

Annex 4: Cambodia's Legislative Process, Stakeholder Inputs, and the Role of Donors

Cambodia has a well structured legislative development process, although it involves many steps and takes typically at least 4 years to draft, review and approve a law.¹¹ Some laws have taken a decade. It takes at least two years to develop and approve a sub-degree, while ministerial prakas can be processed more quickly. There is no structured approach to supporting and monitoring effective implementation of the law.

Cambodia has a civil law system, built upon a hierarchy of legal normative documents with laws and anukrets at the highest level, approved by the parliament and signed by the King, then with sub-degrees providing more detailed implementation regulations for laws that are approved by the Prime Minister, and then with prakas, which are the most detailed regulations that ministries have been authorized by a higher law to issue. There are various additional legal instruments issues as well.

A law can be proposed by the Government or the National Assembly, although in practice most laws are initiated by government ministries. Initial technical drafts of laws and regulations typically are initiated by a ministry with the help of donor-supported consultants, often at the initiative of a donor and sometimes with donor funds released only after completion of a law (as done by the ADB for the law on secured transactions). A ministry is typically determined to create a working team to lead the technical drafting, working with the foreign and/or domestic consultants to assure that the technical elements of a draft law are consistent with Cambodian law and contexts, as well as taking into account international best practice. Gradually, the drafting authority/ministry takes ownership of the draft, and it is eventually approved by ministry leadership. This process typically takes around two years.

- An approved final draft is then submitted to the Council of Ministers for review. For a law (and I think a sub-decree or any other regulation approved by the Prime Minister), there is a four-stage process for approval by the Prime Minister, which typically takes at least one year, as follows:
- A draft is submitted to an economic and social analysis committee for an economic and social impact analysis; then,
- A draft is submitted to the Council of Jurists, who check the legal validity of the law relative to the constitution and consistency with other Cambodian law; then,
- A draft goes through an inter-agency review to build a consensus among government authorities that new legislation meets national objectives, and is consistent with inter-ministerial authorities and objectives; and then,
- A draft is submitted to a Cabinet meeting for ministerial approval, and approval by the Prime Minister.

The Prime Minister then submits a draft law (with a statement of cause to support the importance for approving a law) to the National Assembly, which has three steps for approval. The law is

¹¹ For example, the civil code and civil procedure code took around 10 years to draft and come into effect. A law on domestic violence, a much less complex law, took a year to complete and approve. There is a sense that the technical capabilities of the Government has improved, and that complicated laws may evolve a bit faster.

submitted to the President of the National Assembly, but operationally it goes to the Permanent Standing Committee of the NA, who reviews the substance and assigns it for technical review, as follows:

- A draft is reviewed by the National Assembly's Law Committee for consistency with Cambodian law;¹² then,
- A draft is submitted to the NA's technical committee with authority for the topic area for a technical and substantive review;¹³ and then,
- A draft is submitted for full plenary debate, culminated by a vote by the full National Assembly for approval.

There are no time limits as to how long the National Assembly review and vote may take, but experience shows that it typically takes at least a year for the National Assembly to review and approve a law.

After approval by the National Assembly, the draft is submitted to the Senate, which processes the bill through the same three steps as the National Assembly. The only difference is that there are time limits on the Senate approval process, so that this process can be completed more quickly.

Once approved by the Senate, the law is submitted to the King to be promulgated. After signature by the King, it must be published in the Royal Kram (the Official Gazette) to come into effect 20 days after publication in Phnom Penh, and 40 days after publication in all other parts of Cambodia.

Throughout this process, authorities can make comments and changes to the draft law, and in some cases send it back for substantial redrafting. The NA does not formally get involved with the substance of a draft until it is submitted to them, but informally some NA members may be invited to workshops to discuss early drafts. Typically, the lead drafting agency presents the draft law to the technical committee of the National Assembly, and may attend additional NA Committee meetings as a technical resource.

For sub-decrees and other legal instruments for which the Prime Minister has final approval authority, the process is completed with the review by the Council of Ministers and signature/approval by the Prime Minister, coming into effect after publication in the Royal Kram just as is the case for laws. Authority to approve such a particular sub-degree, however, must be stated in a law or anukret that has been approved by the parliament and signed by the King.

Ministries are provided authority in the same way to issue prakas, which are the most detailed technical regulations used to implement higher-level law. Prakas are drafted and approved by a ministry, going through an intra-ministry review process. Prakas do not have to be published in the Royal Kram, which can raise considerable confusion by making it difficult to link key

¹² There are different explanations on this stage. Some have said the Legal Committee does the legal review, while others have said that the Permanent Standing Committee does the legal review. One way or the other, it should not make much difference MSME or USAID programming.

¹³ It does not appear that donors work much with the NA committees. Some donor-supported workshops do invite NA committee representatives. We should probe more about whether it would be appropriate to provide more TA to the technical committees of the National Assembly on targeted laws, which proved quite important in the legislative development process for many legal reforms in Vietnam.

technical implementing regulations in a prakas to the relevant sub-decrees and laws. Prakas are typically published in some form by a ministry, either on their webpage or in a ministerial legal journal.

State agencies are required by Cambodian law (and WTO requirements) to take into account inputs from stakeholder interests, but there does not appear to be a formal requirement for how this is done. In many cases, draft laws and regulations are posted on ministry or National Assembly webpages. As well, donors often support workshops for stakeholders to comment on drafts. These workshops are apparently always held in Phnom Penh—there is typically no attempt to gain stakeholder input from provinces and rural areas. Informal lobbying by interest groups with government and National Assembly authorities can often be much more opaque.

An important process for foreign and domestic business input to laws and regulations has been the Government-Private Sector Advisory Meetings, which are chaired by the Prime Minister and conducted twice a year. At these meetings, policy issues and business problems are raised, the PM and his cabinet respond, and changes under the jurisdiction of the Government can be made quickly. In our view, whereas this forum can provide an important opportunity to raise legal and policy problems with the highest authorities, it is at best a short-term substitute for a mature system of open public comment, technical input and domestic political dialogue in legislative development.

The role of donor consultants appears to be strongest at the beginning of the process of legislative development, and then steadily Cambodian officials take greater leadership as the system moves toward final-decision making. This raises several problems that MSME could address. First, foreign advisors appear to be relied on too greatly at early stages in the legal drafting process; Cambodian experts should be engaged much more strongly in developing the technical foundations and initial drafts for laws, benefiting from foreign expertise, not lead by foreign experts. Second, foreign advisors probably are not engaged enough in the more politically-charged final stages of legal development, specifically the review and approval stages by the National Assembly and the Senate. Parliamentarians should be well informed of international treaty requirements and best practice, otherwise they can, and in fact do, unwind sometimes well-drafted laws submitted by the Government because of a lack of such understanding. This is particularly important where there are specific WTO requirements that must be met.

Third, the overall legislative system has no process for monitoring the implementation of legal changes. Especially given the early stage of legal development of Cambodia, and rapidly developing economic conditions, the effectiveness of new laws and regulations should be monitored constantly and be opened to refinements and improvements as evolving real-world experience reveals strengths and weaknesses in each law. MSME's engagement with businesses provides an excellent view on the success or failures of new laws, which could be developed into important feedback to the Government and parliament.

Annex 5: Insights from the USAID-Funded SEA-CLIR Report on Commercial Law Reform in Cambodia

The USAID Regional Office in Bangkok, in cooperation with ASEAN, supported a series of comparative “commercial law and trade diagnostics” for five Southeast Asian countries, including Cambodia. The final output of this project included a regional synthesis report with comparative findings presented at a conference in Siem Riep, Cambodia, in March 2008, and individual reports for each of the five countries.

Development of the Cambodia diagnostic stimulated a considerable debate among government agencies and induced a productive set of exchanges between the SEA-CLIR research team, USAID/Embassy officials and Cambodian government officials, just as U.S. policy had changed to allow U.S. direct engagement with the Cambodian government.

Substantively, the SEA-CLIR Country Report on Cambodia noted advances in Cambodia’s legal system, especially over the last several years, while emphasizing the considerable remaining challenges to deepen and broaden Cambodia’s commercial law framework, to improve implementation and enforcement of the law, and even more fundamentally, to establish a credibility among the public that Cambodia’s legal system can be applied consistently, fairly and efficiently – that is, that there is a rule of law, not a rule of man. The Cambodian and Regional Reports take a comprehensive “snap shot” of Cambodia’s legal system for commercial activity as of late 2007, reviewing the strengths and weaknesses in 15 basic areas of commercial law application.¹⁴ It also stresses cross-cutting problems caused by wide-spread corruption and the lack of public trust in government institutions, particularly the courts. It’s analysis raised a number of relevant issues that can affect the business environment for micro, small and medium firms throughout Cambodia, as follows:

- Business registration regulations have been improved substantially and a company registry has been developed, but many Cambodian businesses refrain from fully registering their enterprises.
- Cambodia is strengthening its contract law with the recent promulgation of the Civil Code and draft laws on commercial contracts and a commercial court; this can provide an important basis for transforming business transactions toward more prevalent use of written contracts with stronger enforcement mechanisms.
- Land titling and property rights are weak, especially for foreigners, and are vulnerable to abuse by powerful interests.
- Implementation of the new secured transactions law is advancing, but it is hindered by the need for implementing regulations, more efficient filing processes, and greater public understanding of the processes, including outside of Phnom Penh.
- The recently adopted bankruptcy law and the pending competition law pose major challenges to be implemented effectively in Cambodia.

¹⁴ The 15 areas covered are as follows: company law and corporate governance; contract law and enforcement; real property law; secured transactions law; bankruptcy law; competition law and policy; commercial dispute resolution; court administration; foreign direct investment; international law and policy; flow of good and services; flow of money; flow of people; financial crimes; and, intellectual property.

- Businesses rarely use the existing courts to resolve disputes. The new law on commercial arbitration and the possibility for a commercial court raise the possibility that a more effective process can be instituted to resolve commercial disputes, but implementing regulations are required for the arbitration law and concerns must be addressed that arbitrators will be unbiased and objective. The success of the labor arbitration board is seen as a possible model.
- Attracting foreign investment will require a stronger legal system, better infrastructure and lower energy costs, better trained workers, and less corruption.
- New customs laws and regulations have considerably eased the cost and time required to clear customs, but risk management and other approaches to manage a modern customs system has lagged. Transportation costs are high in Cambodia, especially at sea ports.
- After the passage of several key laws to protect intellectual property rights to meet WTO requirements, enforcement in practice has lagged considerably.
- All aspects of court operations are weak.
- The SEA-CLIR report did not analyze carefully issues related to legal transparency, but it notes on a number of occasions the importance of making it easier to access existing laws and regulations and the need to facilitate public comment for draft legislation. (This report has been able to advance considerably USAID/Cambodia and MSME Project understanding of legal transparency in Cambodia, as noted above.)

The SEA-CLIR diagnostic provided a solid analysis of the state of the commercial law system around the end of 2007, with useful recommendations for follow up work. It did not, however, provide a clear strategic sense of priorities for which legal reforms may be most important, nor an analysis of the political economic factors, the legislative processes, or the technical assistance approaches that could be most effectively employed to support promulgation and eventual effective implementation of laws and regulations. The challenge is to establish priorities among the many important deficiencies in Cambodia's legal system, to engage with reformers to determine which issues they think USAID technical assistance can be most effectively applied, and to work out coordination issues with other donors.

Follow up discussions with Cambodian participants who attended the SEA-CLIR Conference confirmed this approach, noting that they benefited from the conference and the reports, but that to a large extent, they were well aware of most of the findings presented in the SEA-CLIR report and that they had developed a process for advancing legal and regulatory reforms, centered on the WTO Work Program.

Effective MSME/USAID technical assistance on legal reform in Cambodia will require much stronger technical analysis than provided in the SEA-CLIR Report, as well as a more nuanced understanding of the political economy of legal reform and institutional development in Cambodia. But clearly, the SEA-CLIR process has provided a useful jumping off point for a next stage of more intensive USAID-supported technical assistance on legal reform.

APPENDIX TABLE 1: Attachment from WTO Working Party Report (August 15, 2003) Agenda for Enacting Laws for WTO Conformity

Law	Agreement(s)	Status of Draft	Expected Approval Date (Parliament)
YEAR 2001			
Ratification of the ICSID Convention	General	Adopted by the CM; Adopted by the Parliament.	2001
Ratification of the New York Convention (Enforcement of Foreign Arbitral Awards)	General	Adopted by the Council of Ministers (CM); Adopted by the Parliament.	2001
Land Law	General	Approved by the CM; Adopted by the Parliament.	September 2001
Royal Decree on Cooperatives	General	Adopted by the CM and issued on October 2001.	No parliamentary approval
Law on Trademarks and Acts of Unfair Competition	TRIPS	Adopted by the CM in October 2001; Awaiting for Ratification by the Parliament.	December 2001
YEAR 2002			
Sub-Decree on Inquiry Points for (1) Services, (2) SPS, and (3) TBT	Technical Barriers to Trade Sanitary and Phytosanitary Measures	Adoption by CM expected June 2002.	No Parliamentary approval
Forestry Law	General	Adopted by the Parliament in August 2002	August 2002
Postal Services Law	GATS	Adopted at the CM and submitted to the Parliament in December 2001.	20 June 2002
Law on Protection of Patent, Utility Models, and Industrial Designs	TRIPS	Adopted by the Parliament in November 2002.	December 2002
Accounting Law	General	Adopted by the Parliament.	November 2002
YEAR 2003			
Law on Copyrights and Related Rights	TRIPS	Adopted by the Parliament in January 2003.	February 2003
Amendment of the Law on Investment	General	Adopted by the Parliament in February 2003.	February 2003
Sub-Decree on Animal Quarantine	SPS	Adopted by CM in February 2003.	No parliamentary approval
Sub-Decree on Plant Quarantine	SPS	Adopted by CM in February 2003.	No Parliamentary approval
Law on Business Enterprises	General	Adopted by CM in April 26, 2002 and to the Parliament in June 2002.	November 2003
Tourism and Entertainment Law	GATS	Submission to the CM is expected in March 2003 and to the Parliament in April 2003.	November 2003
Negotiable and Payment Transaction Law	General	Submission to CM in March 2003 and to the Parliament in April 2003.	December 2003
Customs Code	Customs Valuation	Adapted by the CM in December 2002 and submitted to the	December 2003

Law	Agreement(s)	Status of Draft	Expected Approval Date (Parliament)
	Rules of Origin GATT 1994	Parliament in January 2003.	
Land Traffic Law (Highway Code)	General	Draft completed by the Ministry of Public Works and Transports; Submission to CM is expected in 2001 and to the Parliament in January 2002.	December 2003
Water Resources Management Law	General	Being drafted by the Ministry of Water Resources and Meteorology; submission to the CM is expected in April 2003 and to the Parliament in May 2003.	December 2003
Water Supply Law	General	Being drafted by the Ministry of Industry, Mines, and Energy; submission to the CM is expected in March 2003 and to the Parliament in April 2003.	December 2003
YEAR 2004			
Law on Export Processing Zones (EPZs)	GATT 1994	Draft completed by the Ministry of Industry, Mines and Energy; Submission to CM is expected in March 2003 and to the Parliament in September 2003.	January 2004
Commercial Arbitration Law	General	Submission to CM is expected in February 2003 and to the Parliament in March 2003.	January 2004
Civil Aviation Law	General	Draft completed by the State Secretariat for Civil Aviation; Submitted to CM in June 2002 and to the Parliament in December 2002.	January 2004
Insolvency Law	General	Submission to CM is expected in March 2003 and to the Parliament in April 2003.	January 2004
Secured Transactions Law	General	Submission to CM is expected in October 2003 and to the Parliament in December 2003.	February 2004
Commercial Contracts Law	General	Draft completed by the Ministry of Commerce; Submission to CM is expected in November 2003 and to the Parliament in December 2003.	February 2004
Commercial Leasing Law	General	Draft completed by the Ministry of Commerce; Submission to CM is expected in December 2003 and to the Parliament in January 2004.	June 2004
Telecommunications Law	GATS	Draft under review by the Ministry of Post and Telecommunications; Submission to CM is expected in October 2003 and to the Parliament in December 2003.	June 2004
Fisheries Law	SPS	Being drafted by the Ministry of Agriculture, Forestry and Fisheries; Submission to CM is expected in December 2003 and to the Parliament in January 2004.	June 2004

Law	Agreement(s)	Status of Draft	Expected Approval Date (Parliament)
Law on Layout Designs of Integrated Circuit	TRIPS	TA requested by the Ministry of Industry, Mines, and Energy to prepare draft; Submission to CM is expected in September 2003 and to the Parliament in February 2004.	July 2004
Law on Plant Variety Protection	TRIPS	TA requested by the Ministry of Industry, Mines, and Energy to prepare draft; Submission to CM is expected in March 2003 and to the Parliament in September 2004.	September 2004
Law on Safeguard Measures	Safeguards	TA requested by the Ministry of Commerce to prepare draft; Submission to CM is expected in September 2003 and to the Parliament in April 2004.	October 2004
Law on Anti-dumping Measures and on Countervailing Measures	Anti-Dumping Subsidies and Countervailing Measures	TA requested by the Ministry of Commerce to prepare draft; Submission to CM is expected in September 2003 and to the Parliament in January 2004.	October 2004
Law on Geographical Indications Including Appellation of Origin	TRIPS	TA requested by the Ministry of Commerce to prepare draft; Submission to CM is expected in April 2004 and to the Parliament in June 2004	December 2004
Law on Protection of Undisclosed Information	TRIPS	TA requested by the Ministry of Commerce to prepare draft; Submission to CM is expected in October 2003 and to the Parliament in March 2004.	November 2004
Law on Rules of Origin	Rules of Origin	TA requested by the Ministry of Commerce to prepare draft; Submission to CM is expected in June 2004 and to the Parliament in August 2004.	December 2004
Law Establishing the Commercial Court	General	TA requested by the Ministry of Commerce and the Ministry of Justice to prepare draft; Submission to CM is expected in December 2003 and to the Parliament in February 2004.	December 2004
Civil Procedure Code	General	Being drafted by the Ministry of Justice; Submission to CM is expected in June 2003 and to the Parliament in December 2003.	December 2004
Civil Code	General	Being drafted by the Ministry of Justice; Submission to CM is expected in June 2003 and to the Parliament in December 2003	June 2004
Criminal Procedures Code	General	Being under review by the Ministry of Justice; Submission to CM is expected in June 2003 and to the Parliament in	December 2004

Law	Agreement(s)	Status of Draft	Expected Approval Date (Parliament)
		June 2004.	
Criminal Code	General	Being under review by the Ministry of Justice; Submission to CM is expected in September 2003 and to the Parliament in March 2004.	November 2004
YEAR 2005			
Law on Layout Designs of Integrated Circuit	TRIPS	TA requested by the Ministry of Industry, Mines, and Energy to prepare draft; Submission to CM is expected in June 2004 and to the Parliament in August 2004.	January 2005
Law on Plant Variety Protection	TRIPS	TA requested by the Ministry of Industry, Mines, and Energy to prepare draft; Submission to CM is expected in July 2004 and to the Parliament in September 2004.	January 2005
Commercial Leasing Law	General	Draft completed by the Ministry of Commerce; Submission to CM is expected in June 2004 and to the Parliament in August 2004.	January 2005
Merchant Shipping Law	GATS	Being drafted by the Ministry of Public Works and Transports; submission to the CM is expected in November 2004 and to the Parliament in December 2004.	February 2005
Law on Protection of Undisclosed Information	TRIPS	TA requested by the Ministry of Commerce to prepare draft; Submission to CM is expected in October 2004 and to the Parliament in November 2004.	March 2005
Law on Anti-dumping Measures and on Countervailing Measures	Anti-Dumping Subsidies and Countervailing Measures	TA requested by the Ministry of Commerce to prepare draft; Submission to CM is expected in September 2004 and to the Parliament in December 2004.	March 2005
Commercial Agency Law	General	Draft completed by the Ministry of Commerce; Submission to CM is expected in September 2004 and to the Parliament in November 2004.	February 2005
Criminal Code	General	Being under review by the Ministry of Justice; Submission to CM is expected in September 2004 and to the Parliament in November 2004.	March 2005
Law on Criminal Procedures	General	Being under review by the Ministry of Justice; Submission to CM is expected in November 2004 and to the Parliament in December 2004.	April 2005
Commercial Agency Law	General	Draft completed by the Ministry of Commerce; Submission to CM is expected in November 2004 and to the Parliament in December 2004.	June 2005
Civil Procedure Code	General	Being drafted by the Ministry of	June 2005

Law	Agreement(s)	Status of Draft	Expected Approval Date (Parliament)
		Justice; Submission to CM is expected in December 2003 and to the Parliament in March 2004.	
Civil Code	General	Being drafted by the Ministry of Justice; Submission to CM is expected in October 2003 and to the Parliament in December 2004	June 2005
Law on Safeguard Measures	Safeguards	TA requested by the Ministry of Commerce to prepare draft; Submission to CM is expected in November 2004 and to the Parliament in December 2004.	July 2005
YEAR 2006			
Competition Law	General	TA requested by the Ministry of Commerce to prepare draft; Submission to CM is expected in October 2005 and to the Parliament in December 2005.	January 2006
Securities and Exchange Laws	General	Being drafted by the Ministry of Economy and Finance; submission to the CM is expected in June 2005 and to the Parliament in October 2005.	January 2006

Appendix Table 2: WTO Work Program Revised by Ministry of Commerce as of February 15-16, 2008

(note, topics handled by the Ministry of Economy and Finance were not updated at this meeting; a separate matrix is available that updates work on customs issues)

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
OFFICE OF THE COUNCIL OF MINISTERS						
	Transparency	WP Report para 216, 217	Publish proposed measures pertaining to trade and allow no less than 30 days for comment.	Asap	TA needed. More TA Needed (NIDA-Korea)	Each Ministry has to take the necessary steps. There will be an Anukret requiring this. (no representative from CM attending this meeting)
	Transparency	WP Report para 217	Establish or designate Official Journal or website dedicated to the publication of regulations etc. affecting trade	1 January 2004		Laws, Anukret and Prakas have been posted in Khmer. Need to include those judicial decisions available from the Supreme Court website. Need to include administrative decisions. Need COM decision requiring publication of all administrative decisions. 80-90% of work has been completed.
	Education	Services schedule: educational services	Establish independent accrediting process	Asap	TA needed (NIDA-Korea)	Samdech Prime Minister has ruled to keep status quo.
MINISTRY OF COMMERCE						
	Inter-Ministerial machinery	WP Report Para 39	Re-define the Inter-Ministerial Coordinating Committee	Asap	Not needed	Sub Decree has been adopted. Action completed
	Commercial Court	WP Report para.35 and 36	Pass law establishing the commercial court	June 2005	No TA needed.	Draft law initiated by MOC in 2003. Support for draft is originally from Canada (CIDA). This draft needs a revision to be aligned with the Law on Organization and Function of the court. In 2007 UNDP funded this revision exercise and the final revised draft is in place and is expected to be submitted to Council of Minister in 2008.

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	Competition Policy	WP Report para.28	Draft law (Law on Competition)	Asap	UNCTAD is providing TA	Economic mapping out by Multirap completed. Two workshops have been held. UNCTAD has assisted in the preparation of a draft law. The draft has been examined by a working group set up by MOC. The final draft is in place. MOC is planning to hold a workshop to obtain inputs from stakeholders.
	Commercial arbitration	WP Report para.33, 36	Draft law on commercial arbitration	1 January 2005	No TA Needed	Promulgated on 5th May 2006. Sub-decree to be prepared for implementation. Sub-decree will be dealt with by the National Arbitration Center
	Anti-dumping, safeguards and countervailing measures	WP Report para.106, 108	Draft legislation	1 January 2005	TA Needed	Drafting is underway in the MOC.
	Anti-dumping, safeguards and countervailing measures	WP Report para.108	Notify relevant legislation and regulations to WTO	Asap after adoption of laws	No TA needed	Awaiting the law to be passed first.
	Legal framework for business	WP Report Annex I Attachment	Draft Law on Commercial Enterprises	Early 2004	No TA needed	Adopted and promulgated on June 19, 2005. Action completed
	Special Economic Zones	WP Report para.151 and Annex I Attachment	Draft Law on Export Processing Zones (with CDC and MIME)	Asap	TA needed	Sub-decree on SEZ adopted on 29 December 2005. A draft Law on SEZ is being drafted by CDC.
	Legal framework for business	WP Report Annex I Attachment	Draft Insolvency Law	Asap	No TA needed	This law was adopted by the National Assembly on October 16, 2007 and promulgated on December 8 2008. The implementing regulations will be prepared.
	Legal framework for business	WP Report Annex I Attachment	Draft Secured Transaction Law	Asap	TA is being provided	This law was promulgated on 24 May 2007. A financial institution has been selected as partner to implement this law. Need further training for bank staff to understand the law. Requires implementing regulations
	Legal framework for business	WP Report Annex I Attachment	Draft Commercial Contracts Law	Asap	No TA needed	A draft law is being reviewed by MOC. No Progress

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
	Legal framework for business	WP Report Annex I Attachment	Draft Commercial Agency Law	2005	No TA needed	The draft has been completed by MOC. It awaits final review by the Ministry. No Progress
	TRIPS: Marks	WP Report para.206 and Table 12	Put in force sub-decree implementing the Law on Marks	2004	TA is being provided by WIPO	This Sub Decree was adopted by the Council of Ministers on July 07, 2007 and came into force on July 12 2006. Its implementation has begun.
	TRIPS: IPR border measures	WP Report para.199	Draft sub-decree implementing special border measures contained in Law on Marks (with MEF)	2004	TA needed	Border Measure provisions have been included in the Sub-Decree implementing the Law on Marks (Chapter IV, Articles 38-42). A special regulation can be prepared after a comprehensive study of Thai new practice. Further TA needed
	TBT	WP Report para 127	Extend ASEAN conformity assessment agreements to all WTO Members (with MOI)	Asap	No TA needed	ASEAN agreements cannot be extended to third parties by Cambodia, but conformity assessment procedures should be the same for like products, whatever their origin. It is not clear whether this equivalence exists at present.
	TRADING RIGHTS	WP Report para 44 &50	Verify and make sure that all registered companies could engage in import and export of all types of goods	Asap	Not needed	Issue arises with regard to pharmaceuticals, fertilizers and pesticides. See the relevant entries below.
MINISTRY OF ECONOMY AND FINANCE (NOT FULLY UPDATED)						
	Privatization and reform	WP Report para. 25	Prepare report on privatization and reform	1 year after accession	No TA needed	Currently being prepared. There are 10 SOE not yet privatized. MEF has established a committee led by H.E. Ouk Rabun (No representative from MEF attending this meeting).
	Customs valuation	WP Report para. 84, 93	Pass Customs Law and adopt implementing regulations	Early 2004	TA received from IMF. Further TA needed	The new law on Customs has been adopted and was promulgated by the King on 20th July 2007. 35 implementing regulations have already been drafted
	Customs valuation	WP Report para. 84	Submit Customs Law and implementing regulations to WTO	Asap after adoption of law and regulations	No TA needed	Prakas on Customs Valuation has been drafted in order to implement the WTO Valuation Agreement.

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
	Customs valuation	WP Report para. 91	Eliminate valuation of automobiles according to national origin	On date of accession	No TA needed	Done
	Customs valuation	WP Report Table 7, para 93	Prepare Customs team and departmental plan to implement valuation transition plan	December 2003	Some TAs received. More TA required	The imported goods using PSI service which account for almost 80% of the total duty paid imports are consistent with the WTO Valuation Agreement.
	Customs valuation	WP Report para 51	Complete the reform program	2004-2005	Additional TA needed	Ongoing.
	Customs valuation	WP Report Table 7, para 93, 105	If PSI continues, adapt new contract to WTO rules	December 2003	Not required	BIVAC International has been accepted through a bidding process as the new PSI provider and a contract with this company was signed in February 28, 2006 for 2-year services. WTO rules on customs valuation are fully taken into account. The contract with BIVAC has been continued for another year until 2009.
	Customs valuation	WP Report Table 7, para 93	Provide training on new Customs Law and valuation procedures	2004	TA needed NZ Customs services, JICA	Ongoing with assistance from Japan and others.
	Customs valuation	WP Report Table 7, para 93	Implement Post Clearance Audit program	2004	TA needed	Post Clearance Audit Office already established. Staff has been signed and being trained on PCA. Anukret on SEZ and Anukret on Trade Facilitation through Risk management also make reference to it.
	Customs valuation	WP Report Table 7, para 93	Prepare and publish Manual on Law on Customs and related Regulations	2004-2005	TA needed. JICA would provide assistance to publish	Under preparation.
	Customs valuation	WP Report Table 7, para 93	Apply transactions value to large multinationals, firms importing identical or similar goods, and importers entitled to exemptions	December 2004	No TA needed	Being Implemented gradually. For Importers entitled to exemptions, transactions value is fully applied.

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
	Customs valuation	WP Report Table 7, para 93	Establish data base of compliant valuations to administer and monitor valuation issues	2005	Some TA received. More TA needed	Valuation database called "VeriValue" is provided by PSI company (BIVAC)
	Customs Automation Project	WP Report Table 7, para 93	Begin automated customs processing system project (to be completed by end 2005)	2008	TA needed	TA provided under World Bank Trade Facilitation and Competitiveness Project. ASYCUDA project document was signed on 18 April 2006. Institutional arrangement has been established. The development of ASYCUDA prototype (1st phase) finished in May 2007. The 2nd phase, the beginning of pilot site started afterwards. The implement at pilot site is planned to commence at early 2008.
	Risk Management		Establishment of Sub-Decree 21 and Inter-ministerial Working Group on Risk Management	2006	TA from AusAid and JICA	Done
	Risk Management		Establishment of Risk Management Unit at the CED and other line ministries	2006		Already established and assigned officers at the CED. It is still going on at other line ministries
	Risk Management		Establishment of 28 Risk Indicators and 9 Selectivity Criteria	2007	TA from JICA	Done and already sent to ASYCUDA, but some selectivity criteria that relate to HS Code 2004 need to be converted to Tariff 2007 version in order to be consistent with ASYCUDA system.
	Cambodia Customs Tariff 2007		Publish and Put into use	2007		Done. New AHTN (WCO HS version 2007) was put in place from 1st July 2007
	Prohibited and Restricted Goods		Establishment of a National Prohibited and Restricted List	2007		The draft of the P&R Goods consisted of 1537 tariff lines has been agreed by the inter-ministerial meeting held on 18, 19, and 26 October 2007. The final draft was already sent to the MEF for approval. Sub-Decree on the Prohibited and Restricted Goods is adopted on December 31, 2007.

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
	Customs Broker		Prakas on Customs broker			The MEF issued a letter to put the interim customs broker system into use. So far, initial conditions for interim customs broker have been developed; and almost 200 applicants have applied for interim customs broker license. Custom brokers will be selected and approved by the MEF. The implementation of customs broker has been delay due to limited awareness of private sector on the system.
	Single Administrative Document-SAD		Training to both Customs officers and private sector.			Many training courses have been conducted at the CED to both customs officers and applicants of interim customs brokers (declarants). Single Administrative Document (SAD) will be implemented from 1st January 2008 (Prakas on SAD will be issued in December 2007). Task completed
	Single Administrative Document-SAD		Introduction of SAD to replace the existing customs declaration			The format and explanatory notes of the SAD have been drafted and finalized. The Prakas on SAD was already drafted and ready for signature by Minister of MEF. Task completed.
	Rules of Origin	WP Report para 96	Conform to WTO rules of origin (Draft law on ROO)	December 2004	TA needed	MOC, MEF to meet to work out the details to prepare a separate Law on Rules of Origin.
	Smuggling	WP Report para 98	Equip enforcement teams	ASAP	TA needed	Ongoing efforts made by CED to tackle this issue. Need funds and TA to build up enforcement capacity.
	Smuggling and issues of customs administration	WP Report para. 99	Establish dispute settlement mechanism	December 2004	No TA needed	Draft Prakas has been prepared in accordance with the provision of the Customs Law.
	Tariffs on textiles and clothing	WP Report para.165	Apply all tariffs on an MFN basis	Date of accession	No TA needed	This issue, which arise for an extremely small number of tariff lines, is still under consideration.
	TRIPS border measures	WP Report para 199	Draft sub-decree implementing special border measures contained in Law on Marks (with MOC)	2004	TA needed	Draft sub-decree has been prepared. Implementation of border measures is to be based on a joint Prakas to be issued by MOC and MEF. Draft Law on Geographic Indicators also deals with border measures.

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
	Permit for foreign workers	Services schedule: horizontal commitments	Change fee for work permit to reflect the fact that it will be issued for a period of two years	2004	No TA needed	Refer to MOLVT section. Established in 2005.
	Insurance and re-insurance	Services schedule: financial services	Revise law on Insurance and prepare regulations		TA needed	MEF decided to revise the Anukret, not the Law. The Department received the approval from Senior Minister to revise the Anukret, but work has not begun yet. The Department of Financial Industry is currently drafting the Anukret on Life insurance. A seminar on this topic will held on 22nd Feb 07, before submission to CoM.
	Money and capital markets	Services schedule: financial services	Draft laws on government securities and on non-governmental securities (bearing in mind that it will trigger commitments)	2005	TA is being provided by ADB. Further TA needed on issuance procedures and trading.	The Law on Government Securities has been adopted and was promulgated on 10th Jan 07. The Law on Issuances and Trading of Non-Government Securities was promulgated on 19/10/2007. The Implementing Regulation is yet to begin.
MINISTRY OF AGRICULTURE FORESTRY AND FISHERIES						
	Pesticides risk assessment	WP Report para. 75 (see also para 77)	Develop capacity to undertake risk assessment	June 2005	TA needed	A Laboratory for analyzing pesticides formulation and pesticide residues has been established with a WB loan. TA needed and could be sought from UNDP. Present Status—laboratory has been established but there is limited capacity to use it. Assistance is needed for the enhancement of laboratory capacity (including facilities) and for improving staff capacity. There is a strong expectation of support from WB and UNDP.
	QRs on fertilizers, pesticides and other agricultural inputs	WP Report para. 77	Eliminate QRs and establish WTO-consistent methods for registration and review	June 2005	TA is needed to establish procedures for managing domestic distribution.	QRs have been eliminated by a ministerial circular as regards both fertilizer and pesticides. However, pesticides in the extremely toxic category are banned, and another group of high toxic pesticides will be allowed only in emergency situations. A laboratory for the analysis of fertilizer and pesticides has been established and operates. Post registration measures have been monitored by MAFF/DAL. Importer of agriculture materials needs to

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
						<p>inform MAFF at least 10 days before the date of importation. MAFF shall inspect the imported agriculture materials at permanent warehouse, which shall be identified by the importers. Sample of agriculture materials shall be collected for laboratory test to ensure standard verification.</p> <p>(Same status and remains unchanged)</p> <p>Legal framework on agriculture materials management</p> <p>Sub-decree No: 69/28-10-1998 MAFF circular for implementation of sub-decree 69 No: 345 21-10-2002 Inspection at warehouse before sale and use are operated Promulgation No: 589/15-12-2003 on the list of pesticides permitted, restricted and banned for use in Cambodia. Promulgation No: 204/12-July-2004 format of application form of registration, importation and trade license. Declaration No: 356/259-10-2002 on the organization and functioning of the department of agricultural legislation Joint declaration No: 02/26-10-2004 between MAFF and MOJ on the creation and recognition of judicial police of agricultural materials. Declaration No: 185/09-06-06 on the promulgation of new format for agriculture materials importation. Other legal measures of MAFF Circular on measure for strengthening management of agricultural inputs for trade have been drafted. The Sub-Degree on agricultural inputs materials management have been completed draft under ADB loan No:2022-CAM</p>
	Fishing	WP Report Annex I Attachment	Draft Fisheries Law	2004	No TA needed	The Fisheries Law was adopted by the National Assembly on 30th March 2006 and Promulgated on 21 May 2006.

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
	TBT	WP Report para 77	Develop and apply technical standards for fertilizers and pesticides	2007	TA needed	MAFF has started to establish standards. A Laboratory for analyzing pesticides formulation and pesticide residues has been established and operated with WB loan. TA needed and could be sought from UNDP. Se item 49, above (same status)
	SPS	WP Report Table 11, para 142	Design plant pest and disease control program and other measures	2004	More TA needed for implementing action plan and drafting the law	NZAid II and AusAid providing assistance in Capacity building. Phytosanitary action plan has been prepared by MAFF. Some training in risk management has occurred. MAFF is planning to draft the Law on Plant Quarantine and NZAid is being requested for TA. (FAO extended assistance on SPS matters—Support on the implementation of Sub Decree on SPS (Plant and animal health). Capacity building and TA. (Further TA is still needed from other sources). Complete and detailed list of TA will be presented for facilitating the consolidated list of TA). The regulation under Sub-Decree No:15 (2003) has been drafted as follows: Cambodian quarantine pest list Regulation (Prakas) on plant quarantine materials Regulation (Prakas) on Free charge for plant quarantine inspection Regulation (Prakas) on plant quarantine inspection procedure Regulation (Prakas) on award for plant quarantine officer and other expenses for their mission Sub-Decree on Uniform for plant quarantine officer The regulation under Sub-Decree No:16 (2003) on the control of animal hygiene and animal products has been drafted as follow:

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
						<p>Direction on the implementation of the sub-decree No: 16 Regulation (Prakas) on infectious diseases list</p> <p>Regulation (Prakas) on list of goods items which are subject of control as regards animal hygiene and animal products</p> <p>Regulation (Prakas) on procedure of control of animal hygiene and animal products</p> <p>Regulation (Prakas) on award for animal officer and other expenses for their mission</p> <p>Regulation (Prakas) on Uniform for plant quarantine officer</p> <p>Regulation (Prakas) on service charge for the control of animal hygiene and animal products</p> <p>Regulation (Prakas) on method of control of animal hygiene and animal products</p> <p>Law on drug control</p> <p>Sub-Decree on trade facilitation through risk management.</p>
MINISTRY OF INDUSTRY MINES AND ENERGY						
	TBT	WP Report Table 10, para 131	Establish and make operational the TBT Enquiry Point	2004	Initial TA was provided by Multrap. Additional TA will be needed	<p>Enquiry point has been set up and is operational, although operations are not yet smooth. e-mail: camtbt@camshin.com.kh Website: www.isc.gov.kh</p> <p>TBT enquiry point: TBT Committee has been established. Notification on this subject matter has been communicated to WTO.</p> <p>No further TA needed.</p>
	TBT	WP Report para 127	Extend ASEAN conformity assessment agreements to all WTO members (with MOC)	2004	No TA needed	<p>Cambodia cannot unilaterally extend ASEAN Agreements to third parties. However, conformity assessment procedures should be the same for like goods, regardless of their origin. At present, ASEAN conformity assessment is being implemented for all sources of goods imported into Cambodia.</p>

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
	TBT	WP Report Table 10, para 131	Submission of statement on implementation (per G/TBT/1)	Date of accession	TA needed	Statement has been submitted to the WTO secretariat.
	TBT	WP Report Table 10, para 131	Draft Law on Industrial Standards and implementing regulations; compliance with Code of Good Practice	June 2004	TA is being provided. Further TA needed with respect to drafting regulations. (No further TA needed)	The title of the law is now: "Law on Standards of Cambodia". This law was adopted by the NA on April 25, 2007 and was promulgated on June 24, 2007. An implementation regulation on the Function and Role of the Institute of Standards of Cambodia has been drafted and submitted for discussion at inter ministerial level. A WG will be established to verify the compliance of this law with WTO requirements. (UNIDO has offered to assist with the work of this WG).
	TBT	WP Report Table 10, para 131	Development of technical regulations and conformity assessment procedures	2004-2005	TA is being provided. Further TA needed	A Regulation has been adopted on conformity assessment. Regulations have also been adopted on electrical equipment (several, covering more than 66 items), bottled drinking water, chili sauce and vinegar. These all need to be notified. A TBT Committee of Cambodia will be established with the members invited from all relevant institutions).
	TBT	WP Report Table 10, para 131	Publication of Standards Bulletin	December 2004	Further TA needed	A Website has been created by MIME. UNIDO is helping publish Brochures. There is as yet no Bulletin.
	TBT	WP Report Table 10, para 131	Staff training on TBT implementation	2004-2005	TA needed	Ongoing process. Training was supported by EC in the middle of 2005. Further "on-job" training is needed. (Same status—remains unchanged).
	TRIPS	WP Report Table 12 and para.206	Draft sub-decree implementing the Law on Patents	2004	TA provided by WIPO	Draft sub-decree was completed and submitted to the Council of Ministers in September 2005. COM refused to adopt the sub-decree, and instructed the Minister of Industry to issue the text as a Prakas. Two Prakas have been established—Prakas on the Procedure for the registration of Industrial Design, adopted on June 29, 2006 and Prakas on the Procedure

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
						for the grant of Patent and Utility Model certificate, adopted on the same date. The Schedule of fees has been drafted, and is under discussion with the MEF.
	TRIPS	WP Report para 185	Implementing text for the Law on Patents must specify that computer programs and business methods may be eligible for patent protection	2004	TA provided by WIPO	The draft Prakas incorporates the necessary language as regards computer programs. A separate Prakas is to be issued to protect business methods. TA is needed to do this task. (Same Status)
MINISTRY OF INTERIOR						
	Residency permit	Services schedule: horizontal commitments	Develop and implement residency permits consistent with the horizontal commitments	2004	TA needed	Art 21 of Immigration Law allows 2-year residency permit and can be extended for every two years. A draft Anukret has been prepared amending Anukret 75, and allowing visa and extension of stay for two years renewable to a maximum of 5 years. The Ministry will also be working on classification of visas. Draft amended Anu-kret is still under review at ministerial level. The Ministry wishes to combine these changes with other modifications to Anukret 75, and is waiting for these other changes to be agreed. However in case of emergency a separate Prakas could be issued dealing only with WTO issues Work on the classification of visa is still continuing.
	Visa	Services schedule: horizontal commitments	Adapt visa requirements to make them consistent with horizontal commitments	2004	No TA needed	See item 63, above
	Visa	Services schedule: horizontal commitments	Issue Prakas on procedures for issuing 2-year visa	2004	No TA needed	See item 63, above

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
MINISTRY OF JUSTICE						
	Appeals process	WP Report para 36	Draft Law on Judicial Organization	December 2004	No TA needed	The final draft has been completed, discussed in the Working Group and examined by the Supreme Council of the Magistracy. The draft has been sent to the Council of Ministers and is being considered by the Council of Jurists. The law allows special courts to be established. (Same status)
	Civil Law	WP Report Annex I Attachment	Draft and implement Civil Code	2004	TA is being provided.	Has been adopted by the Council of Ministers and submitted to the National Assembly. It is being debated at Legal Department of the National Assembly. (Same status)
	Civil Law	WP Report Annex I Attachment	Draft and implement Civil Procedural Code	2004	TA is being provided.	Promulgated in July 06, 2006. The Code has entered into force.
	Criminal Law	WP Report Annex I Attachment	Draft Criminal Code	2005	TA is being provided.	Has been submitted to the Council of Ministers. The Council of Jurists has no objection to the current draft. It is being discussed by the Inter-Ministerial Committee. The Draft has been sent back to the MoJ for changes in some wording.
	Criminal Law	WP Report Annex I Attachment	Draft Criminal Procedural Code	2005	TA is being provided.	Promulgated in August 10, 2007.
MINISTRY OF LABOR AND VOCATIONAL TRAINING (Not updated)						
	Movement of foreign labor	Services schedule: horizontal commitments	Establish classifications for intra-corporate transferees	2004	TA to be sought from ILO and other donors	One ILO expert has been dispatched to the Ministry and is working on amending the Labor Law. The Ministry is seeking TA to draft the classifications for intra-corporate transferees and prepared to establish occupational categories.
	Movement of foreign labor	Services schedule: horizontal commitments	Amend Labor Law to allow work permits to be granted for 2 years	2004	No TA needed	The above mentioned ILO expert will also work on the drafting of the amendment of the Labor Law especially on Article 261 of the Law. The drafting of the amendment has been completed. The draft law specifies the duration of the work permit.

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
						Existing joint Prakas no 56 of Ministry of Economy and Finance and the Ministry of Social Affairs, Labor and Youth Rehabilitation will be amended to specify a charge of USD 200 for the first two- year term and USD 100 for annual renewal.
	Employment agencies	Services schedule: other business services: placement and supply services of personnel	Amend Labor Law so as to allow for the operation of these companies in Cambodia	2004	No TA needed	<p>The future amendment of the Labor Law will incorporate the operation of the service placement and supply services of personnel as Art. 258 of the Labor Law is silent in this aspect.</p> <p>The Ministry is working on this. For time being Ministry has modified it structure by separated into two depts.: Local Labor supply Dept and Overseas labor supply Dept. It will incorporate accordingly into Labor Law.</p>
MINISTRY OF LAND MANAGEMENT URBAN PLANNING AND CONSTRUCTION						
	Architecture	Services schedule: architectural services	Repeal provision in Sub- Decree requiring "signature by Khmer architect for big projects." (Amending laws/regulations)	2004	TA needed	<p>Amendment to the Sub-Decree has been drafted. Expected submission to the National Assembly in November 2006. A sub-decree has also been drafted.</p> <p>Revisions will also be needed in the urban planning law, land law and law on special economic zones. However, in practice the restriction has been lifted.</p> <p>The Sub-Decree will be amended after the amending of law. Therefore, the amendment will be made on the Law on Land Management and Urbanization. (Signature by Khmer architect for big project will not be needed after amendment). (The law on Land Management states in Article 15 that "documents attached for a construction permit for big constructions must be prepared by a Khmer architect having a diploma or by any person recognized by the competent authority. Such requirements of Diploma and recognition must be stated by sub-decree." The sub-decree implementing the law states in its Article 11 that a "project must be done by a Khmer architect or any person participating with a Khmer Architect and such a person must be recognized by the Royal Government." Therefore, it still appears that the problem is in the Sub-decree)</p>

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
	Architecture	Services schedule: architectural services	Draft Law setting out professional qualifications. Consider establishing a Board of Architects	2005	TA needed	Ongoing. TA was provided by EU Multitrap. First drafts have been completed by EU experts and are being reviewed: Architect law (involved with Board of Architect) and Engineer law (involved with Board of Engineer).
	Construction	Services schedule: construction and related engineering services	Draft Law establishing professional qualifications	2005	TA needed	See item 75, above
	Engineering	Services schedule: engineering services	Draft Law establishing professional qualifications	2005	TA needed	See item 75, above
MINISTRY OF HEALTH						
	Imports of pharmaceuticals	WP Report para 49, 50	Amend Law on Drug Management and Prakas No.82 of 31 March 1999 so as to allow any firm to engage in import activity	June 2005	TA needed	The draft law on Drug Management has been discussed and the Council of Jurists has no objection to it. The amendment takes into consideration WTO requirements and allows all commercial companies in the commercial register to import pharmaceuticals.
MINISTRY OF POST AND TELECOMMUNICATIONS						
	Tele-Communications	Services schedule: tele-communication services	Draft Law on Tele-communication that separates operations from regulation	2004	TA is being provided by ADB and WB	Sub-decree to establish Telecom of Cambodia (TC) as a public enterprise approved by SPM on 12 January 2005. Telecom Cambodia and MPTC became legally and physically distinct on 1 January 2006. A sub-decree will spell out the structure, power and responsibility of the regulatory body and after that the law will come into effect. Draft Law on Telecommunication to govern Telecommunication Industry and establish an independent regulatory body has been submitted to the Council of Ministers. Examination by Council of Jurists is finished. This draft is being discussed by OBSESS. TA to draft the law on telecom was completed.

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
	Tele-Communications	Services schedule: tele-communication services	Prepare plan of action containing steps necessary to meet commitment in 2008	2004-2005	TA is being provided	Action plan with clear timeframe for implementation was made. MPTC will submit this action plan to MOC. Action plan has been delivered to MOC. Task is completed.
	Mobile phones	Services schedule: Telecommunication services	Develop objective and transparent criteria for issuing licenses in this area	2004	TA is being provided	The criteria for issuing licenses is being developed with assistance from ADB. It is estimated that another 6 months will be needed to complete the work.
MINISTRY OF TOURISM						
	Hotels	Services schedule: tourism and related travel services	Prepare sub-decree on hotel rating classification	2004	No TA needed	Sub-decree on hotel rating was approved and signed by SPM on 11 June 2004. Task completed.
	Travel Agencies and Tour Operators	Services schedule: tourism and related travel services	Amend present draft Law on Tourism to bring it into compliance with commitments	2004	No TA needed	Draft Law on Tourism was returned by the National Assembly and currently is being reviewed by the MOT to include other elements, possibly including 100% foreign equity participation for tour operator. Waiting further comments from private sector. Draft law has passed OBSESS, however, due to the penalty provisions contained in this law, draft has been return for further discussion with MoJ. Expect to return back to CM soon.
	Restaurants	Services schedule: tourism and related travel services	Issue Sub-decree or Prakas to establish the criteria for setting up restaurants	2004	No TA needed	Restaurant Associations have been formed, and MOT will recognize them. Detailed criteria for setting up restaurants related to area in the form of sub-decree has been drafted and will be submitted to the OCM. This Sub-Decree is still under discussion at ministerial level.

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
MINISTRY OF PUBLIC WORKS AND TRANSPORT						
	Access to maritime services	Services schedule: maritime services	Ensure that draft Law on Maritime Transport contains provisions covering "additional commitments"	2004	TA being provided by Belgium	Drafting of a Maritime Code is going forward in stages. As drafting is completed, it is sent to a Belgian maritime lawyer for review. Belgian expert has reviewed the full text of the draft. Internal review is completed. Final draft will be sent back soon after further reviewing. This draft is expected to be sent back to MPWT at the end of February 2008.
	Road transport	Services schedule: road transport services	Draft Law on Transport regulating sector	2004	TA needed	The draft Law on Road Traffic was adopted by NA and Senate in January 2007, and entered into force on February 8, 2007. Among 20 implementing regulations, four sub-decrees are drafted, namely the Sub-decree on the Establishment of Joint Inspection Team, the Sub-decree on Registration of Vehicle Card, the Sub-decree on the Management of Road Transport Operations, and the Sub-decree on the Management of Repair Garage. The Sub-Decree on the establishment of a Joint Inspection Team is being discussed at ministerial level. The other three draft sub-decrees have been submitted to CoM. A draft sub-decree on Management of Cargo and Passenger Transportation has been prepared.
	Refuse disposal, sanitation	Services schedule; environmental services	Issue sub-decree requiring Governors and Mayors to observe non-discrimination in granting contracts	2004	Not needed	No action has been initiated. A sub-decree should be prepared to inform mayors and governors of their responsibilities. (Same status)
MINISTRY OF CULTURE AND FINE ARTS						
	TRIPS	WP Report Table 12 and para.206	Draft regulations implementing the Law on Copyright	2004	TA needed	WIPO has stated that no implementing regulations are required. A more detailed request for assistance will be made to WIPO. . A Draft Sub-decree on the establishment of Collective management organizations has been drafted and is under discussion at the departmental level.

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
NATIONAL BANK OF CAMBODIA						
	Banking	Services schedule: banking and other financial services	Prepare and adopt Law on Negotiable Instruments and Payments Transactions.	2004	No TA needed	The National Assembly adopted the law on 19 September 2005. Task completed, but TA needed for drafting the implementing sub-decree. Three prakas have been put into effect: 1- Prakas on Control of systematic risk of Payment System. 2- Prakas on Payment Clearing System. 3- Prakas on Operations of Settlement Accounts One is still being drafted: 4- Prakas on Licensing of Monetary Exchange. (Same status)
	Banking	Services schedule: banking and other financial services	Consider preparing regulations covering mortgage credit, factoring, charge and debit cards and traveler's cheques	2005	TA needed	ADB is supporting the preparation of the Financial Blueprint's Road Map. Comparative research on other countries' laws and regulations had been planned. However, due to the lack of capacity, the plan is suspended.
	Banking	Services schedule: banking and other financial services	If Law on Financial Leasing is drafted, be aware that it will trigger WTO obligations	None	TA needed	The draft has been sent to COM. MOJ said that the draft contains some provisions contradictory to the existing laws. NBC and MoJ are now working on this issue. (Same status)
	Legal framework for business	WP Report Annex I Attachment	Draft Commercial Leasing Law	2005	No TA needed	Only a Law on Financial Leasing is being considered. Law on Commercial leasing is dropped from the agenda of the National Bank.
COUNCIL FOR THE DEVELOPMENT OF CAMBODIA						
	Investment Law	WP Report para 143	Draft of implementing Sub-decree of the Law on the Amendment of	2004	TA needed	The sub-decree was adopted on 27 September 2005. Task completed.

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
			the LOI, by increasing compliance with TRIMS.			
	Investment Law	WP Report para 119, 120	Notify "subsidies" (waiver of customs duties for some investors) to WTO	Date of accession	TA needed	The features referred to in WP Report para. 119 and 120 have been eliminated by the new LOI and the sub-decree implementing it. Task is completed.
STATE SECRETARIAT OF CIVIL AVIATION						
	Civil aviation	Services schedule: air transport services	Pass Civil Aviation Law and draft implementing regulations	2004	TA Provided by ICAO	The draft Law was submitted to the National Assembly on 23 December 2004. Civil Aviation law has been promulgated by His Majesty the King on January 19, 2008. Implementing regulations have been drafted with regard to: 1. Airworthiness 2. Flight Operation 3. Airport Security Program. 4. National Aviation Security Program. (Same status for the implementing regulations)
	Selling of air transport services	Services schedule: air transport services	Draft economic and technical regulations covering the selling and marketing of air transport services	2004-2005	TA needed	Seeking a continuation of ICAO TA SSCA requested TA from ICAO but received no response. (Same status)
NATIONAL CODEX COMMITTEE						
	SPS	WP Report Table 11, para 142	Prepare sub-decree on food hygiene and other legal provisions	2004		Adopted, task is completed.

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
	SPS	WP Report Table 11, para 142	Make Enquiry Point operational	2004-2005	TA needed	Enquiry point has begun to operate. Five officials were sent to Singapore for practical training. However, it is not efficient to cover the activities. Further TA is needed both English and technical knowledge training such as database management and coverage of website contents in order to be fully operated.
	SPS	WP Report Table 11 para 142	Establish Codex library; implement training;	2004	TA needed for training in librarian skills	Codex library is already established. Use of the library is still limited by librarian skills, therefore TA is needed.
	SPS	WP Report Table 11 para 142	Put in place necessary regulations on food safety; secure necessary training	2005	TA needed	Cambodia is going to adopt Codex standards that are relevant to Cambodia. All existing Codex norms have been reviewed to assess their relevance . The selected norms are the basis for drafting Cambodian regulations. These will be submitted for review by the Inter-ministerial Committee for final adoption. Continued support from Codex trust fund is necessary for participation of Cambodian officials at Codex meetings.
INTELLECTUAL PROPERTY RIGHTS COORDINATING COMMITTEE						
	TRIPS	WP Report Table 12, para 206	Secure Cambodia's membership in Berne, Geneva Phonogram, and Brussels Satellite Conventions and the Patent Cooperation Treaty	2004-2005	No TA needed	<p>Cambodia has requested membership in the PCT. Awaiting the decision of the Council of Ministers.</p> <p>The MCFA is currently working on the translation of the Berne and Geneva Phonogram Conventions. We are lobbying law makers to support the membership.</p> <p>Need special TA for Law Makers to obtain the support for membership in Bern Convention.</p>
	TRIPS	WP Report Table 12, para 206	Draft Law on Geographical Indications	2004	TA is being provided by France	Drafting completed. Currently being reviewed at MOC and will submit to the Council of Ministers in 2008.

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
	TRIPS	WP Report Table 12, para 206	Draft Laws on Layout Designs, Undisclosed Information and Plant Variety Protection	2005	Further TA needed probably from Australia (CATAF).	<p>Draft Law on Layout Design is being reviewed by MIME. Expect to submit to CoMs in 2008. TA is needed.</p> <p>New Plant varieties is being discussed at CoMs. This provision has been included in the Seed Law of MAFF.</p> <p>Law on Undisclosed information and trade secrets and the Law on Compulsory Licensing for Public health are in the final stages of preparation. The final drafts will be completed soon.</p> <p>Sub-decree for implementing these two laws has been drafted and no further TA needed.</p>
	TRIPS	WP Report Table 12, para 206	Put into force implementing regulations for laws on geographic indications and protection of undisclosed information and trade secret	December, 2005	TA needed	<p>The draft Sub-decree for implementing the GI law is completed. It can be sent to the Council of Ministers once the GI law is promulgated.</p> <p>APEC-EIP will assist the drafting of Sub-decree to implement the undisclosed information and trade secrets law during 2008.</p>
	TRIPS	WP Report Table 12, para 206	Put into force implementing regulations for the Law on Layout Design of Integrated Circuits	2006	TA needed	Awaits drafting of the Law
	TRIPS	WP Report Table 12, para. 206	Put into force implementing regulations for the Law on Plant Variety Protection	2006	TA needed	Awaits drafting of the Law
	TRIPS	WP Report Table 12, para 206	Join International Convention for the Protection of New Varieties of Plants	December, 2005	No TA needed	After the adoption of the above drafted law. However, Cambodia should inquire from the Convention whether having the laws in place is a prerequisite for membership. A decision needs to be taken as regards the Ministry that has authority in this area.

No.	Topic	WTO Reference	Task	Deadline	Technical Assistance	Comments and Status
ALL MINISTRIES AND AGENCIES						
	Transparency	WP Report para 216	Publish draft laws and draft regulations for comment 30 days before they are adopted	2004	No TA needed	Sub-decree may be needed to ensure compliance by ministries.
GENEVA MISSION						
	WTO Committee on TBT	WP Report para.129	Participate in the meetings of the Committee	Ongoing	No TA needed	Ongoing
	WTO Committee on SPS	WP Report para 141	Participate in the meetings of the Committee	Ongoing	No TA needed	Ongoing
BAR ASSOCIATION						
	Legal services	Services schedule: Business services: Legal services	Draft amendments to paragraph 5 and 6, and other articles if any, of the Law on Bar, to bring about conformity with the WTO commitment	2004	No TA needed	<p>Redrafting of para 5 and 6 will be undertaken. It will also be confirmed that Khmer lawyers will be prohibited from advertising. If this is not the case, para 7 must be deleted. The Bar Association will meet in March 2006 to establish a technical team to undertake the necessary work.</p> <p>The Bar had discussed with French expert stationed at MOJ for potential support on this issue.</p> <p>The Bar Association is in the process for establishing a WG to study the procedure to register foreign law firms. There is no decision yet on whether to have regulations or a Sub-decree to register foreign law firms.</p>

Appendix Table 3: Technical Assistance Requests

- 11- Draft Sub-Decree on "Procedures for Enforcement of IPR".
- 12- Translation and publication of IP laws, regulations, and international conventions

IV. AGRICULTURE and SPS

1- TA needed for capacity building:

STEP/MEASURE/ACTIVITIES	TECHNICAL ASSISTANCE REQUIREMENT
<ul style="list-style-type: none"> ▪ Pesticides risk assessment / WP Report para.75 (see also para. 77) 	<ul style="list-style-type: none"> ▪ Develop capacity to undertake risk assessment/ TA needed
<ul style="list-style-type: none"> ▪ Design plant pest and disease control program and other measures. WP Report Table 11, para 142 	<ul style="list-style-type: none"> ▪ TA needed
<ul style="list-style-type: none"> ▪ Sub-decree on Food Safety Standards on Agricultural Chemicals: Pesticide Residues 	<ul style="list-style-type: none"> ▪ TA Need
<ul style="list-style-type: none"> ▪ Building an SPS system to facilitate all exports, including hygienic standard for food exports. 	<ul style="list-style-type: none"> ▪ TA Need
<ul style="list-style-type: none"> ▪ Regulations of Safety Requirements for Fresh and Processed Fruits and vegetables 	<ul style="list-style-type: none"> ▪ TA Need
<ul style="list-style-type: none"> ▪ Sub-decree on Food Safety Standards on Environmental Contaminants 	<ul style="list-style-type: none"> ▪ TA Need
<ul style="list-style-type: none"> ▪ Sub-decree on Food Inspection Administration 	<ul style="list-style-type: none"> ▪ TA Need
<ul style="list-style-type: none"> ▪ Sub-decree on Food Safety Standards on Additives (Sweeteners, Colors, Flavors, Preservatives and Antioxidants) 	<ul style="list-style-type: none"> ▪ TA Need
<ul style="list-style-type: none"> ▪ Regulations on Safety Requirements for Cereals, Pulses and Legumes 	<ul style="list-style-type: none"> ▪ TA Need
<ul style="list-style-type: none"> ▪ Guidelines on Assurance of Seafood Quality 	<ul style="list-style-type: none"> ▪ TA Need
<ul style="list-style-type: none"> • Working with food producers and exporters to identify key technical barriers to increase exports 	<ul style="list-style-type: none"> • TA Need
<ul style="list-style-type: none"> • Clarifying the issues with trading partner countries by means of agency-to-agency dialogue 	<ul style="list-style-type: none"> • TA Need

TECHNICAL ASSISTANCE REQUESTS

2nd Cambodia-US TIFA, November 21, 2007, Siem Reap

Cambodia requests the following assistance from the United States:

I. Trade

- 1- Request USA to assist Cambodia in fully utilizing the US GSP scheme.
- 2- Request to provide regular updated information or rules/regulations associated with GSP granted to the least developed countries.

II. Food safety and quality control (Ministry of Commerce)

1. TA establishing Risk profile for the implementation of import inspections, using a risk management approach;
2. Developing a system of market surveillance of food safety;
3. Strengthening the capability and capacity of testing laboratories for food products;
4. Strengthening Cambodia's capacity to participate in the Codex activity and other international and regional bodies relevant to food safety.

III. Intellectual Property Rights

- 1- Training courses on explanation of TRIPS Agreement for IP professionals and enforcement agencies.
- 2- Training on Layout-Design of Integrated Circuit
- 3- Study visit to USPTO on the administration and enforcement of IP system
- 4- Long and short term training courses on IP law at USPTO Academy
- 5- IPR Public Awareness Campaign in some main cities and provinces.
- 6- Training courses for law makers, lawyers, and enforcement agencies on the benefit of joining Bern Convention.
- 7- Draft Sub-Decree on Border Measures.
- 8- Draft Sub-Decree on the Control of Production, Import, Export of CDs.
- 9- Procedures and examination of patent, utility models for examiners including in the fields of chemistry, non-chemistry, and nano-technology.
- 10- Procedures and examination for industrial design examiners

STEP/MEASURE/ACTIVITIES	TECHNICAL ASSISTANCE REQUIREMENT
▪ Law on Seed Management and Plant Breeder Rights	▪ Have been drafted , TA needed
▪ Draft on Rubber Law	▪ TA needed
▪ Draft on Animal Health and Production Law	▪ TA needed
▪ Draft on Pesticides Law	▪ TA needed
▪ Draft on Plant Protections Law	▪ TA needed
▪ Draft on Agricultural Standard and Safety Production	▪ TA needed

2- TA for Trade Capacity Building and Poverty Alleviation:

- Develop program for case crops and Poverty Alleviation in Cambodia
- Cambodia Horticulture Development Program
- Cambodia Maize Development Program
- Small Enterprise Development Program
- Agribusiness Small and Medium Enterprise Market Development
- Agro-based Industries and Technology Development

V. Finance and Banking

- 1- **Developing a national payment system:** We need financial assistance to setup the necessary IT infrastructure for a functioning and effective payment system.
- 2- **Capacity building for onsite-bank supervision:** We need on-the-job training, where a visiting expert works on the field with Cambodian inspectors and through this way provide guidance and share his expertise with them.
- 3- **Improving and establishing legal framework:** We need assistance to review the existing legal framework in Cambodia related to banking and financial sector and identify the necessary legislation for an effective functioning of that sector, including assistance to prepare the needed legislation.
- 4- **Capacity building:** Capacity building in the following areas is considered very crucial: monetary operations, establishment of an earlier warning system, financial market development, establishment of a credit bureau, deposit insurance, and treasury management. Furthermore, to support trade and investment in Cambodia, we wish to learn from the experiences of advanced countries on trade finance and related banking products, the role

of export-import bank, and the role of central bank in developing trade finance.

VI. Public Works and Transport

1. Training on Maritime Security. Priority is focused on the training of trainers.
2. Support the maintaining of Ministry of Public Works and Transport web site to ensure its sustainability for data collection and dissemination.

VII. Ministry of Economy and Finance

1. Insurance

- 1- Technical assistance to review Insurance Law and to draft implementing Regulation of this law.

2. Customs

1. Customs valuation

- Training of customs officers and traders
- Provision of valuation reference database (contract services)
- Training on Post Clearance Audit (PCA)

2. Rules of origin

- To prepare the Law on Rules of Origin

3. Enforcement (anti-smuggling)

- Capacity building for CED including enforcement tools and equipment
- Technical training on commercial fraud and smuggling
- Training on drug detecting techniques
- Training on image recognition and analysis (for officers dealing with X-Ray machines)
- Establishment of customs maritime team

4. TRIPS border measures

- Training of customs officers on IPR enforcement

5. Trade facilitation and security

- Single window development and implementation
- Implement Action Plan of WCO SAFE Framework (Security of supply chain)

6. International integration

- Action plan for accession to:
 - o Revised Kyoto Convention
 - o ATA Convention

VIII. TBT (Ministry of Industry Mines and Energy)

- 1- Human capacity building on standardization and conformity assessment activities.
- 2- Studying visit at National Standard Body of the United States and its related organizations.
- 3- Request for standards and technical regulation documents of US.
- 4- Strengthening the capacity of the products and system certification bodies and testing laboratories.

IX. Ministry of labor and Vocational Training

1. Technical assistance to study labor economy with focus on wage and productivity, informal sector - micro employment, management of migrant workers.
2. TA for capacity building of state institution in relation to labor and worker rights.

X. Ministry of Justice

1. Human resource development in the field of commercial laws and commercial dispute laws and regulation;
2. Human resources development, capacity building and facilities in court administration, and computerized case management system.
3. Human resources development in information technology
4. Facilities in the offices such as computers, printers, photocopy machines, and internet access both in the Ministry of Justice and in courts.
5. Refurbishing buildings, hearing rooms and recording system in the hearing rooms for courts.
6. Establishing modern technology for forensic system, and criminal record.