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**Working Party on the
Accession of Lao PDR**

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ACCESSION OF THE LAO PDR

Additional Questions and Replies

The following submission, dated 9 July 2007, is being circulated at the request of the Government of Lao People's Democratic Republic (Lao PDR).

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II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

2. Economic Policies

(a) Main direction of ongoing economic policies

Question 1

We note that in the reply to Question 1 (WT/ACC/LAO/5), Lao PDR said it intends to provide a "market information program" to develop its agriculture. Please provide the Working Party with information on Lao PDR's workforce skilled in collecting, analyzing, and disseminating agricultural market information.

Answer:

In Lao PDR, the agencies involved with market information systems include (a) Ministry of Agriculture and Forestry (IT Center); (b) Ministry of Industry and Commerce (MOIC); and (c) the National Statistics Center (NSC).

Altogether at the Ministry of Agriculture and Forestry (MAF), there are approximately 21 Lao PDR staff who have been trained in collecting, analyzing and disseminating agriculture and market information. Although they are trained staff, further organization of the various actors remains to be done in order to enable an integrated and well-functioning system to be established.

Presently, MOIC collects market information, including on agriculture but need resources to disseminate widely. The NSC also collects agriculture and other market information from around the country and provides some market information via its publications and website.

The MAF is trying to facilitate the organizational coordination of all players so that market information is disseminated to farmers, agriculture offices in provinces and districts, business associations, the private sector and the general public. It has designed a system for reaching this objective, but as in other LDCs the MAF continues to experience difficulty in obtaining data.

- Pricing Policy

Question 2

We appreciate the responses to our question in relation to price controls on 30 products. We understand that most of the 30 products are only subject to "price surveillance", which according to the reply to Question 4 in WT/ACC/LAO/5 involves Trade Officials undertaking "spot checks to check adherence to pricing regulations". Aside from the requirement to "display the prices of products", are there additional "price regulations" that must be adhered to?

Answer:

Instruction No. 0334/MOC/ITD dated 22 March 2002 relates to price surveillance of 30 products of which three products are subjected to maximum prices for reasons of economic development and social welfare. Decree 207/PM requires the traders to maintain proper book-keeping and to cooperate with officials who undertake price surveillance. It also provides traders the right to appeal against the decision of inspecting officials.

Question 3

Could Lao PDR explain how the regulation of the maximum price is carried out in practice as regards steel for construction and cement both in respect of domestic and imported products?

Answer:

The maximum price is only set for domestically produced cement and construction steel. There is no price control on similar imported products.

Question 4

Are domestic producers of Steel and cement supported financially by the State due to the system of maximum prices?

Answer:

Currently, the Lao PDR Government does not provide any financial support to domestic producers of steel and cement.

(c) Foreign exchange and payments system

Question 5

Page 1 of the IMF's Article IV for Lao PDR, dated 21 February 2006 notes that Lao PDR maintains exchange restrictions imposed for the preservation of national or international security which have been notified pursuant to IMF Decision No. 144-52/51, and a restriction subject to Fund approval under Article VII (tax payment certificates are required for some transactions). The IMF does not recommend approval of this restriction, and has urged the Lao PDR authorities to eliminate it before it accepts the obligations under Article VIII.

Page 27 of that Article IV notes that in August 2004 the IMF conducted an analysis of your exchange system to determine what restrictions remained that prevent Lao PDR from accepting the obligations of IMF Article VIII, including the elimination of the exchange restriction on the making of payments and transfers for current international transactions.

The IMF's 2006 report on Exchange Arrangements and Exchange Restrictions shows that Lao PDR has both repatriation and surrender requirements. The repatriation requirement is as follows: Income from exports must be repatriated within 120 days of delivery at the Border (date of fob shipment) except for income used for external loan repayments approved by the Central Bank, or funds use for payment of a letter of credit approved by the Central Bank, or specified in a contract between an foreign investor and the Government of Lao PDR. The surrender requirement is that receipts from the export of wood and wood products must be surrendered to State-owned commercial banks after all payments due to the Government have been settled, as follows: 80 per cent for exports of sawed timber and 60 per cent for exports of wood products.

We note that in WT/ACC/LAO/9, dated 30 October 2006, the Government of Lao PDR specified two laws on foreign exchange control: (1) Decree Law on Foreign Exchange and Precious Metals (2002); and (2) Instruction on Implementation of Decree Law on Management of Foreign Currency and Precious Metals (2003).

In WT/ACC/LAO/9, Section II, Legislative Action Plan (Item 4), we note that the Decree Law will be revised by the Central Bank and approved by the National Assembly in 2008.

We have the following questions on these reports, developments and requirements:

- (i) Can you describe your exchange regime? What reforms do you plan to undertake and what is the timetable for implementing the changes? May we review the draft law?**
- (ii) Can you provide us with a copy of the IMF's analysis of the foreign exchange system, and indicate how you are proceeding in meeting the IMF's requirements to prepare to accept the Obligations of Article VIII?**
- (iii) With regard to Lao PDR's repatriation and surrender requirements, do you have a timetable for eliminating these requirements?**
- (iv) What is the Lao PDR's timetable for eliminating the specific restriction that IMF staff recommended be done before Lao PDR accepts the obligations of Article VIII (tax payment certificates are required for some transactions)?**

Answer:

Concerning the legal framework on foreign exchange control, in addition to the two legal frameworks governing this issue, there is another one which is called Additional Instruction on Implementation of Decree Law on Foreign Exchange and Precious Metals (2004).

In August 2004, an IMF mission came to Lao PDR to review the legal framework on foreign exchange management. They found out that the overall picture of the current practice by the Bank of Lao PDR (BOL) on foreign exchange management and international payments has been *de facto* liberalized for current account transactions for some time. However, there remain a few elements in relevant legal framework that need to be reviewed or amended before declaring the acceptance of Article VIII status in the IMF membership.

The Government is aware of this recommendation. However, Lao PDR needs sometime to get the laws and regulations amended or changed since they have just been recently adopted (Decree Law in 2002).

Lao PDR's foreign exchange regime is a managed floating system. The reforms the Government plans to take and the timetable for implementing the changes are as follows:

- The amendment of the Decree Law No. 1 on the Management of Foreign Exchange and Precious Metals is scheduled to be completed by the third quarter of 2007 and the IMF's recommendations to amend Article 13 about the exchange rate to be determined by the market and Article 27 about the tax certificates before sending profits abroad have been reflected in this draft amendment.
- The amendment of Instruction No. 2/BOL of 2003 and the Additional Instruction No. 1/BOL of 2004 on the implementation of Decree Law No. 1 on the Management of Foreign Exchange and Precious Metals is scheduled to be completed before December 2008. On the repatriation requirement of foreign exchange within 120 days, the BOL is reviewing this stipulation. However, the residents of Lao PDR who export, except those who have been given specific permission, must bring their proceeds back through any commercial banks located in Lao PDR within a specific period. In so doing, the IMF's recommendations will be reflected in this amendment.
- Lao PDR also plans to abolish Regulations No. 1/BOL of 2000 on the surrender requirement of transaction payments of wood and sawn wood by December 2008.

In meeting the IMF's requirements to prepare to accept the Obligations of Article VIII, the Government has been working on the amendments of the above-mentioned legal frameworks under the supervision of the Bank of the Lao PDR as recommended by the IMF.

Question 6

Could Lao PDR please define more clearly what are the "additional administrative requirements" for foreign currency transactions above US\$10,000 as mentioned in your response to Question 1 of WT/ACC/LAO/8?

Answer:

Purchases of beyond a threshold level of US\$10,000 are subject to additional administrative requirements. This refers to the threshold level of daily withdrawal of cash from a person's bank account (and not the purchase of foreign currency or making a settlement through the banking system, for which there is no quota). A person wishing to withdraw more than US\$10,000 in cash is subject to due diligence or know-your-customers procedure of the concerned commercial bank (Additional Instruction No. 1/BOL dated 5 February 2004, and Instruction No. 2/BOL dated 29 September 2003).

(d) Foreign and domestic investment policies

Question 7

Could Lao PDR please provide a greater description, even in general terms, of the types of TRIMs that are provided for within its foreign investment laws? What are the provisions of the laws that allow for TRIMs to be applied, and in practice, what are the extent (sectoral coverage, level) of TRIMs?

Answer:

The provision on the use of local content and export performance is contained in the implementing decree No. 301/PM of the Law on the Promotion of Foreign Investment No. 11/NA, dated 22 October 2004.

Under the local content requirement, any importation of a particular product/material that is not available domestically is granted either duty remission or exemption for the imported product/material. If the product/material is available locally, the industry can import its requirements subject to payment of the full import duty.

Under the export performance requirement, the eligibility for investment incentives is tied to the percentage of export. A firm that exports 80 per cent and above will qualify for the full range of incentives.

Question 8

Can Lao PDR indicate whether the 1994 Investment Law (and associated implementing Decree of 1995) are no longer in force or have been repealed?

Answer:

The Foreign Investment Law of 1994 and its implementing Decree have been replaced by the amended Foreign Investment Promotion Law of 2004 and its implementing Decree of 2005.

Question 9

Domestic investment law:

(i) Article 6.1. stipulates that State provides facilities to domestic companies to establish and conduct production and businesses and 6.4 stipulates that domestic companies will be provided facilities in receiving credits from various financial institutions.

- **Could Lao explain what kind of facilities and support are meant here? Is State providing domestic companies funds to set up businesses and/or provide them financing in the form of credits? (It is noted that these benefits are not available for foreign invested companies.)**

(ii) Article 9.1.

- **It appears that Lao promotes export production and local contents requirements. Can Lao PDR confirm this? We would like to stress that LDCs are exempted from the prohibition of export subsidies under Article 27 ASCM (Annex VII), but not from the prohibition of local content subsidies. We therefore urge Lao PDR to eliminate any local content subsidies upon accession.**

Answer:

- (i) Article 6.1 of the Domestic Investment Law states that domestic investors will "receive support from the Government in establishing and operating their production, and business in accordance with the laws and regulations". The same benefit is also provided for foreign investors as stated in Article 12.1 of the Foreign Investment Law. Also, Article 6.4 of the Domestic Investment Law states that domestic investors will receive support from financial institutions in providing credits in accordance with the laws and regulations. The words "Facility/facilitate" and "support" literally mean to provide assistance and help in terms of paper work necessary to be accompanied as supplementary documents required by a bank or financial institution in their process of considering and approving the loan or credit. As an LDC the Lao Government does not have the resources to provide any financial support or credit.

The translation of Article 6.1 of the Domestic Investment Law and Article 12.1 of the Foreign Investment Law may be different in terms of wording, but they are identical in Lao versions.

- (ii) Article 9.1 of the Domestic Investment Law stipulates that Lao PDR promotes export production and import substitution. Lao PDR's policy is to promote production for export and production for import substitution by giving investment incentives in term of tax holidays and reduced tax rates as well as enjoying the import duty and tax exemption for the importation of raw materials, machinery and equipment. Article 9.1 does not specify anything on local content and export performance requirements.

Question 10

Law on Foreign Investment:

- (i) **Article 12 and 13**

We note that the foreign workers can only represent maximum 10 per cent of the work force of the foreign invested company (Article 12.5). We further note that one of the obligations of foreign investors according to Article 13 is to give priority for Lao workers and to train and upgrade their professional skills, and to transfer technology to Lao workers.

Even if we recognise the importance of technology transfer, we do not consider imposing an obligation to technology transfer very helpful method for developing the investment climate.

The same applies to restriction to the number of foreign employees. We would therefore urge Lao PDR to reconsider such obligations.

- (ii) As regards application procedures for investment licence at CPMI, could Lao PDR clarify what is the criteria used by CPMI when assessing whether to accept or reject an application? What is the legal basis for these criteria, in which legal instruments it is set out?**
- (iii) Will the investment licence be automatically granted when the application form and supplementary documents have been submitted?**
- (iv) We note that in general, the time periods for granting investment licenses are longer in case of foreign invested companies than in case of domestic companies. Can Lao PDR explain the main reason for the differences?**
- (v) We would urge Lao PDR to consider harmonising the time periods for granting the licenses for domestic and foreign companies.**

Answer:

- (i) To attract FDI by definition means to attract capital, management and expertise, transfer of technologies and create job opportunities for local people. The Law on the Promotion of Foreign Investment was drafted bearing in mind these developmental objectives. The obligations for using foreign labour not exceeding 10 per cent of the enterprise's labour force, providing training for local workers and transferring technology, are to enable the Lao people to benefit more equitably from FDI.
- (ii) The list of activities open for investors, as provided in the Annex 3 of the Implementing Decree of the Law on Promotion of Foreign Investment, is used as a basis in deciding the approval of an investment licence. As provided for in Article 19 of the Law on Promotion of Foreign Investment, the CPMI evaluates the feasibility of the project regarding economic, social and environmental aspects of a project, including the pros and cons of the project. In addition, large scale projects, especially those related to the use of natural resources, specific approval from the cabinet is required.

A foreign investor who wishes to establish a foreign investment in the Lao PDR shall complete documentation in accordance with Article 19 of the Law on Promotion of Foreign Investment along with other documents as set out by the CPMI and then submit these documents to the CPMI pursuant to a one stop service mechanism. Investment activities are divided into three types (categories 1, 2 and 3). For each of these, the CPMI receives the complete investment application and submits it to relevant sectoral and local agencies for examination and comment. These agencies must respond within 10-15 official working days from the date of receiving the application from the CPMI. If they do not respond within this time period, it is deemed that such sectoral and local agencies have approved the application. Subsequently, the CPMI shall submit the application to the weekly meeting of the CPMI that has the participation of the concerned sectoral agency under the Chairpersonship of the Chairman or Vice Chairman of the CPMI for consideration (or, for category 3 investments, discussion before proposal to the Prime Minister, Vice Prime Minister or to the Government for consideration). All proposed investments over US\$20 million are submitted to Government for consideration.

- (iii) The investment licence will not be automatically granted after the application form is submitted. The application will be considered through procedures stated in paragraph (ii) above.
- (iv)/(v) The time periods for granting investment licenses are the same for both foreign companies and domestic companies.

Question 11

Implementing regulation: Article 11 – Branches

Article 11 states that branches can only be established in areas of banking and financial institutions, insurance, consulting and airlines.

- **Does Lao PDR have any plans to allow branches also in other areas, and what would be the timetable? We would urge Lao PDR to consider more sectors for branching.**

Answer:

At the current stage, branches can only be established in areas of banking and financial institutions, insurance, consulting and airlines.

The intention of the law is to promote FDI, be it newly established enterprises or incorporated as subsidiaries of foreign companies.

Question 12

Annex two – promoted sectors:

- **We note that in order to qualify for incentives, foreign companies must use local workforce for at least 90 per cent, and to use more than 50 per cent local raw material (local content requirement). We note that the first requirement is discriminatory and not helpful, and the second is incompatible with TRIMs and Article 27 of the ASCM (local contents not allowed for LDCs, export subsidies OK). We would urge Lao PDR to eliminate these measures upon accession.**

Answer:

- The obligation for using 90 per cent of local workforce (or not more than 10 per cent of foreign labourer as stated in Article 12 of the Law on Promotion of Foreign Investment No. 11/NA) is required as the Lao Government is trying to use FDI to create job opportunities for its people. FDI should also help raise incomes and achieve the Government's developmental objectives. In the Government's understanding, the imposition of 90 per cent utilization of local workforce does not fall in the purview of the TRIMs Agreement.
- As regards the use of local raw materials, the Government reiterates its request for transition period as provided for LDCs in paragraph 36 of the Ministerial Declaration in Hong Kong, China.

Question 13

Annex 4 – prohibited sectors:

- **Is the list of prohibited sectors also applicable to domestic companies? If not, explain why these sectors are prohibited only for foreign invested companies?**

Answer:

With respect to annex 5 (prohibited sectors): the list of prohibited sectors is also applied to domestic companies, except for funeral services due to religious and traditional sensitivity.

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

Question 14

We welcome the Preliminary Legislative Action Plan (WT/ACC/LAO/9) provided by Lao PDR and note the progress to date in passing laws and amendments central to WTO accession.

- **In relation to the new Law on Standards, we note this has been prepared by the Science Technology and Environment Agency but is not expected to receive National Assembly approval until 2010. What assistance is Lao PDR receiving in drafting this law, and why is such a lag expected in approval?**
- **We would encourage Lao PDR to develop a more detailed Action Plan in relation to SPS and TBT implementation.**
- **In the area of Customs reform, we welcome that an implementing Decree will be adopted in 2007. Can Lao PDR provide a more detailed plan of which aspects of the Agreement on Customs Valuation it envisages meeting in 2007 (when Law is adopted) and which aspects will require longer implementation.**

Answer:

- The draft law on standards is being prepared in consultation with the Government agencies and private sector, with the assistance of UNIDO funded by the EU. The draft law is expected to be submitted to the National Assembly for its approval no later than 2010. Approval in the National Assembly takes time as draft laws submitted for its approval follow a "queue" system.
- Please see Action Plans on implementing customs valuation, SPS and TBT Agreements, submitted in separate documents to the Working Party (WT/ACC/LAO/12-14).

Question 15

We welcome advice that Lao PDR is considering the establishment of Commercial Chambers to adjudicate in relation to cases concerning business and commerce, including "cases relating to the import and export of goods".

- (i) **Will such Chambers be empowered to hear and rectify problems arising from Government administration of laws and regulations related to trade, or will the jurisdiction only pertain to legal commercial disputes between companies and not Government administrative action?**
- (ii) **Will traders be able to appeal any decisions of the Chambers to a higher court?**

Answer:

- (i) With regard to the jurisdiction of the commercial chamber, the Civil Procedure Law has stipulated in Article 48 that the commercial chamber has jurisdiction to decide on:
 1. Cases relating to business or commercial matters;
 2. Cases relating to business or commercial contracts, or commercial documents such as promissory notes, bills of exchange, cheques and other documents;
 3. Cases relating to commercial loan agreements;
 4. Cases relating to enterprise bankruptcy and liquidation;
 5. Cases relating to business or commercial relationships in connection with the import or export of goods, transportation of goods, insurance, banking and financial services, marketing services, and agency;

6. Appeals to decisions or awards by the Office of Economic Dispute Resolution; and
7. Cases relating to violation of copyright and trademarks.

The commercial chamber does not have the authority to hear and rectify problems arising from Government administration of laws and regulations related to trade. However, these matters can be appealed before the courts, see also response to Question 16.

- (ii) Litigants, who are not satisfied with the decision of the chambers, have the right to appeal to a higher court, the highest being the People's Supreme Court.

Question 16

The response provided to Question 15 of document WT/ACC/LAO/5 concerning how the Lao PDR intends to observe the requirements of Article X or other WTO provisions concerning the right of appeal from administrative decisions to the courts or an independent tribunal did not address the specific question asked. We request Lao PDR provide a follow up answer that speaks specifically to the right to appeal administrative decisions to the courts or independent tribunal.

Answer:

Under the laws of the Lao PDR, natural persons or legal entities have the rights to lodge complaints to the courts in order to protect their rights and interests in accordance with the law.

In the case of customs matters, any aggrieved party to a decision made by the customs authority, may file an appeal to an immediate higher customs authority. If they cannot solve the problems or in cases where the party considers the appeal is not appropriately settled, he/she may file a petition to the court.

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

Question 17

It appears that Decree No. 206/PM on Goods Trading Business addresses the requirements of firms that wish to be engaged in the business of importing and exporting, e.g., entering goods into Lao PDR on behalf of others. The right to import and export, as required under the GATT, is distinct from the business of importing and exporting. The right to import and export ensures the ability of a foreign exporter located outside Lao PDR to enter its product into the customs territory of Lao PDR, clear customs formalities, and access the same channels of distribution as are available to domestic firms. In this light, please explain whether foreign firms are able to perform these activities in Lao PDR and where such rights are provided for in the laws of Lao PDR.

Answer:

The same rights to import and export which is given to Lao firms is also provided to all foreign firms, on condition that foreign firms are registered in Lao PDR and they have a physical presence. The right to distribute is a matter distinct from the right to import and export.

1. Import Regulation

(a) Registration requirements for engaging in importing

Question 18

With regard to the "List of attached documents needed in an Application of Business Registration from the Ministry of Commerce", provided in Annex I, page 44, of WT/ACC/LAO/5, what forms are required to receive approval from the provincial trade office where the business is located? Are different criteria used by provincial trade officials to decide whether or not to grant approval? What is the justification for having a provincial trade officials grant approval specifically for imports of vehicles, petroleum and luxury goods?

Answer:

The list of attached documents needed in an Application of Business Registration whether at the ministry level or provincial level is the same.

The criteria used by provincial industry and commerce officials are the same as that used by the Ministry of Industry and Commerce.

The business dealing with imports of vehicles, petroleum and luxury goods are required to be registered the Ministry of Industry and Commerce. By this, the Ministry needs the applicant to get verification from provincial industry and commerce offices.

Question 19

Page 18 of WT/ACC/LAO/3 states "the fee for that registration is 0.1 per cent of capital for both wholly foreign-owned or a joint venture enterprise." Are wholly domestically owned import-export enterprises subject to the same registration fee?

Answer:

There is no such fee of 0.1 per cent of registered capital collected by Industry and Commerce authorities. However, the Finance authorities practiced so up until the beginning of 2005 when the PMO's Order No. 04/PM, dated 3 March 2005 (Article 4), repealed the collection of such fee from domestic and foreign enterprises, including those dealing with import and export.

Question 20

We welcome the information provided in Question 16 of WT/ACC/LAO/5 in relation to business registration – in particular concerning the Prime Minister's Decree No. 301 PM of October 2005 which stipulates that some activities will be closed to foreign investment. Can Lao PDR be more specific about areas that will be closed to foreign investment which may relate to the importation and exportation of products?

Answer:

The Decree No. 301 PM of October 2005 provides the list of closed sectors for foreign investment. This list does not contain activities related to importation and exportation.

Question 21

What are the levels of fees that are charged for obtaining registration?

Answer:

At present fee collection is based on Presidential Decree No. 02/OPP, dated 27 November 2002, on fees and services charging which are based on the level of registered capital. If it is a domestic investment, the fee will be in kip and foreign investment is US dollar as in the following Tables:

1. The fees for domestic investment registration

No.	Enterprise's registered capital			Registration fees
1	Lower than	1,000,000	kip	Nil
2	From	1,000,000	to 5,000,000 kip	20,000 kip
3	From	5,000,001	to 10,000,000 kip	50,000 kip
4	From	10,000,001	to 50,000,000 kip	100,000 kip
5	From	50,000,001	to 100,000,000 kip	300,000 kip
6	From	100,000,001	to 500,000,000 kip	500,000 kip
7	From	500,000,001	to 1,000,000,000 kip	1,000,000 kip
8	Higher than	1,000,000,000	kip	2,000,000 kip

2. The fees for foreign investment registration

No.	Enterprise's registered capital			Registration fees
1	From	100,000	to 300,000 US\$	US\$100
2	From	300,001	to 600,000 US\$	US\$200
3	From	600,001	to 1,000,000 US\$	US\$300
4	Higher than	1,000,000	US\$	US\$500

Question 22

Are there limitations on what an individual or firm can import that might relate to their sector of activity or their business licence?

Answer:

An individual or firm can import only if they hold a licence of import and shall only import the goods which are identified at the list in the business certificate.

Question 23

Can a Laos-based firm be engaged in importation of goods if it is not involved in the production or distribution of those goods in the domestic market?

Answer:

The Laos-based firm, which is not involved in the production or distribution of the goods in the domestic market, can import goods but it has to follow the provisions of the Customs Law of 2005.

Question 24

We note in Annex I (registration procedures) that there are registration requirements for "import and export business" for "domestic applicants"? There are also requirements for "Foreign Direct Investment for business registration". It is not clear under which requirement foreign investors can obtain registration for engaging in importation or exportation?

Answer:

The application form for foreign investor, in any sector, is identical.

Question 25

Under "domestic applicants for business registration" and "for import and export businesses" it notes that applications for importation of vehicles, petroleum and luxury goods (or exports of wood and word products) required "approval from the provincial trade office where the business is located".

- (i) **Can Lao PDR please outline the purpose of this approval at the provincial level, the process involved, what information needs to be provided, any fees that are charged and the criteria for such an approval?**
- (ii) **What does Lao PDR see as the relevant WTO justification?**

Answer:

- (i) Please see the answer to Question 18 on enterprise registration procedure.
- (ii) Please see the answer to the Question 21 on fee collection.
- (e) **Quantitative import restrictions, including prohibitions, quotas and licensing systems**

Question 26

Please provide harmonized tariff numbers for all the products listed in Annex II of WT/ACC/LAO/5, "List of Goods Subject to Prohibition from import and Export".

Answer:

Lao PDR would like to inform that the Ministry of Industry and Commerce has revised the list of controlled goods for import and export under notification No. 1376/MOIC.DIMEX dated 10 October 2006.

This notification replaces Notification Nos. 284/MOC.FTD and 285/MOC.FTD dated 17 March 2004, thus abolishing Annex II. The current list comprises only five groups of products under the category of prohibited imports (from 15 groups) while the number of product groups under export prohibition remains the same.

This list is subjected to further revision with the objective to reducing the number of products and assigning the HS codes.

Question 27

Please provide harmonized tariff numbers for all the products listed in Annex III of WT/ACC/LAO/5, "List of Goods Subject to Import and Export Licensing".

Examples:

- **Telephone, fax and all types of communication equipment;**
- **Raw materials and semi-products for production;**
- **Agricultural products;**
- **All types of snacks;**

- **Medical supplies; and**
- **Video cassette, sound cassette, CD, film and others.**

Answer:

The list of products in Annex III of WT/ACC/LAO/5 is being revised with the objective of reducing the number of products subjected to import and export licensing and assigning the HS codes.

Question 28

We seek clarification as to certain goods identified as prohibited from importation into Lao PDR (WT/ACC/LAO/5, Annex II). Please explain more fully the characteristics of products in the following prohibited categories: "Materials affecting national culture and customs"; "Food, medicines and medical supplies as prohibited by relevant authorities"; "Toys which affect attitudes, growth and safety of children and social morale"; "Literature materials, pornography, printing and other materials which are against Lao PDR". It would also be useful to hear of examples of products from each of these categories.

Answer:

Please see the response to Question 26. As a result, from the prohibited categories referenced in Question 28, only two remain as prohibited:

- "Game machines that lead to bad attitudes, growth and safety of children and social morale" for example video games that contain violence scene.
- "Literature materials, pornography, printing and other materials which are against Lao PDR", for example, pornographic magazines, magazines or newspaper that attack the Lao Government policies.

Question 29

Annex II of WT/ACC/LAO/5 also explains that Lao PDR places "second-hand goods as prohibited by the Government" on the list of prohibited goods for importation. Please explain the rationale for the prohibition on imports of second-hand goods "as prohibited by the Government", and the prohibition on imports of logs and timber. In responding to this question, we would like to draw Lao PDR's attention to the benefits of eliminating non-tariff barriers on remanufactured (and refurbished) products, as described in the document "Market Access for Non-Agricultural Products – Negotiating NTBs Related to Remanufacturing and Refurbishing" (TN/MA/W/18/Add.11).

Answer:

As a result of the revised notification No. 1376/MOIC.DIMEX dated 10 October 2006, the item "second-hand goods as prohibited by the Government" has been removed from the prohibited list.

Logs and timber has been moved to the list of goods requiring approval from the Ministries concerned for importation.

Question 30

With regard to Question 27 of WT/ACC/LAO/5, can Lao PDR indicate when it expects to have its import licensing restrictions be WTO consistent? Lao PDR noted it was evaluating restrictions for a limited number of strategic goods. Can Lao PDR indicate what those goods are?

Answer:

The Lao Government is making every effort to streamline and simplify import procedures to facilitate foreign trade. Notably, the import quota, trade balancing policy and import indicative plan have been abolished. In addition to response to Question 26, the MOIC is revising the import and export procedures with the objective of making it WTO consistent. Research is foreseen under support funding with regard to strategic goods.

Question 31

We would appreciate if Lao PDR could add HS code numbers to the goods that are prohibited for importation and exportation.

Answer:

See the answer to Question 26.

Question 32

We would appreciate greater detail on what is covered by "second-hand goods as prohibited by the Government" in Lao PDR's list of prohibited imports and exports in Annex II to WT/ACC/LAO/5.

What constitutes second-hand goods? How is such a prohibition justified in WTO terms, and in a manner that ensures consistency with the treatment of like domestic product?

Answer:

See the answer to Question 29.

Question 33

Can Lao PDR please provide greater detail on what goods are covered under the export and import prohibition on "Food, medicine and medical supplies as prohibited by relevant authorities"? These terms are very broad and could make a considerable amount of normal trade subject to prohibition or inappropriate approvals/controls.

- (i) Could it provide HS codes for such goods, and can it provide an WTO justification for why such goods should be prohibited for importation?**
- (ii) What criteria are used in the application of this policy by relevant authorities?**

Answer:

As a result of Notification No. 1376/MOIC.DIMEX dated 10 October 2006, the item "food, medicine and medical supplies" has now been moved to goods subjected to approval from the Ministries concerned. The category of food has been broken down into specific items for example meat and meat products, dairy products and cereals.

Question 34

Can Lao PDR please provide an explanation for the WTO justification for the banning of importation and exportation of all kinds of logs and other forestry products?

Answer:

See the answer to Question 29 on the importation of logs.

The banning of the exportation of logs and other products from natural forestry, Lao PDR believes that it is in compliance with GATT Article XX.

Question 35

We welcome the fact that Lao PDR has taken steps to liberalise its import regime, replacing trade balancing policy with an "indicative policy plan". We would appreciate further detail on the nature of the "indicative policy plan" and its provisions concerning the rights of importation.

Answer:

The order of the MOIC No. 0453/MOIC.DIMEX dated 26 March 2007 abolished the indicative plan.

With this abolishment importers are not required to submit their indicative plan nor are they required to apply for an import licence except those imported goods as prescribed by the MOIC notification No. 1376/MOIC.DIMEX dated 10 October 2006.

Question 36

We note in Lao PDR's response to Question 31, that in order to obtain an automatic import licence, an importer must submit an "indicative plan" specifying the total value of goods to be imported during an annual period, and each import transaction is deducted against that plan.

- (i) **Is the purpose of requiring an "indicative plan" only for statistical/information purposes?**
- (ii) **Can Lao PDR confirm that the size of planned imports under automatic licensing is not a factor in determining approval of such a licence?**
- (iii) **Lao PDR indicates that automatic licensing is applicable to goods not subject to control or prohibited. Does this mean that all goods in Lao PDR's HS schedule (aside from those defined as controlled or prohibited in Annex II and III) are all subject to automatic licensing? Or is there a subset of particular goods which are subject to automatic licensing?**
- (iv) **Can Lao PDR spell out the process for obtaining an automatic licence, what documents are required, and if there is any basis for rejecting an application? Are there any fees charged, and what is the timeframe within which a licence will be granted?**

Answer:

For (i) and (ii) please refer to the response to Question 35.

Lao PDR is revising the import and export procedures with the objective to bringing them into compliance with the WTO requirements on automatic and non-automatic import licensing.

Question 37

We are interested in Lao PDR providing greater information on the nature of "exceptional cases" where some prohibited imported projects can be imported subject to approval of the Prime Minister's office. Can Lao PDR provide clear criteria governing such decisions and to what goods the apply?

Answer:

"Exceptional cases" for some prohibited goods that are allowed to be imported refer to, for example, the import of weapons and ammunition by the Ministry of Defence for military purposes. Another example is the import of harmful chemicals for medical or scientific purposes as endorsed by the Ministry of Health.

Question 38

We note that there is a large list of goods that are subject to non-automatic (controlled) importation, and which seem to involve approvals by agencies and the Ministry of Commerce. We would like to understand better how this system works in relation to agricultural products.

- (i) An approval appears to be required by both the Department of Agriculture and the Ministry of Health (Food and Drug Department) for some agricultural products. If the Department of Agriculture issues an "import permit", what is issued by the MOH?**
- (ii) Why is there a need for two separate approvals in the case of such products? What do these technical approvals seek to verify? (e.g. that the produce meets the standards of Lao PDR?)**
- (iii) Are these approvals issued for each instance of importation or over a reasonable period of time?**
- (iv) If these approvals are effectively associated with ensuring compliance with TBT and SPS measures (e.g. ensuring proper labelling, or...), what is the purpose of requiring that an import licence be issued?**

Answer:

Further to response to Questions 26, 35 and 36 Lao PDR is making every effort to review its import and export licensing procedures to facilitate trade and ensuring transparent rules governing foreign trade. The ultimate objective is to bring the import and export regime into compliance with WTO Agreements such as the Import Licensing Agreement and SPS/TBT Agreements. Technical assistance is currently being sought from international partners in this regard.

Question 39

We note that Annex II lists following goods as being prohibited for import: food medicines, medical supplies as prohibited by authorities, toys, second hand goods, literature materials, books magazines newspapers, films record cassettes and discs that are against the Government policy.

- Could Lao PDR explain what is the reason for prohibiting imports of these products and why it is not possible to regulate their imports by another means than a ban, i.e. non-automatic licensing?**

Answer:

See answers to Questions 26, 28, 29 and 33.

Question 40

We welcome the Lao PDR announcement that it is in the process of limiting import licensing restrictions to a limited number of strategic goods. Could Lao PDR indicate the timing for this revision and when the revised list of goods subject to import licensing would be available?

Answer:

See the answers to Questions 36 and 38.

(f) Import licensing procedures

Question 41

We appreciate the information provided by the Lao PDR regarding its import licensing regime and have additional follow up questions on WT/ACC/LAO/5. With regard to Lao PDR's answer to Question 31 on pages 12-13 of this document, it appears that all goods are subject to some type of import licensing. Is that the case? Could the representative of the Lao PDR clarify that all goods not subject to control or prohibition require an automatic import licence, as stated in the second paragraph? What is the rationale for requiring automatic import licenses for all products? (Article 2.2(b) of the WTO Import Licensing Agreement states that "automatic import licenses may be maintained as long as the circumstances which gave rise to its introduction prevail and as long as its underlying administrative purposes cannot be achieved in a more appropriate way.")

Answer:

See answer to Question 36.

Question 42

Please explain the approval process necessary for the importation quantity set out in an importer's "indicative plan" described in the answer to Question 31 (WT/ACC/LAO/5).

Answer:

See the answer to Question 35.

Question 43

If approval of the "indicative plan" is discretionary, please describe why Lao PDR believes it constitutes an automatic licence?

Answer:

See the answer to Question 35.

Question 44

Please describe the process by which an importer is able to amend or otherwise change the quantity of goods requested for importation under the indicative plan at a time other than the annual submission. Is an importer permitted to increase the amount of goods to be imported at any time during the annual period?

Answer:

See answer to Question 35.

Question 45

Also, in regard to the application process for automatic licenses, could the representative of the Lao PDR explain whether these procedures are outlined in any rules or guidance? If so, could a copy be provided?

Answer:

See answer to Questions 36 and 38.

Question 46

Does Lao PDR have a process in place to make publications regarding import licensing easily accessible in a timely manner to all interested parties (i.e. is the relevant information published in an official journal)?

Answer:

Lao PDR make the notification available to the public through all provincial industry and trade offices, newspapers, and the MOIC's website. We also have information dissemination missions to provincial industry and trade offices after the new regulations have been promulgated.

Question 47

Does Lao PDR provide an opportunity for other countries to make comments in writing when new procedures/products relating to import licensing are introduced?

Answer:

In reviewing and improving import and export procedures Lao PDR has consulted and will continue to consult with line ministries and businesses within the country. Any changes to this procedures will be duly notified to the Working Party or, when Lao PDR becomes a member of the WTO, to the Committee on Import Licensing in line with the Agreement on Import Licensing Procedures.

Question 48

How much time is allotted for submission of documents for an application for an import licence or a renewal of an import licence? Are extensions available if needed?

Answer:

- There is no time limit for submission of documents needed to receive a import licence.
- An extension is possible given reasoning for extension request by importers.

Question 49

How much time does the Government of Lao PDR allow for processing import licensing applications?

- For automatic import licensing – are applications for licenses, when submitted in appropriate and complete form, approved immediately on receipt, to the extent administratively feasible, but within a maximum of 10 working days?
- For non-automatic import licensing – is the period for processing applications no longer than 30 days when applications are received and considered on a first-come first-served basis?

Answer:

Lao PDR does not have specific provisions on existing regulations governing these timeframe as yet. We are reviewing our import and export regime with the efforts to bringing them into compliance with WTO obligations. Technical assistance is currently being sought from international partners in this regard.

Question 50

Can applications be denied for minor documentation errors? Additionally, can applications be refused for minor variations in value, quantity or weight due to any minor differences consistent with normal commercial practices?

Answer:

Applications with minor errors, e.g. typo errors, which do not change the substance or involve fraudulent intention, are acceptable to officials and subject to correction with the witness of officials.

Question 51

Does Lao PDR maintain an appeals process for rejected import licensing applications? Does this process include information on how to make an appeal? Under what circumstances will appeals be considered?

Answer:

Lao PDR does not have specific provisions governing this issue. In practice, however an appeal against a decision on import licensing can be made to the higher organisation for consideration.

(h) Customs valuation

Question 52

We welcome the fact that amended Customs Law (2005) was passed and would encourage Lao PDR to develop an Action Plan for its full implementation. What are the particular challenges facing Lao PDR in relation to implementing this law and WTO commitments? Can Lao PDR provide more detail on what technical assistance has been provided to date in this area, and a timeframe in which it believes it can meet specific commitments/aspects of the disciplines?

Answer:

Please see the customs valuation Action Plan (WT/ACC/LAO/12).

The passing by the National Assembly of the revised Customs Law in May 2005 provided the catalyst for advancing the legislative programme to effect the implementation of all of the provisions of the Law. The necessary Prime Minister's implementing Decree is presently before the Government for approval as the first step in the legislative programme. In accordance with the country's legislative structure the provisions of the Law, which incorporate the WTO commitments, must be elaborated in Ministry of Finance regulations and departmental circulars for the guidance of officers.

The International Monetary Fund (IMF) has provided considerable technical assistance in drafting the Law and continues to provide assistance in drafting the regulations and circulars. Assistance was

provided during 2005 and 2006 and a Customs adviser is at present working with Customs on a three month mission with the objective of completing the legislative programme by May 2007.

Question 53

We note the request of Lao PDR for a transition period for achieving full compliance with the Customs Valuation Agreement and its request to receive TA in this area.

We would be happy to know when Lao PDR would be able to submit an Action Plan for implementation of CVA.

Answer:

Please see the customs valuation Action Plan (WT/ACC/LAO/12). The Action Plan provides for the full implementation of the CVA over the years 2008 to 2012, contingent on technical assistance. The Customs Department will require extensive technical assistance in implementing its transition plan.

(k) Application of internal taxes on imports

Question 54

We welcome Lao PDR's recognition of WTO inconsistencies in the application of some internal taxes – including excise and turnover taxes. We welcome that problems in relation to excise taxes have been addressed – can Lao PDR provide a simple table with applicable excise rates on products and their levels?

Answer:

See the table with applicable excise rates on products in Annex 1.

Question 55

In relation to turnover tax, we welcome that this will be replaced by a VAT which will be applied in consistency with WTO rules. We look forward to hearing more about its introduction and implementation. Is there a detailed plan or timeframe for its implementation?

Answer:

The VAT Law has been approved by the National Assembly in December 2006, and shall be implemented by second half of the year 2008 or at the latest in January 2009. Initially, the VAT will be applied to the business entities, whose turnover exceeds 400,000,000 kip per annum. Currently, there are about 4,500 to 5,000 entities meet the requirement. Those who are not required to comply with the VAT system will continue to pay turnover tax as specified in the Tax Law No. 04/NA, dated 19 February 2005.

Question 56

It is not fully clear when Lao PDR will effectively move from a "turnover tax" system to a VAT system with the adoption of the VAT Law? Could Lao PDR clarify this?

Answer:

See response to Question 55.

Question 57

Could Lao PDR explain what are the main features of the "turnover tax" and what are the main differences with a VAT system?

Answer:

The main features of the turnover tax are as follows:

- Turnover tax is an indirect tax collected at customs checkpoint and from wholesalers.
- It has two rates of 5 per cent and 10 per cent.
- There is a mechanism for refund, meaning that the turnover tax paid earlier at the customs checkpoint and collected from purchase of the raw materials will be deducted from the monthly turnover tax.

The main features of the VAT are as follows:

- VAT has a flat rate of 10 per cent for both foreign and domestic investments.
- The VAT rate for export is 0 per cent.
- There is a mechanism for VAT refund for export.
- Strict accounting practices are implemented with the use of a 'receipt' for VAT as supporting document.

Question 58

What is the taxable base for the turnover tax?

Answer:

The calculation of turnover tax as indicated in Article 14 of the Tax Law is as follow:

- For imported products, the calculation will be the declared value plus import duties and plus excise tax (if any);
- For the products distributed in the country, the calculation will be the actual sale price without turnover tax;
- For goods produced by contract, the calculation is based on the actual value of the contract for production;
- For services, the basis of calculation is based on the total income from the services; and
- For credit sales, the basis of calculation is calculated on the actual sales price paid by the customers.

Question 59

It seems from the answers provided by Lao PDR in 2004 that the turnover tax is not applied to imported goods when the rate of customs duty is zero. The result is a clear discrimination against imports from countries having no preferential treatment, which appears to be contrary to Article III-1 of the GATT.

Could Lao PDR explain whether this discrimination will be removed in the context of moving to a VAT system?

Answer:

Refer to the reply on Question 96 (WT/ACC/LAO/4), import duty on the goods is levied at zero per cent, turnover tax is still applied.

(l) Rules of origin

Question 60

We take note that Lao PDR authorities consider to incorporate the provisions of Article 2 (h) and Paragraph 3 (d) of Annex II of the WTO Agreement on Rules of Origin into the revised Implementation Decree.

Could Lao PDR indicate when the Decree will come into force?

Answer:

The Draft Implementing Decree was submitted to the Prime Minister Office. When approved by the cabinet, the Decree will take effect 30 days after the Prime Minister's signature.

2. Export Regulation

(d) Export licensing procedures

Question 61

We would appreciate further elaboration of how export licensing arrangements apply to the results of mining and forestry products. What policy purpose is achieved through licensing, and how are the licenses applied? Are they applied for the purposes of limiting exportation of such goods, or for other purposes? It would be useful for Lao PDR to outline reasons and WTO justification for such licenses in all cases in Annex III.

Answer:

Mining and forestry products are exhausted natural resources which requires environmental conservation, for example through export licensing. Lao PDR will comply with WTO requirements.

(g) Export performance requirements

Question 62

In response to Question 51 in WT/ACC/LAO/5, Lao PDR reserved its rights as a least developed country (LDC) to special and differential treatment under Article 27 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). Relevant laws referenced by Lao PDR indicate incentives that appear to be contingent on export performance within the meaning of Article 3.1(a) of the SCM Agreement: the Law on the Promotion of Domestic Investment (10/NA) at Articles 9 and 11; the Law on the Promotion of Foreign Investment (11/NA) at Articles 16 and 18; and the Decree of the Prime Minister Regarding the Implementation of the Law on the Promotion of Foreign Investment (301/PM) at Article 15.

Upon accession, each WTO Member has an obligation under Article 25 of the SCM Agreement to notify all of its subsidies, including prohibited subsidies that are contingent upon export or upon the use of domestic over imported goods. We request that Lao PDR submit a subsidy notification.

Answer:

As an LDC, within its limited resources, the Lao Government will endeavour to fulfil the Article 25 notification requirement of the SCM Agreement. Technical assistance is currently being sought from international partners in this regard.

3. Internal policies affecting foreign trade in goods

(a) Industrial policy, including subsidy policies

Question 63

With regard to the SCM Agreement, relevant laws referenced by Lao PDR indicate incentives that appear to be contingent upon the use of domestic over imported goods within the meaning of Article 3.1(b) of the SCM Agreement: the Law on the Promotion of Domestic Investment (10/NA) at Articles 9 and 11; the Law on the Promotion of Foreign Investment (11/NA) at Article 18; and the Decree of the Prime Minister Regarding the Implementation of the Law on the Promotion of Foreign Investment (301/PM) at Article 34.

- (i) We request that Lao PDR clearly identify the subsidies contingent on the use of domestic over imported goods in the manufacturing process for which it is requesting a transition period and provide the Working Party with an Action Plan for the elimination of such subsidies within that period by a date certain.**
- (ii) Upon accession, each WTO Member has an obligation under Article 25 of the SCM Agreement to notify all of its subsidies, including prohibited subsidies that are contingent upon export or upon the use of domestic over imported goods. Therefore, we seek a commitment by Lao PDR that it will comply with that obligation.**

Answer:

See response to Questions 9 and 62.

Question 64

We would welcome further detail on the nature of proposed amendments to the current Mining Law. What are the purposes of the amendments and in what areas of policy do they address?

Answer:

As of May 2007, the Ministry of Energy and Mining is in the process of soliciting inputs and comments from line ministries and the mining industry with a view to incorporating into the draft revised Mining Law.

The purpose of the amendments is to create more enabling environment for investment in this area.

Question 65

We note that Annex II of the Implementing Decree to the investment laws sets export thresholds (80 per cent) and local contents requirements (50 per cent) as criteria for receiving investment incentives. We would like to stress that LDCs are exempted from the prohibition of export subsidies under Article 27 ASCM (Annex VII), but not from the prohibition of local content subsidies. We therefore urge Lao PDR to eliminate any local content subsidies upon accession.

Answer:

Refer to answer to Question 63.

(b) **Technical regulations and standards**

Question 66

We appreciate Lao PDR's efforts to consider and respond to our questions to date. But there is still much work to be done before we are confident that Lao PDR will commit to the obligations established in the WTO TBT Agreement in exchange for the rights that WTO membership accords. It would appear from the legislative Action Plan provided in WT/ACC/LAO/9, dated 30 October 2006, that Lao PDR has prepared its basic draft Law on Standards. At the same time, the Lao PDR asserts its need for technical assistance before it can further its work on the draft.

Would the Lao PDR be willing to share a copy of its draft Law on Standards as it stands now? We would be happy to work with your technical assistance providers to review and comment on this draft law. From our perspective, the TBT Agreement itself provides all language that Lao PDR needs in order to craft a law that would be consistent with the Agreement.

Answer:

Please see the Action Plan on Implementing the TBT Agreement (WT/ACC/LAO/14). The draft Standards Law will be presented to the Working Party before its third meeting.

Question 67

What will be the relationship of the new law to the present Decree No. 85/PM dated 2 November 1995, of the Prime Minister, on Management of Standards and Quality of Products and Goods? Will the Decree be abolished? What specific provisions will Lao PDR include to "upgrade" the Decree "to ensure the compliance with provisions of the agreement concerning" (WT/ACC/LAO/6)?

Answer:

When the Draft Standards Law is approved by the National Assembly and subsequently its Decree approved by the Prime Minister, the Decree of the Prime Minister on Management of the Standard and Quality of Goods and Products No. 85/PM dated 2 November 1995 will be repealed. The new Law and Decree will cover the specific provisions of the TBT Agreement.

See also response to Question 66.

Question 68

In specific terms, how/through what vehicle/in what legal instrument will Lao PDR incorporate all the measures identified in WT/ACC/LAO/6? Do the "domestic regulation(s)" await the passage of the new law? Or, will/can domestic development of standards and technical regulations take place separately? How/through what means/by what process will the Lao PDR ensure that its technical regulations comply with the WTO TBT Agreement?

Answer:

The new Law on Standards, its Decree and regulations will be the legal instrument which will incorporate on the measures identified in WT/ACC/LAO/6.

The development of new standards as well as technical regulations follows ACCSQ principles as stipulated in the Lao Government's Master Plan on Standards and Conformity Assessment of 2000. The development of national standards and technical regulations are undertaken in consultation with stakeholders from both Government and private sectors, and work is also being pursued through ACCSQ based on ISO/IEC guidelines in terms of standards development.

The development of "domestic regulation(s)" does not have to await the passage of the new law. Even presently, these are being developed by specific technical committees which consist of representatives at technical level from both Government and private sectors. The draft regulations are then sent to the National Committee on Management of Standards and Quality under the auspice of the Science Technology and Environment Agency (STEA).

Question 69

WT/ACC/LAO/6, 5(c), states that "Technical regulations are already subject to ongoing review". What are the procedures for reviewing legislation? Is there a law or regulation that outlines the procedure? If so, could a copy be provided? How will Lao PDR ensure that, upon accession, the regulations continue to undergo review in accordance with the TBT Agreement?

Answer:

Please see the Action Plan on the implementing the TBT Agreement (WT/ACC/LAO/14).

Question 70

In WT/ACC/LAO/3, page 24, the Government states, "The Government of the Lao PDR is considering joining ISO". What is the status of the Lao PDR's consideration? In WT/ACC/LAO/6, the Lao PDR says that, "in practice," the Lao PDR refers to ISO/IEC guidance. Will the Lao PDR commit, upon accession, to consider appropriate international standards, guides and recommendations as a basis for technical regulations and conformity assessment procedures as contained in Articles 2.4, 3.1, 5.4, 7.1?

Answer:

Lao PDR became a member of the International Organization for Standardization (ISO) in January 2007. Upon accession the Government will as provided for in the TBT Agreement consider appropriate international standards, guidelines and recommendations as a basis for technical regulations and conformity assessment procedures. Being a signatory of the ACCSQ (since 1998) helps in this effort.

Question 71

The explanation for 5(e) of WT/ACC/LAO/6 indicates that "Lao PDR has adopted 50 IEC standards as the National Standards of Electronically and Electronic Products." What are the procedures for adopting international standards? Is there a law or regulation that outlines the procedure? If so, could a copy be provided?

Answer:

Lao PDR became a signatory of IEC-APRC Affiliate Country Programme (IEC-APRC-ACP) in 2002. As a signatory, the Government abides by the decision of the ACCSQ that IEC standards be adopted as national standards and those standards be notified to IEC-APRC-ACP. The procedure to adopt international standards is as follows:

- (i) Examination by the Board on Management of Standards and Quality (under the auspices of STEA); and
- (ii) Approval of the standard by the Government.

Presently, there is no specific regulation on procedures for the adoption of international standards. Such a provision will be incorporated into the Implementing Decree of the Law on Standards.

Question 72

The explanation for 5(f) of WT/ACC/LAO/6 indicates that "Lao PDR does recognize the results of conformity assessment procedures conducted by relevant bodies in exporting countries." What are the procedures for recognition? What bodies qualify as relevant bodies? Is there a law or regulation that outlines the procedure? If so, could a copy be provided?

Answer:

Presently, Lao PDR recognizes the results of conformity assessment conducted by relevant bodies in exporting countries. For steel bars, electrical and electronic equipment, cement and gasoline, the procedure requires the importer to inform STEA as the national standard body, and for food and drugs, to the Ministry of Health prior to applying for the import licence on the quality of the imported goods, which are listed for quality inspection. The attestation on quality should be accompanied by a certificate from a testing laboratory which is accredited by the national standard body in the exporting country. This procedure on steel bars, cement and gasoline is stipulated in the Regulation on Quality Inspection of Imported Goods No. 1036/STEA-PMO dated 11 June 2002 while that for food and drugs in the Regulation on the Control on Production, Exported-Imported Safe Food No. 586/MOH dated 12 May 2006.

Question 73

Commitments 5(d) and 6(c) of WT/ACC/LAO/6 deal with the use of international standards. The response provided highlights the ISO/IEC guidance. We would like to draw your attention to the work of the WTO TBT Committee in this area, specifically the May 2002 Decision (G/TBT/1/Rev.8), which identifies the key principles for the development of international standards including transparency, openness, impartiality and consensus, relevance and effectiveness, coherence and consideration of constraints on developing countries' participation in standards development.

In its footnote to WT/ACC/LAO/6, the Lao PDR "notes that several laws and regulations relevant to these checklists are currently in the process of being drafted, approved or promulgated as well as related Decrees..." We hope that the Lao PDR will share these with us at the earliest possible moment so that we can try to work with your Government to ensure that these instruments are WTO/TBT Agreement consistent before they are finalized.

Answer:

The development of new standards as well as technical regulations follows ACCSQ principles as stipulated in the Lao Government's Master Plan on Standards and Conformity Assessment of 2000.

The development of national standards and technical regulations are undertaken in consultation with stakeholders from both Government and private sectors, and work is also being pursued through ACCSQ based on ISO/IEC guidelines in terms of standards development. Technical assistance is provided by ACCSQ and UNIDO experts.

Question 74

For a number of the items in WT/ACC/LAO/6, it indicates either that the commitment "will be incorporated into domestic regulations" or that "the measure has not yet been incorporated into domestic regulation" – Commitments 4(c), 4(d), 4(e) 5(a), 5(b), 5(g), 6(a), 6(b), and 6(c). Could the representative of Lao PDR indicate when these measures will be incorporated into domestic law? Are they currently being addressed in the Law on Standards?

Answer:

The draft law on standards as well as implementing Decrees/Regulations are being prepared in consultation with the private sector and Government agencies, and technical assistance is provided by UNIDO and the EU. Lao PDR is fully aware that the new law should be consistent to the WTO requirements. All commitments 4(c), 4(d), 4(e), 5(a), 5(b), 5(g), 6(a), 6(b), and 6(c) stated in checklist WT/ACC/LAO/6 are to be incorporated into domestic law and regulations by the year 2010.

Question 75

The Lao PDR also notes that it "is involved in technical assistance programs designed to improve its capacity in the areas of SPS and TBT". Please elaborate on these programs. We will need a complete understanding of what these programs are before we can comprehend the Lao PDR request for other or additional technical assistance.

Answer:

Lao PDR would like to express the appreciation for the willingness to provide technical assistance to Lao PDR. The present Action Plan and the assistance provided by UNIDO and ACCSQ allow us to proceed in a satisfactory matter. There is, however, no doubt that we will require further specific assistance and we will submit such requests at the appropriate time.

Question 76

We welcome Lao PDR's response in which it indicates that certain minerals and precious metals are included in a list of TBT-related reviews prior to importation. Lao PDR indicates that this is for the purpose of "monitoring and preserving natural resources". Can Lao PDR be more specific about the kinds of regulations/standards/test that such products must pass in order for importation to take place? How do import policies contribute to "preserving precious natural resources"?

Answer:

Based on Notification No. 1376/MOIC.DIMEX, prior to the importation and exportation of gold bar and silver importer/exporter must get the approval from the Bank of Lao PDR for the purpose of foreign reserve surveillance.

For the importation and exportation of unprocessed diamond the importer/exporter must get the approval from the Ministry of Industry and Commerce under the Kimberley Process Certificate Scheme to which Lao PDR is signatory.

Question 77

We appreciate the checklist on TBT, which indicates that there is work underway on bringing Lao PDR's regime into WTO compliance.

The checklist of Illustrative SPS and TBT Issues is a welcome first effort at identifying the work ahead for Lao PDR in meeting WTO rules in these areas. We would encourage Lao PDR to expand on this checklist with a more detailed plan of action – including what domestic regulations/laws will be expected to be required, by what time periods, and what resources currently exist to implement such plans.

As an early step in the process, what timeframe is envisaged for implementation of Enquiry Points for both SPS and TBT Agreements?

Answer:

Please see the Action Plan on SPS and TBT for bringing domestic laws and regulations in line with SPS and TBT Agreements as well as technical assistance needed for compliance (WT/ACC/LAO/13 and 14).

The single Enquiry Point on SPS/TBT is to be created at the Department of Intellectual Property Standard and Metrology of the Science Technology and Environment Agency and will be operational upon the date of accession as indicated in WT/ACC/LAO/9. Technical assistance is required for this purpose.

Question 78

We thank Lao PDR for submitting the checklist on TBT issues. We take note of the transition period until 2010 indicated in the legislative Action Plan.

Answer:

Please see the Action Plan on implementing the TBT Agreement (WT/ACC/LAO/14).

(c) Sanitary and phytosanitary measures

Question 79

We note that an enquiry point is being set up under the Prime Minister's Science, Technology, and Environment Agency (STEA) and that the Ministry of Commerce (MOC) has been mandated to be responsible for notifications (WT/ACC/LAO/6). Please provide the Working Party with information about how STEA and MOC intend to coordinate and collaborate to serve as a single contact point for information and notifications, respectively. Please also provide the Working Party with a timeframe to establish and operate a single point of contact.

Answer:

To further facilitate effective communications on these matters, the Lao Government has decided to establish the enquiry point and notification point for SPS/TBT at the Department of Intellectual Property Standard and Metrology of the Science Technology and Environment Agency.

As indicated in WT/ACC/LAO/9, the expected timeframe to establish and operate the notification and enquiry points is upon accession.

Question 80

We note that measures to protect human, animal or plant health "has not yet been incorporated into domestic regulation" (WT/ACC/LAO/6). Please provide the Working Party with plans and details to incorporate measures to protect human, animal or plant health.

Answer:

Please see Action Plan on implementing the SPS Agreement (WT/ACC/LAO/13).

Question 81

We note that regulations based on science "has not yet been incorporated into domestic regulations" (WT/ACC/LAO/6). Please provide the Working Party with details and plans to incorporate science-based regulations.

Answer:

Please see Action Plan on implementing the SPS Agreement (WT/ACC/LAO/13). Further, it has to be noted that Lao PDR has promulgated a National Policy on Science and Technology toward the year 2010 as indicated in the resolution of the Government No. 09/PMO dated 27 November 2003.

Question 82

We note that equivalence, a Member's recognition of different measures to achieve the same level of protection, "has not yet been incorporated into domestic regulation" (WT/ACC/LAO/6). Please provide the Working Party with details and plans to incorporate equivalence measures into Lao PDR's regulatory system.

Answer:

Please see Action Plan on implementing the SPS Agreement (WT/ACC/LAO/13).

Question 83

We note that risk assessment "has not yet been incorporated into domestic regulation" (WT/ACC/LAO/6). Please provide the Working Party with details and plans to incorporate risk assessment into Lao PDR's regulatory system.

Answer:

As an LDC, Lao PDR has not had necessary resources to conduct any risk assessment procedures. Lao PDR relies on international standards and uses results of risk assessment carried out by international and regional organizations, and by other countries with similar conditions to that of Lao PDR instead.

Question 84

We note that non-discrimination measures "has not yet been incorporated into domestic regulation (WT/ACC/LAO/6). Please provide the Working Party with details and plans to incorporate non-discrimination measures into Lao PDR's regulatory system.

Answer:

Please see Action Plan on implementing the SPS Agreement (WT/ACC/LAO/13).

Question 85

We note that control, inspection, and approval procedures "has not yet been incorporated into domestic regulation (WT/ACC/LAO/6). Please provide the Working Party details and plans to incorporate control, inspection, and approval procedures into Lao PDR's regulatory system.

Answer:

Please see Action Plan on implementing the SPS Agreement (WT/ACC/LAO/13).

Question 86

We note that a reasonable period of time for comment from Members and the public, and establishment of a process to take comments into account without discrimination is required in law or administrative procedure (WT/ACC/LAO/6). Please provide the Working Party with a timeframe for implementing a process to take comments from Members and the general public.

Answer:

Currently, there is no provision in Lao PDR determining a specific timeframe for implementing a process to take comments from the general public in the process of law or regulation drafting. However, in practice, some agencies involving with law or regulation making process which have an effect on the rights and interests of the general public seek comments from the public and the timeframe for this purpose depends on different laws and regulations.

For the comments from Members, there is no law or regulation in Lao PDR that the draft law/regulation should be provided for comments from Members. However, many laws or regulations prepared with the support of donors or international organizations have taken into account comments from international experts, international organizations and donors.

Question 87

We note that "in practice" Lao PDR follows to the extent possible international standards, guidelines, and recommendations in preparing SPS measures (WT/ACC/LAO/6). Please explain "in practice" more fully to the Working Party as it relates to following to the extent possible international standards, guidelines, and recommendations in preparing SPS measures.

Answer:

In practice, the formulation of SPS regulations on human health, animal and plant quarantine in Lao PDR is in line with standards and guidelines of ASEAN. Where there is no such guidance, the standards and guidelines of OIE, IPPC, and Codex Alimentarius will be used until the relevant Lao regulations have been established.

Question 88

For a number of the items in the SPS Checklist (WT/ACC/LAO/6), it indicates that "this measure has not yet been incorporated into domestic regulation" – Commitments 4, 5, 7, 8, 10, and 11. Could the representative of Lao PDR indicate when these measures will be incorporated into domestic law? Are they currently being addressed in any of the SPS legislation listed in the Preliminary Legislative Action Plan (WT/ACC/LAO/9)?

Answer:

Please see Action Plan on implementing the SPS Agreement (WT/ACC/LAO/13).

Question 89

The explanation for domestic provisions for Commitments 6 and 9 in WT/ACC/LAO/6 indicates that these obligations are followed in practice in the Lao PDR. Are these commitments written into domestic legislation? If so, could a copy be provided?

Answer:

The commitments 6 and 9 in WT/ACC/LAO/6 have yet to be incorporated into domestic legislation. However, please see the legislative Action Plan on SPS and Lao PDR will include these commitments into the domestic legislation (WT/ACC/LAO/13).

Question 90

We welcome news that a draft veterinary law is awaiting approval by the National Assembly. We would be interested in whether this has been approved or a time frame for its approval.

Answer:

The Veterinary Law has been drafted and comments were sought from international experts. The draft law has been accepted by the Government Meeting and submitted to the National Assembly for consideration. WTO conformity has been checked and some amendments are necessary which requires technical assistance. Passage is expected in 2009.

Question 91

We note that Regulation No. 894/MOAF has been replaced by Regulation No. 0886/MOAF and there is a procedure for obtaining import permit authorisation for agricultural commodities. We have the following questions in relation to this new system.

- (i) When an importer makes an application, is this in relation to the first time he or she seeks to import a specific product from a particular country (e.g. Beef from Australia), import a specific product from a particular supplier (e.g. Beef from Supplier X in Australia) or does it relate to each and every single shipment?**
- (ii) Is the purpose of this process essentially to determine whether a particular commodity is safe to be imported from a particular country or supplier?**
- (iii) Once it is determined that this product is safe for entry from a particular country, can an importer purchase such product without further permission on an ongoing basis?**
- (iv) If the purpose is to determine the safety of the imported product for sale in Laos, why is it necessary for the importer to obtain an import permit and pay the related fee? Can't such product be determined suitable for importation (and hence Customs is given approval) without the need to issue an actual import licence?**
- (v) How are the fees calculated for obtaining such a licence?**

Answer:

Regulation No. 0886/MOAF is related to the use of pesticides in agriculture.

- (i) Yes, it relates to every single shipment which requires prior registration with the Department of Agriculture (DOA) and an import permit from the same Department - if imported to Vientiane Capital - and from the respective Provincial Agriculture and Forestry Office, if imported to the provinces.**

- (ii) Yes.
- (iii) No, because an import permit is required from the DOA for each shipment.
- (iv) An import permit is required for each shipment as the registration of the pesticides is only done once with the DOA for the duration of two years. Without an import permit, there is no way for the Department to monitor the actual importation.
- (v) A fee is necessary to cover the administrative costs. It is based on the Ministerial Instruction of the Ministry of Finance No. 0341/MOF dated 21 February 2003, concerning the implementation of the Presidential Decree of the Lao PDR on the registration and other services fees.

Question 92

We welcome the provision of an SPS checklist with greater information on aspects of the disciplines that have been met or need to be met. We note that a number of important principles of the SPS Agreement have not been reflected into domestic law or regulation. We would encourage Lao PDR to provide a detailed Action Plan of when it expects it will be able to implement the provisions of the agreement, and areas where it particularly requires assistance.

Answer:

Please see Action Plan on implementing the SPS Agreement. Technical assistance is required, particularly to enhance institutional capacity and laboratory build-up.

Question 93

We thank Lao PDR for submitting the checklist on SPS issues. We take note of the transition period until 2010 indicated in the legislative Action Plan.

In its reply to Question 2 in WT/ACC/LAO/8, Lao PDR refers to the list of quarantine pests in Annex I to the document. However, this Annex I is missing. Could Lao PDR submit the Annex containing the quarantine pests list to the Working Party?

Answer:

See the pest list in Annex 2 of this document.

Question 94

In WT/ACC/LAO/8, your answer to Question 2 includes the sentence "This (quarantine pests) list will be updated in the near future (see Annex I)". Could Lao PDR please identify for us the Annex I that is being referred to here, and the document to which it is attached?

Answer:

See response to Question 93.

Question 95

In WT/ACC/LAO/9, a transitional period is mentioned as being required to implement the SPS Agreement. We would appreciate knowing what length of transitional period Lao PDR expects to set for this requirement.

Answer:

Please see Action Plan on implementing the SPS Agreement (WT/ACC/LAO/13). Any need for transition periods will be considered at a later stage.

Question 96

With reference again to document WT/ACC/LAO/9, could Lao PDR please provide further details of the legal and institutional framework that may affect production, standards, sanitary and phytosanitary requirements.

Answer:

At the central level, the key Government agencies deal with sanitary and phytosanitary requirements and standards are the Department of Agriculture (plant health) and the Department of Livestock and Fisheries (animal health) within the Ministry of Agriculture and Forestry (MAF). The two departments: the Department of Food and Drug and Department of Hygiene and Disease Prevention of the Ministry of Health (MOH) involve with food safety under supervision of the National Codex Committee (NCC). The NCC is chaired by Department of Intellectual Property, Standardization and Metrology (DISM) of the Science Technology and Environment Agency (STEA) and consists of representatives from the Ministry of Industry and Commerce, Agriculture and Forestry and Ministry of Health). The DISM is the national standards development body and is primarily involved with standard-setting in the food safety, including chairing the National Codex Committee. Its secretariat is in the Ministry of Health.

The MAF is responsible for food safety control for all fresh (unprocessed) food, starting from the production activities from farm and post-harvest practices to the retail markets. The Department of Agriculture (DOA) and Department of Livestock and Fisheries (DOLF) are responsible for plant health activities and animals and unprocessed animal products, respectively. As mentioned earlier there are two departments of the MOH involved with SPS matters. The Department of Food and Drug and Department of Hygiene and Disease Prevention are responsible for the control of processed food and water, including hygiene in food and bottled water processing factories and restaurants.

The implementation of food safety and agricultural health policies are carried out by provincial and local authorities in 16 provinces and Vientiane Capital.

Plant health: Provincial Agricultural and Forestry Offices issue the Phytosanitary Certificates and import permits for land border posts under supervision of National Plant Protection Organization (the Department of Agriculture).

Animal Health: In addition, the National Animal Health Center (NAHC) of DOLF is responsible for animal health activities in the country and related border controls: animals (including fish) health protection and quarantine, safety of unprocessed livestock product, safety and control of animal feed and veterinary drugs, import of breeding stock, animal movement control veterinary certification, relevant laboratory tests. The NAHC has supervisory responsibility for central and provincial disease diagnostic laboratories and international border check points and it also has technical supervisory responsibility for all abattoir and slaughter slab inspections in the country although operating responsibility remains at the provincial and district levels.

Food Safety: The institutional framework for Food Safety is as follows:

- I. Food and Drug Administration (FDA) has an advisory board for food safety issues consisting of 9 members from 6 ministries:

1. Ministry of Health, Chairman (Minister);
2. Science, Technology and Environment Agency;
3. Ministry of Agriculture and Forestry;
4. Ministry of Industry and Commerce;
5. Ministry of Finance; and
6. Ministry of Public Security.

Permanent bureau is located in Food and Drug Department (FDD) under the Minister of the Ministry of Health.

II. Food and Drug Department (FDD), MOH is Food Safety Authority of Lao PDR and responsible for:

- Developing food safety legislation and standards (Food Law, May 2005);
- Issuing permit for imported food, certificates of quality assurance for exported food;
- Registration of food premises and products;
- Inspection and enforcement;
- Food safety promotion (Training, workshops..);
- Analyzing food samples and monitoring food contaminants (by Food and Drug Quality Control Center: FDQCC);
- Providing food safety information to the public; and
- FDD acts as the Codex Contact point.

III. Department of Hygiene and Disease Prevention is responsible for the control of the markets, food services such street vendors and restaurants. The Department works with National Centre for Laboratories and Epidemiology for monitoring and surveillance the diseases.

Standardization: The DISM under the STEA is in charge of standardization, testing and quality activities which include the formulation of national standards and maintenance and national metrology standards.

Legislation: The legislation governing SPS and TBT has already been provided to the WTO Secretariat.

(d) Trade-related investment measures

Question 97

In response to Question 56 of WT/ACC/LAO/5, Lao PDR addressed the issue of local-content requirements largely with regard to the transition period under the TRIMs Agreement.

- (i) In order to utilize such transitions to maintain its TRIMs, Lao PDR must identify them for notification.**
- (ii) Lao PDR also should indicate how long within the allowable period of seven years it believes it must maintain these measures.**
- (iii) We seek a commitment for the WP report that Lao PDR will eliminate all measures inconsistent with the TRIMs Agreement by a date certain, e.g., no later than seven years from accession to the WTO, consistent with the provisions of the TRIMs Agreement, the Declaration on LDC Accessions, and the Hong Kong Ministerial Declaration.**

Answer:

The Lao Government takes note, with thanks, of Members's understanding to allow Lao PDR, as a landlocked least developed country, to avail itself of the flexibilities provided for all LDCs in paragraph 36 of the Hong Kong, China Ministerial Declaration and paragraph 84 of its Annex F.

Lao PDR also takes note of the request to notify the TRIMs measures.

Lao PDR would like to avail itself of the transition period for phasing out the TRIMs incompatible measures by 2020 as allowed for in the Hong Kong, China Ministerial Declaration.

Question 98

With regard to Article 34 and the footnote to Annex 2 of the Decree of the Prime Minister Regarding the Implementation of the Law on the Promotion of Foreign Investment (No. 301/PM), excerpted below, please explain how these requirements, if maintained, would not violate Lao PDR's TRIMs obligations.

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Article 34. Reduction and Exemption privilege on Duty, Use Tax and Business Turnover Tax regarding the Importation of Raw Materials, Finished Products and Semi-finished Products.

34.1 The importation of raw materials which cannot be produced within the country by a certificate of the relevant sector will be entitled to the importation authorization by exemption of imported duty, use tax and business turnover tax. For any raw materials which can be produced in the country shall use such materials in the country, unless they are such raw materials that the domestic producers can not supply its quantity and quality, the CPMI will consider for approval based on case by case;

34.2 The importation of semi-finished products that are produced in the country but that are not sufficient or do not meet the standard for the processing, assembly or production of goods for domestic distribution will receive the authorization to pay duty and business turnover tax for importation with a reduction to half of the normal tariff for a maximum period of 5 years from the date of receiving the privilege to import, based on the special characteristic of each enterprise and on the basis of the relevant sector. After the expiry of 5 years, if the foreign investment enterprise still has the necessity to continue to import it shall adhere to the Custom Law and Tax Law;

34.3 The importation of accessories that are produced in domestically but those accessories produced domestically are not sufficient or do not meet the standard for processing, assembly, or production for goods for domestic distribution by having a certification from the relevant sector will receive the authorization to pay imported duty, use tax as accessories according to the rate prescribed in ASEAN harmonized tariff nomenclature;

34.4 The importation of raw materials, semi-finished products and accessories for assembly, processing or production to be products for exportation will receive the duty, use tax and business turnover tax exemption at the time of importation and exportation.

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Foreign investment enterprise to receive investment incentive shall satisfy at least 3 of

the following additional conditions:

- 1. must use local labour at least 90 per cent of total labour during the term of investment;**
- 2. must use local raw material more than 50 per cent of total production cost;**
- 3. must use model technology;**
- 4. must preserve the environment according to the Law on Environmental Protection;**
- 5. must be promoted activities to other domestic production; and**
- 6. must have production activities for export at least 80 per cent of total production cost.**

Answer:

To the extent that the aforementioned measures fall within the illustrative list of the TRIMs Agreement (of which not all of the above are), the Lao Government reiterates its request for transition period as provided for all LDCs in paragraph 36 of the Ministerial Declaration in Hong Kong, China and refers in paragraph 84 of Annex F.

(e) State-trading practices

Question 99

We recall that in its Foreign Trade Memorandum (WT/ACC/LAO/3), Lao PDR expressed its preliminary view that it did "not have State trading enterprises in the sense of Article XVII of the GATT 1994 and working definition of Understanding on the Interpretation of Article XVII of the GATT 1994." The obligations in Article XVII apply equally to enterprises owned or controlled by the State, as well as enterprises to which the State grants special or exclusive privileges. Is it your view that there are no such enterprises in Lao PDR? If any such enterprises do exist in Lao PDR, it would be useful to know their principal sectors of operation and the manner in which they make commercial decisions, e.g., with respect to sales and purchases.

Answer:

In Lao PDR, the State-owned enterprises involved with foreign trade are registered with Industry and Commerce authorities. Currently, there are 16 State-owned enterprises dealing with imports and exports. State-owned and private enterprises of imports and exports shall be established and operated in the same obligations, regulations and laws of Lao PDR. The board of directors of such enterprises has the right to make their own decisions on their business operation such as pricing, costing and marketing, without interference of the Government given the fact that they comply with the laws and regulations of Lao PDR.

(g) Free economic zones

Question 100

In response to Question 67, Lao PDR identified a set of legislation governing the operations at two border trade zones and one special economic zone. Article 15 of both the Decree on Border Trade Zone at Boten (162/PM) and the Decree on Dansavanh Village Border Trade Zone (25/PM) provides that payment of profit tax following the grace period will be governed by separate legislation "based on the conditions and situations in each period."

- **If any separate legislation providing additional profit tax incentives at the zone has been drafted, could Lao PDR provide a copy for review?**
- **If not, what types of conditions or situations does Lao PDR or the relevant zone authority envision as providing a basis for additional incentives under the separate regulation?**

Answer:

- At present, there is no separate legislation that provides for additional profit tax incentives at the zones.
- The Lao PDR Government has yet to develop the basis for additional incentives.

Question 101

Article 17 of both the Decree on Border Trade Zone at Boten (No. 162/PM) and the Decree on Dansavanh Village Border Trade Zone (No. 25/PM) provides that goods produced in the zone may enter the domestic market subject to import duty at the rate of 10 per cent of the normal rate for the type of good, but goods produced with more than 20 per cent local content are subject to a concession rate of import duty "equal to the rate of such components used."

- **Could Lao PDR explain the meaning of the phrase "equal to the rate of such components used"?**
- **Please explain how such a concession rate would compare with the rate imposed on goods with less than 20 per cent local content.**

Answer:

The phrase "equal to the rate of such components used" means that the reduction of import duty to be paid will be equivalent to the percentage of local content in the product. For example, a product which embodies 30 per cent local content with the nominal import duty rate of 50 per cent will get a duty reduction of 30 per cent of 50 per cent (or = 15 per cent reduction). As a result, the import duty to be paid is 35 per cent.

However, the threshold for the use of local content is 20 per cent. Any use of local content below this threshold will be subject to a flat rate of 10 per cent reduction of the nominal import duty.

Question 102

Article 6.4 of the Decree of the Prime Minister on Savan-Seno Special Economic Zone (148/PM) indicates that preferential duty and tax treatment provided to investors in the zone will be determined under separate legislation.

- **If any separate legislation providing duty and tax incentives at the zone have been drafted, could Lao PDR provide a copy for review?**
- **Other than location in the zone, what other eligibility criteria would Lao PDR or the zone authority use in providing these incentives?**

Answer:

- At present, there is no separate legislation that provides for duty and tax incentives at the zones.
- The Lao Government has yet to develop the basis for other eligibility criteria for these incentives.

Question 103

Can Lao PDR confirm that goods produced in the SEZs and FEZs, when they enter the domestic market of Laos, are subject to normal import duties collected from imported goods?

If this is not the case, can Lao PDR explain how the goods entering the domestic market are treated as regards import duties?

Answer:

Yes, goods produced in the SEZs and FEZs are subjected to normal import duties collected from imported goods. However, as explained in response to Question 101, the percentage of local content will determine the actual duty to be levied on the product.

4. Policies affecting foreign trade in agricultural products

Question 104

DS:1 - Green Box: In relation to Domestic Food Aid programs, we would note that countries do not need to schedule any programs that are funded by foreign aid organizations in their agricultural tables. Can Lao PDR confirm that 2(a) contains only Lao Government expenses associated with any foreign assistance?

Answer:

There are no purchases of food aid by the Government. The domestic food aid expenditures recorded in Supporting Table DS: 1, are expenses incurred by the Government to facilitate the storage, transport and distribution of donated food and seed to those who need it. The food and seed being distributed is provided by international foreign aid agencies or the foreign aid agencies of other countries. This aid has been provided primarily to alleviate the effects of natural disasters.

Question 105

In relation to domestic food aid programs, can Lao PDR confirm the clearly-defined eligibility criteria related to nutritional objectives underpinning its food aid programs, and at what prices purchases by the Government are made?

Answer:

The eligibility criteria is based on the status of the food aid recipients to ensure that they obtain the minimum daily nutritional requirements.

See also response to Question 104.

Question 106

We note a preference for support measures to be scheduled in local currency units as it provides a more accurate measure of actual support paid to farmers.

Answer:

The checklist WT/ACC/4 does not appear to require the use of local currency. Since the kip is a non-convertible currency, it was considered desirable to provide this information using a convertible

currency actually used for international trade. The exchange rates used for each of the base years are provided in footnote 2 for Supporting Table DS: 1.

Question 107

In DS:2 (Article 6.2 provisions), we would welcome more information on the nature of investment and operating credit provided below market interest rates. Can Lao PDR provide a table on how such support was calculated?

Answer:

The investment and operating credit support was calculated from the difference between the interest rates offered by the commercial banks and the interest rates provided by the Agriculture Promotion Bank multiplied by the total amount of loans in the base period.

Question 108

ES:1 - Export Subsidies:

We note that Lao PDR has not applied any export subsidies in the 2001-03 base period selected. Can it confirm that it has not used any form of subsidy contingent upon the export of agricultural product in recent years?

Answer:

In the 2001-03 base period, Lao PDR has not introduced any such measures which would provide a subsidy contingent on agricultural products being exported.

Question 109

Supporting Table DS: 9 in document WT/ACC/SPEC/LAO/1 shows Non-Product-Specific AMS amounting to nearly US\$12 million in each of the years 2002 and 2003, which is listed as *de minimis* (in Table DS:4). Would Lao PDR kindly provide us with the value of "total production" and "ratio of domestic support to total production" on which this *de minimis* description is based.

Answer:

Footnote 4 for Supporting Table DS: 5 provides the total value of agricultural production for each of the base years. Using these figures, the non-product-specific AMS amounted to 1.4 per cent and 1.5 per cent of the total value of agricultural production in 2002 and 2003, respectively, well below the 10 per cent *de minimis* level.

Question 110

We note in your Agriculture Market Access Offer, the following HS lines are missing: 050100, 290545, 293911, 330210, 382311, 382312, 382313, 382319, 382370, 382460. Please provide offers for those products. Also, please note that fish and fish products are negotiated under the Non – Agriculture Market Access Group.

Answer:

All these lines are listed in Lao PDR's initial goods offer, under the NAMA spreadsheet, except 050100 under Agriculture spreadsheet.

Question 111

In reference to Table DS:9 (WT/ACC/SPEC/LAO/1), it is recommended that Lao PDR remove the reference to State-owned enterprises from the support Tables. This information is outside the base years (2001-2003) and thus irrelevant. It should be transferred to the Working Party report.

Answer:

This information was provided for transparency purposes even though no support was provided during the base period. Lao PDR has no objection to this information being moved to the Working Party report.

Question 112

In reference to Table DS:5, please identify the data set used to determine the external reference price for rice.

Answer:

The external reference price for rice was obtained from the data set on World Price for Rice from the University of Arkansas, USA.

Question 113

We note that Lao PDR did not provide support information in domestic currency, as called for in WT/ACC/4. Unless a country's currency is officially pegged to another currency (e.g., dollars, SDRs) the information in the support Tables should be in the domestic currency. Please correct in future submissions.

Answer:

See response to Question 106.

Question 114

In reference to Table DS:1, the Government expenses included for distributing food aid appears to be an administrative expense of the Government rather than a program to provide food aid. Please provide more detail on what type of expenses are incurred.

Answer:

See response to Question 104.

Question 115

We note that in Decree No. 870/MOC of 10 September 1996 a number of agricultural products are banned from import or export to Lao PDR. Specifically identified as banned goods for import include: all animal parts (including bones, hides, feet, wings and heads) and all agricultural goods which are produced locally. In addition, the same Decree identifies all food products as State Controlled Special Imports. Please further explain the purpose of this Decree, how it is enforced and whether it is still in existence.

Answer:

The above-mentioned Decree was abolished. See also response to Question 26.

Question 116

We note that during the exchange of questions and answers at the 30 November 2006 Working Party meeting, Lao PDR responded that they have no export subsidies, but that they reserve the right to apply subsidies as long as they are an LDC. We encourage Lao PDR to demonstrate a willingness to adhere to maintaining a standstill agreement.

Answer:

Members in the Hong Kong Ministerial Declaration recognized the need for special policy flexibility for LDCs owing to their severe economic and development needs. While Lao PDR does not envisage such measures at this stage, the underlying development rationale of the Ministers' decision applies to all LDCs and is welcomed by Lao PDR.

Question 117

We note that in Decree No. 870/MOC 19/09/1996 a number of agricultural products are banned from import or export to Laos. These goods include all animal parts (including bones, hides, feet, wings and heads) and all agricultural goods produced locally. Furthermore, the Decree states that all food products are State Controlled Special Imports. We would appreciate further information on the justification of this Decree, and how it works.

Answer:

See response to Questions 26 and 115.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

1. General

Question 118

We thank Lao PDR for submitting information on implementing of the TRIPS Agreement. We take note of the transition period until 2012 indicated in the legislative Action Plan.

Answer:

Lao PDR is a signatory to the convention establishing the World Intellectual Property Organization (WIPO) since 1995, and became the member of the Paris Convention for the Protection of Industrial Property in 1998. In 2006, Lao PDR joined the International Patent Cooperation Treaty (PCT), and is now studying and preparing to join other conventions and treaties.

With an aim to ensure the implementation of provisions stipulated in the Paris Convention, Lao PDR has promulgated some Decrees and Regulations such as:

- Decree on Trademarks No. 06/PM of 18 January 1995, and Regulation on the Registration of Trademarks No. 466/STEA-PMO dated 7 March 2002; and
- Decree No. 01/PM dated 17 January 2002 on the protection of Patents, Petty Patents (Utility Models) and Industrial Designs, and Regulation on the Implementation of the Patents Decree No. 322/STEA-PMO dated 18 February 2003.

The Lao Government wishes to utilize the transitional period granted for LDCs to build capacity of its officials involved in the implementation of intellectual property rights through human resource development programmes, and institutional reform and development. For this, the Lao Government requests appropriate and adequate technical support.

Question 119

Comments on draft Law on Intellectual Property. We recommend that Lao PDR separate the IP law into completely separate sections according to the intellectual property at issue, or into separate documents. Each category of intellectual property covered in the TRIPS Agreement receives different treatment and involves different exclusive rights. Combining copyrights with trademarks with patents, etc. would lead to inaccuracies that would be inconsistent with the TRIPS obligations.

Answer:

The draft Law on Intellectual Property only reflects the main principles of intellectual property rights. The details will be incorporated into separate Decrees and Regulations for each field of IP.

- 2. Substantive standards of protection, including procedures for the acquisition and maintenance of intellectual property rights**
- (a) Copyright and related rights**

Question 120

The draft "Law on Intellectual Property" appears to fall short of full compliance with the TRIPS/Berne requirements for copyright protection. What plans does the Lao PDR have to bring the law into full compliance with the TRIPS Agreement?

Answer:

For copyrights and related rights, the details will be stipulated in specific Decrees and Regulations to ensure the compliance with the Berne Convention as indicated in model law provided by the World Intellectual Property Organization (WIPO).

Question 121

We would like to highlight some specific areas where the draft law fails to implement the TRIPS/Berne requirements:

- (i) Article 4 requires registration of the intellectual property to receive protection. The Berne Convention, which was incorporated into the TRIPS Agreement, requires that protection be granted to copyrights of nationals of countries that are signatories of Berne and cannot require the right holder to register the right. Please explain how this provision will be brought into conformity with the TRIPS Agreement.**
- (ii) There are exceptions in Article 6 that appear to be too broad and appear to exclude from protection works that should be protected under TRIPS. Could you please explain what is meant by drawing plans, regulations for doing business, performing that relates to psychology or playing games, and imitations?**
- (iii) Article 14 does not include "scientific" works which must be included for TRIPS compliance.**
- (iv) Could you explain what is meant by the statement "The protection is limited to solely the creation not the content, quality and purpose of its creation" in Article 15?**

- (v) **Article 16 of the draft law covers "the rights of performers, owners of products in relation to the phonograms and pictures and the sound and picture broadcasting organizations." We believe that "owners of products in relation to the phonograms" means phonogram producers. Is that correct? Why are the words "and pictures" included here if audiovisual works, photos and drawings are covered by copyright under Article 15? What about pictures is not covered by Article 15?**
- (vi) **The Draft Law on IP does not appear to set forth the copyright term for audio visual works and sound recordings. What section sets forth the term of copyright protection for those types of works?**

Answer:

- (i) As stipulated in Article 4 of the draft law relating to the registration of intellectual property to receive protection of industrial property, the procedures of protection of copyrights and related rights will be incorporated in specific Decrees and Regulations.

- (ii) Article 6 of the draft law contains provisions on Intellectual property that are excluded from protection below:

"Under this law no protection shall extend to scientific theories, mathematical methods, charts, schemes, rules or methods for doing business, cognitive learning activities or games, methods for treatment of the human and animals, ideas, legislative procedures, concepts, principles, discovery, official documents, collection of mere data from public medias, copy or imitation, and acts which are contrary to the public order or the national cultural morality."

There appears to be a confusion of the draft law with respect to sub-question (ii).

- (iii) Lao PDR takes note with thanks, and this will be reflected in the draft law.

- (iv) Article 15 means the protection is limited to the creation or works as visibly seen or heard (audiovisual); for example, a sculpture can be protected without its meaning or expression, or as for a song only its text or melody could be protected but not its popularity.

- (v) Article 16 of the draft law contains provisions on "related rights":

"For the purposes of this law, "related rights" means the rights of performers, producers of phonograms and broadcasting organizations to be protected."

There seems to be a confusion of the terms "the rights of performers, owners of products in relation to the phonograms and pictures and the sound and picture broadcasting organizations". However, it is true that the owners of products in relation to the phonograms" means phonogram producers, and the words "and pictures" are also covered by Article 15, which are photographic works as stated in paragraph (h) of the draft law.

- (vi) The copyright term for audio visual works and sound recordings will be incorporated in the implementing Decrees or Regulations of the draft law.

- (b) Trademarks, including service marks**

Question 122

In responding to Question 76, WT/ACC/LAO/5, regarding the 1995 Decree Article 7 provision that a trademark application shall include "a list of the goods and services with the description of the characteristic and quality", Lao PDR provided the following example: "For example, the

trademark "CASIO" is intended for use in relation to certain scientific, photographic and cinematographic apparatus and instruments in Class 9". Based on this example, how does "a list of the goods and services with the description of the characteristic and quality" differ from "a list of the goods and services"?

Answer:

In addition to the response to Question 76 of WT/ACC/LAO/5, the terminology "the description of characteristic and quality" differs completely from "a list of the goods and services". The list of goods and services means the latest version of the Nice Agreement on International Classification of Goods and Services. The description of characteristic and quality is only additional information requested by Registration Unit to know about the nature/characteristics as well as the quality of such goods or services, which are applied for protection.

Question 123

In responding to Question 77, WT/ACC/LAO/5, regarding the 1995 Decree Article 7 provision referring to the "assign[ment of] the right to use the trademark", Lao PDR stated that the word "assignment" "does mean the transfer or licensing of rights". As "assignment" generally refers to a transfer of rights, rather than a licensing of rights, shouldn't the phrase read, "does mean the transfer of rights"? Under what circumstances would permission of the assignor/transferor be required or preferred, as the assignee/transferee would become the owner of the mark?

Answer:

In addition to the response to Question 77 of WT/ACC/LAO/5, the terminology of "assignment" means the transfer of rights; it does not mean that the assignee/transferee becomes automatically the owner of the mark. The limitation of using the assignor's rights depends on the agreement between two parties.

Question 124

In responding to Question 77, WT/ACC/LAO/5, regarding the 1995 Decree Article 7 provision that "[i]n the case of partial assignments, the agreement shall provide for the right of the owner of trademark to verify the quality of goods and services", Lao PDR responded that "[t]he transfer of rights between the right owner and the assignee is voluntary based on consensual agreement between the two parties". What is a "partial assignment"? Under what circumstances would the trademark owner/assignor be able to exercise quality and control over the use of a mark that has been assigned?

Answer:

In addition to the response to Question 77 of WT/ACC/LAO/5, the terminology "partial assignment" means the transfer of limited rights to the use of a mark given the fact that the trademark owner could verify the quality of goods or services which use the mark that has been assigned. The verification of quality could be done by different methods; for instance, the result of quality testing of goods or services, based on standards, can be used in order to avoid the dilution of trademark or services mark.

Question 125

In responding to Question 79, WT/ACC/LAO/5, regarding the 1995 Decree Article 10 provision referring to "applications for the registration of identical or confusingly similar trademarks of the same kind", Lao PDR stated that "[t]he similar trademark of the same kind of this Article means the trademark which has not yet been registered or granted anywhere in the world."

Since trademarks are territorial, please clarify the meaning of the phrase "anywhere in the world".

Answer:

In addition to the response to Question 79 of WT/ACC/LAO/5, the terminology "anywhere in the world" means "outside of country". Although trademarks are territorial, the Registration Unit would know information of the trademark, whether it has been already registered abroad, particularly those well-known trademarks, or the priority date to be given to applicant for trademark that has already been registered abroad, as stated in the Paris Convention for the Protection of Industrial Property.

Question 126

In responding to Question 82, WT/ACC/LAO/5, regarding the 1995 Decree Article 12 provision referring to the marks that are "confusingly similar to a trademark or trade name of goods or services which are widely well known", Lao PDR stated that "the evaluation is conducted by a search of trade names which...[are] considered widely well-known." How is this evaluation conducted in Lao PDR? What criteria are used in determining whether a trademark or trade name of goods or services is "widely well known"? Who is responsible for making that decision?

Answer:

In addition to the response to Question 82 of WT/ACC/LAO/5, the terminology "well-known" refers to Article 6*bis* of the Paris Convention for the Protection of Industrial Property related to well-known marks. The criteria of evaluation is considered firstly by examiners and then by higher officials concerned. This is based on the Paris Convention.

Question 127

Also, the 1995 Decree Article 12 makes no reference to marks that are identical or confusingly similar to marks that are the subject of registrations or pending applications (but are not well-known). Shouldn't this language also be included in Article 12?

Answer:

Article 12 of the 1995 Decree is valid for all marks whether the mark is well-known or otherwise. Lao PDR thanks Members for raising this issue, and the 1995 Decree will be accordingly amended to incorporate reference to identical or confusingly similar marks.

Question 128

In responding to Question 84, WT/ACC/LAO/5, regarding the 1995 Decree Article 13 provision stating that "[t]he rights of the owner of registered trademark or his consent shall not extend to the other acts related to the goods and services existing in the Lao PDR", Lao PDR stated that "the phrase 'other acts' means any businesses or services in the area of trade (e.g., wholesale and retail trade). Please provide an example of "other acts" that shows the relationship between trademarks rights and "other acts related to the goods and services" to which the rights would not extend.

Answer:

In Lao PDR, the registration for protection of trademark is not compulsory. Therefore, owner's trademark is free to use their marks through selling or importing goods, or providing services in the

territory. The rights of the owner or his consent could be recognized only if the trademark has been registered. For example, if there is any case of infringement, the trademark owner has the rights to take action against any acts after its registration, and the rights shall not extend to other acts before such registration.

Question 129

In responding to Question 84, WT/ACC/LAO/5, regarding the 1995 Decree Article 17 provision stating that "[t]he infringer of right under the trademark shall be warned", Lao PDR stated that "the suspected infringer is called upon by the relevant authorities to explain the alleged infringement. In some instances, the infringer and the rightful owner are also present with the view to finding an amicable solution."

- (i) **What is meant by "shall be warned"? How is the process initiated? Is this process initiated in all instances where a complaint is brought and, if not, under what instances would this process not be initiated?**
- (ii) **Please provide a detailed explanation of the process in which the suspected infringer is called upon to explain the alleged infringement. In what instances are the infringer and the rightful owner also present? Who conducts this process?**
- (iii) **Article 17 provides that the suspected infringer "shall be warned or shall be subjected to legal sanction". In what instances would a suspected infringer be warned? In what instances would a suspected infringer be subject to legal sanction?**
- (iv) **How is 1995 Decree Article 17 related to Section V of the Regulation on the Registration of Trademarks No. 466/STEA-PMO of 7 March 2002? To what extent is the parties' confidential information, provided for the purposes of settlement only during the course of mediation, included within the STEA memorandum referenced in Article 24 of Section V of the Regulation on the Registration of Trademarks?**

Answer:

In addition to the response to Question 84 of WT/ACC/LAO/5 relating to Article 17 of Decree in 1995, the terminology such as:

- (i) "Shall be warned" refers to the initial stage of administrative procedure when the infringement has been undertaken without intention. The suspected infringer is called upon by the relevant authorities to explain the alleged infringement. In some instances, the infringer and the rightful owner are also present with the view to finding an amicable solution.
- (ii) With regard to the process of administrative procedure, upon receipt of the petition of the rightful owner, STEA will promptly examine whether it is an infringement or otherwise, based on relevant Decree and Regulation. If so, STEA will communicate with relevant authorities such as the Custom Department, Trade Department, Economic Police Department and other parties concerned, including the infringer and the rightful owner to clarify the infringement, and then the board will determine whether or not there is infringement. Then, the board encourages the parties concerned to solve the problem among themselves. If there is no solution, they can proceed to the court. The report of administrative procedure for such case should be signed by relevant authorities.
- (iii) In addition to answer (i), the suspected infringer shall be subject to legal sanction when he or she has waived/breached the agreement among parties concerned or the infringement is highly damaging to economic benefits of the rightful owner, etc.

- (iv) The Regulation on the Registration of Trademarks No. 466/STEA-PMO of 7 March 2002 is an implementing measure of the Decree of the Prime Minister on Trademarks No. 06/PM dated 18 January 1995. Article 18 of the Decree provides the rights for STEA to formulate implementing regulations as well as procedures, including the course of mediation as stated in Article 17.

Question 130

In responding to Question 86, WT/ACC/LAO/5, regarding Lao PDR's compliance with the terms of TRIPS Article 22 (protection of geographical indications) and Article 23 (Additional Protection for GIs for Wines and Spirits), Lao PDR responded that "Lao PDR is in the process of considering to enact the Law on Intellectual Property which also covers Geographical Indications (GI)." We have received a copy of the new draft Law of Intellectual Property (undated); however, the references to GIs is limited to Article 13 (definition) and Article 18 (duration).

- (i) **Does the Government of Lao PDR intend to draft an additional law covering GIs, or to expand the current draft law's coverage of GIs?**
- (ii) **How does the new draft Law of Intellectual Property comply with TRIPS Articles 22 and 23?**
- (iii) **Please confirm that the new draft Law on Intellectual Property provides the grounds for an owner of an earlier protected trademark to prevent the protection or registration of a confusingly similar and later in time geographical indication, in accordance with TRIPS Articles 16.1 and 24.5.**

Answer:

In addition to the response to Question 86 of WT/ACC/LAO/5 related to the legislation on Geographical Indications (GI), the draft Law on Intellectual Property only embodies the main principles of intellectual property rights, including such references to GI as provided for in Articles 13 and 18.

- (i) The Government of Lao PDR is in the process of drafting Decree and Regulation to implement the Law on Intellectual Property related to GI, and the technical assistance provided by EU under the multilateral cooperation project between EC and ASEAN (ECAP II Project), and France. See also the Action Plan implementing the TRIPS Agreement (WT/ACC/LAO/15).
- (ii) TRIPS Articles 22 and 23 shall be incorporated in the implementing Decree and Regulation on GI.
- (iii) TRIPS Articles 16.1 and 24.5 shall be incorporated into the implementing Decree and Regulation on GI.

Question 131

The 1995 Decree of the Prime Minister on Trademarks No. 06/PM of 18 January 1995 does not provide for cancellation of trademarks. The Regulation on the Registration of Trademarks No. 466/STEA-PMO of 7 March 2002 refers to "cancellation" in Article 16, stating that "[i]ndividuals or legal entities can apply for cancellation of a registered trademark with the Registry Unit...". On this record, we are unable to state that the law is TRIPS-consistent requiring under Article 15.5 that "Members...shall afford a reasonable opportunity for petitions to cancel the registration." What are Lao PDR's plans for drafting the law and regulations regarding cancellation of marks?

Answer:

The Decree of the Prime Minister on Trademarks No. 06/PM of 18 January 1995 and the Regulation on Registration of Trademarks No. 466/STEA-PMO of 7 March 2002 are related to each other as regard to the cancellation of trademarks.

Lao PDR thanks Members for raising this question. The 1995 Decree on Trademarks will be accordingly amended to incorporate this element as provided for in Article 15.5 of the TRIPS Agreement.

Question 132

In the checklist on TRIPS, WT/ACC/LAO/7, Lao PDR notes in No. 65 that Articles 6 and 13 of the Decree on Trademarks No. 06/PM of 18 January 1995 does not specifically refer to the "similar marks" language of TRIPS Article 16.1 and that "this is planned to be implemented through the IP law being considered by the National Assembly". To what IP law does this statement refer? Does this statement refer to the new draft Law of Intellectual Property (undated) and, if so, how and where is the "similar marks" language reflected in this draft law? If not, please provide information on anticipated timeline and availability of a copy of this draft.

Answer:

Lao PDR takes note of this matter and, while expressing its appreciation to Members, assures that the new draft Law on Intellectual Property as well as its implementing Decrees and Regulations will reflect the language of "similar marks" as provided for in TRIPS Article 16.1.

Question 133

In the checklist on TRIPS, WT/ACC/LAO/7, Lao PDR notes in No. 66 that the "presumption of confusion" as provided for in TRIPS Article 16.1 "is not provided for yet and will be incorporated in a new Decree that will implement the IP law set to be adopted by the National Assembly at the beginning of 2006." Please provide us with a copy of this new Decree.

Answer:

In addition to the response in the checklist on TRIPS No. 66, the terminology of "presumption of confusion" as provided in TRIPS Article 16.1 will be incorporated in the new Decree, after that Lao PDR would make a copy available to the Working Party.

Question 134

In the checklist on TRIPS, WT/ACC/LAO/7, Lao PDR notes in No. 67 that conformity with TRIPS Article 16.3 is ensured by Article 12 of the Decree on Trademarks No. 06/PM of 18 January 1995. How does Article 12 provide protection for registered well-known marks against dissimilar goods or services?

Answer:

In addition to the response in the checklist on TRIPS No. 67 that the conformity with the TRIPS Article 16.3 is ensured because the Article 12 of Decree in 1995 stated that "A trademark cannot be registered if a mark is identical with, or confusingly similar to a trademark or trade name of goods or services which are widely well-known".

Lao PDR takes note and assures that the new draft Law on Intellectual Property as well as its implementing Decrees and Regulations will reflect clearly the language in protecting registered well-known marks against dissimilar goods or services as provided for in TRIPS Article 16.3.

(e) Patents

Question 135

With regard to Law No. 01/PM, Decree on Patent, Petty Patent and Industrial Designs:

Article 21: In the version of Article 21 that we have, the first paragraph reads:

When the patented invention is patented invention is not exploited...the Registry may issue a non-voluntary licence if it is satisfied that, by working the invention locally or by importation in the Lao People's Democratic Republic, except if the owner of the patent satisfies the Registry that circumstances exist which justify the non-exploitation or insufficient exploitation of the patented invention.

This text appears to be attempting to provide for a compulsory licence where the provisions of Paris Convention Article 5(A)(4) apply, but this is not clear from the text. Please clarify.

Answer:

With regard to the Decree No. 01/PM on Patent, Petty Patent (Utility model) and Industrial Designs:

Article 21 relates to the non-use or insufficient exploitation of patented invention after a period of four years from the date of filing or three after the grant of patent. Such compulsory licence shall be non-exclusive and should define the scope, function, time limit, and the amount of the adequate remuneration to be paid to the owner of patent as well as the condition of payment as stated in Article 5 (A)(4) of the Paris Convention.

Question 136

Regarding the Draft Bill, what will be the status of Law No. 01/PM, once the bill "Law on Intellectual Property" becomes law? The bill includes articles restating the law set forth in Law No. 01/PM, for example, Article 18 of the bill sets forth the duration of intellectual property, and sets forth periods that are found in Article 17 for patents and Article 35 for industrial designs.

Answer:

The draft Law stipulates only the main principles and areas of intellectual property, and upon approval, the Decrees and Regulations will be developed and considered by the Government of Lao PDR, and the existing Decrees as well as Regulations will be amended accordingly with the aim of meeting the requirements of the TRIPS Agreement.

Question 137

What is the status of the Draft IP Law referenced in rows 81, 85, 87 and 89 of the Table in WT/ACC/LAO/7 (pages 12-13)?

Answer:

Lao PDR is in the process of amending the existing Decree and Regulation related to patent based on draft IP Law, which is under the consideration of National Assembly. The requirements of the TRIPS Agreement as stated in rows 81, 85, 87 and 89 of document WT/ACC/LAO/7 shall be incorporated in new Decree and Regulation.

Question 138

We would like to note that industrial designs under TRIPS receive ten years of protection; therefore, the Lao PDR draft law is not in compliance with TRIPS as Article 18 appears to provide only five years of protection. Please clarify.

Answer:

Article 35 of Decree No. 01/PM in 2002 reads: "An industrial design shall expire in five years after the filing date of the application and could be renewed for two consecutive periods and each period lasts five years...", meaning the whole term of protection is 15 years, which is beyond the requirements of the TRIPS.

Question 139

Row 94 of the Table in WT/ACC/LAO/7 states that new regulations of the FDA of Lao PDR will be considered in order to comply with this provision. Have the regulations been drafted?

Answer:

At present, it is still under discussion on preparing this regulation. Technical assistance is requested for this purpose.

4. Enforcement

Question 140

We recommend that Lao PDR provide more specific provisions on criminal, administrative, and civil enforcement as provided in the TRIPS Agreement.

Answer:

The existing Decree No. 06/PM in 1995 and Decree No. 01/PM in 2002 as well as their implementing Regulations provide administrative and civil remedy that the infringer shall be subjected to legal sanctions. According to the laws of Lao PDR, and the draft law on IP, the right holder could choose civil or criminal remedies or both, which is consistent with TRIPS Article 41.1.

Question 141

Does the right holder choose between civil remedy or a criminal remedy, or are both remedies available? (TRIPS Article 41.1)

Answer:

The draft law on IP provides the availability to the right holder to choose civil or criminal remedy or both remedies in consistent with TRIPS Article 41.1.

Question 142

Please clarify what cases and/or issues that can be appealed to a higher court after final adjudication at the trial court level. What is the standard of review that is adopted by the appellate court? Is such an appeal as of right or at the discretion of the court? (TRIPS Article 41.4)

Answer:

Any decision or case could be appealed to a higher court if it could not be settled or agreed by the parties with respect to the final adjudication at the trial court level, consistent with TRIPS Article 41.4.

Question 143

What sort of specific mechanism exists that a judge can utilize to order production of evidence? Is there any way that a party can submit documents that are redacted or for the court's or attorney eye's only, particularly in trade secret cases? (TRIPS Article 43.1)

Answer:

During the court proceedings, a judge is authorized to order the production of evidence which is to be made available only for the court's or attorney's "eye only"; the aim being to protect confidential information, particularly trade secrets, as provided for in TRIPS Article 43.1.

Question 144

Please clarify the provisions related to injunctive relief (temporary restraining order, preliminary injunction, and permanent injunction). What is the current status in implementing this requirement? (TRIPS Article 44.1)

Answer:

The Regulation on registration of trademarks No. 466/STEA-PMO dated 7 March 2002 and the Regulation on the Implementation of Decree on Patent, Petty Patent and Industrial Designs No. 322/STEA-PMO dated 18 February 2003 allow the right holders to apply for settlement of dispute relating to the infringement for administrative procedure, which could provide action for injunctive relief, consistent with TRIPS Article 44.1.

Question 145

Please clarify the provisions related to compensatory monetary damages. What is the current status in implementing this requirement? (TRIPS Article 45.1)

Answer:

Article 23 of the Regulation on registration of trademarks No. 466/STEA-PMO dated 7 March 2002 and Article 42 of Regulation on the Implementation of Decree on Patent, Petty Patent and Industrial Designs No. 322/STEA-PMO dated 18 February 2003 provide the method for the settlement of dispute and the claim for damages from the infringer as regards to compensatory monetary damages, consistent with TRIPS Article 45.1.

Question 146

Please clarify the provisions related to the infringer paying costs. What is the current status in implementing this requirement? Please clarify the provisions related to the requirement that the infringer pays profits to the right holder. What is the current status in implementing this requirement? Please clarify the provisions related to statutory damages. What is the current status in implementing this requirement? (TRIPS Article 45.2)

Answer:

Article 23 of the Regulation on registration of trademarks No. 466/STEA-PMO dated 7 March 2002 and Article 42 of Regulation on the Implementation of Decree on Patent, Petty Patent and Industrial Designs No. 322/STEA-PMO dated 18 February 2003 provide the method for the settlement of dispute and the claim for damages from the infringer as regards to the infringer paying costs or profits to the right holder in accordance with TRIPS Article 45.2.

Question 147

Please clarify that in addition to seizure of infringing goods, materials, and implements, that such goods, materials, and implements are to be destroyed in order to take them out of the stream of commerce (TRIPS Article 46).

Answer:

Article 23 of the Regulation on registration of trademarks No. 466 / STEA-PMO dated 7 March 2002 and Article 42 of the Regulation on the Implementation of Decree on Patent, Petty Patent and Industrial Designs No. 322/STEA-PMO dated 18 February 2003, provide the method for the settlement of dispute related to seizure of infringing goods and materials, which will be destroyed in order to take them out of the stream of commerce, consistent with TRIPS Article 46.

Question 148

Please clarify the provisions related to the indemnification of defendant in the case of litigation abuse by plaintiff. What is the current status in implementing this requirement? (TRIPS Article 48.1)

Answer:

Presently, such a provision is only available within the provisions of the Civil law of Lao PDR. A specific provision will be incorporated into the draft law on IP.

Question 149

Please clarify the provisions related to the indemnification of public authorities acting in good faith and within the scope of their authority. What is the current status in implementing this requirement? (TRIPS Article 48.2)

Answer:

See response to Question 148.

Question 150

Please clarify the provisions related to administrative remedies. Will these remedies be set high enough to compensate the IP right holder? What is the current status in implementing this requirement? (TRIPS Article 49).

Answer:

At present, the provisions related to the administrative remedy based on the Decree on Trademarks in 1995 as well as the Regulation on the Registration of Trademarks No. 466/STEA/PMO dated 7 March 2002 and, the Decree on Patents, Petty Patents and Industrial Designs in 2002 as well as the Regulation on the Implementation of the Patents, and Decree No. 322/STEA/PMO dated 18 February 2003, which are related to each other. With regard to compensation settled by means of mediation, most of right holders are satisfied by the administrative procedures. The result of administrative procedures could be ordered by civil remedy on the merits of a case as provided in Article 24 of the Regulation on the Registration of Trademarks No. 466 and Article 43 of the Regulation on the Implementation of the Patents, and Decree No. 322 as stated in Article 49 of the TRIPS Agreement.

Question 151

Please clarify the provisions related to indemnification of the defending party if the provisional relief is unjustified. What is the current status in implementing this requirement? (TRIPS Article 50.3)

Answer:

Article 7 of the Criminal Procedure Law No. 1/NA dated 15 May 2004 allows the defendant to protect his/her rights and legitimate interests against unjustified provisional measures as stated in Article 50.3 of the TRIPS Agreement. In the past, there was no case related to an indemnification of the defending party.

Question 152

Please clarify the provisions related to temporary restraining orders (both *ex parte* and *inter partes*). What is the current status in implementing this requirement (TRIPS Article 50.4)?

Answer:

The Customs Law Article 76(10) provides that the customs authority has the right to inspect and seize goods that violate intellectual property rights.

Question 153

What is the current status in the Implementation Decree(s) for the border measure requirements under TRIPS? Will there be any further updates/amendments to the Lao PDR Customs Law (TRIPS Article 51-59 (border measures))?

Answer:

See response to Question 152.

Question 154

What is the current status in implementing this requirement? (TRIPS Article 61)

Answer:

See response to Question 152.

Question 155

Please clarify that in addition to seizure of infringing goods, materials, and implement that such goods, materials, and implements are to be destroyed in order to take them out of the stream of commerce. (TRIPS Article 46)

Answer:

The administrative procedures provide for the destruction of goods that have been found to have infringed the Law on Intellectual Property of Lao PDR. See also response to Question 147.

VI. TRADE-RELATED SERVICES REGIME

Question 156

The reply to Question 5 of WT/ACC/LAO/8 (regarding environmental services) states that foreign companies are not allowed to supply any environmental services. Are there Lao environmental services firms that can provide wastewater treatment or air pollution control and monitoring services?

Answer:

At present, there are no companies providing wastewater treatment, air pollution control and monitoring services in Lao PDR.

Question 157

In the response to Question 7 of WT/ACC/LAO/8: Please elaborate on whether or not there are any limitations on the number or percentage of foreign suppliers providing the services in question. Lao PDR indicates that for "Telecommunications - with regard to fixed line telephone services there is no limitation on the number of service suppliers; with regard to mobile phone services the maximum number of operators is limited to five." Please provide clarification on the scope of "telecommunications services."

Answer:

With regard to fixed line telephony, there are currently two operators: one wholly Government owned and the other a joint venture with the foreign services provider.

As for mobile telephony, there are five operators: two are wholly Government owned, one joint venture with foreign services provider, and two are wholly owned by foreign services providers.

There are some service providers offering internet services.

Question 158

Distribution Services: answer to Question 3 in WT/ACC/LAO/8 mentions that foreign participation is not allowed in commission agent and franchising services. However, in Annex 3 of the "Decree of the Prime Minister Regarding the Implementation of the Law on the Promotion of Foreign Investment," the retail trade is included.

We would appreciate having a description of the exact scope of retail trade currently opened up for foreign investment.

Answer:

Foreign investors are allowed to invest in Retail Trade as specified in Annex 3 of the "Decree of the Prime Minister Regarding the Implementation of the Law on the Promotion of Foreign Investment". It is, however, required to be a joint-venture with domestic investor(s).

Question 159

Environmental Services: answer to Question 5 in WT/ACC/LAO/8 includes the statement "On other areas of environmental services including cleaning services of exhaust gases, foreign participation is not allowed." However, Annex 3 of the "Decree of the Prime Minister regarding the Implementation of the Law on the Promotion of Foreign Investment" includes "sewage disposal, sweep, cleaning and similar activities".

We would therefore appreciate having a description of the exact scope of environmental services currently opened up for foreign investment.

Answer:

Like other services sectors, investment in environmental services are governed by investment laws and regulated by relevant ministries, which in the case of "sewage disposal, sweep, cleaning and similar activities" is the Ministry of Communication, Transport, Post and Construction, and for the case of "exhaust gases" is the Science Technology and Environment Agency. Apart from the scope of opening services sectors as prescribed in the Decree on implementing the Foreign Investment Law, regulations making by line ministries are in an on-going process.

ANNEX 1

Excise Tax Rate

The Excise Tax is levied at different rates as follows:

Order	Goods and services liable to Excise Tax	Ad-valorem rates (%)
1	Fuel: - Gasoline (super) - Gasoline (normal) - Diesel - Plane gasoline - Lubricant, hydraulic oils, grease, and brake oil	25 % 24 % 12 % 10 % 5 %
2	Liquor or alcoholic drinks - Liquor or drinks with alcoholic content from 15° upwards - Liquor, wine and other drinks with alcoholic content under 15° - Beer	70 % 60 % 50 %
3	- Mineral water, ready-made drinks, and similar drinks, - Aerated drinks, - Soda and energy drinks	10 % 20 % 30 %
4	Ready-made tobacco, cigarettes in packet, and cigars	55 %
5	Perfume and cosmetics	30 %
6	Playing cards and similar items, traditional rockets, fireworks	70 %
7	Vehicles: - Vans with 15 seats and less, - Buses with more than 15 seats, - Lorries, - Motorcycles - Jeeps with soft cover - Jeeps with hard cover (with maximum of 2000 CC) - Jeeps with hard cover (2,001 CC to 4,000 CC) - Jeeps with hard cover (with engine volume of minimum 4,001 CC) - Cars with a maximum of 1,000 CC - Cars with a engine volume between 1,001 and 1,500 CC - Cars with engine volume between 1,501 and 3,000 CC - Cars with minimum engine volume of 3,001 CC - Tall/low pick-up trucks with two doors, two doors and a cabin - Tall/low pick-up trucks with four doors, four doors and a cabin	25 % 20 % 10 % 20 % 30 % 65 % 70 % 75 % 60 % 65 % 75 % 90 % 20 % 25 %
8	Speed boats, motor boats for sport activities, including their motors and accessories	10 %
9	Electrical appliances such as: air-conditioners, satellite TV signal receivers, audio-video players, cameras, audio-video recorders, musical instruments, including components and accessories,	15 %
10	Freezers, water heaters, washing machines, vacuum cleaners,	10 %
11	Importation, sales and services of billiard/snooker tables, football game tables, and other game-playing machines,	20 %
12	Entertainment services: night clubs, discotheques, karaoke,	25 %
13	The Consumption of the services of mobile phone, cable TV, internet	10 %
14	Lottery services	10 %
15	Casino activities	15 %

Source: Article 28 of the Tax Law (2005).

ANNEX 2

Quarantine Pest in Lao PDR, 2005

Commodity/ Host Plant	Common Name	Scientific Name/Causal organism
<u>Fresh plant products</u>		
Fruits, vegetables, cut flowers, ornamental branches	California scale Japaneses rod scale Japaneses beetle	Quadraspidiotus perniciosus Lopholeucaspis japonica Popillia japonica
Fruits and vegetables (excluding root crops)	Mediterranean fruit fly Mexican fruit fly Queensland fruit fly Great tongarine fly	Ceratitis capitata Anastrepha ludens Dacus tryoni Tetradacus citri
<u>Stored products</u>		
Grains meals etc. Grains, leguminous seeds Leguminus seeds	Khapra beetle Broad-nosed grain weevil Dried bean weevil	Trogoderma granarium Caulophilus latinasus Acanthoscelides obrectus
<u>Plants</u>		
Vegetative plant parts	Texas root rot California scale Japanese beetle Fig wax scale	Phymototrichum omnivorum Quadraspondiotus perniciosus Popillia japonica Ceroplastes rusci
Rice	White tip nematode Rice stem mematode White leaf(hoja blanca) Black streaked dwarf Stripe	Aphelenchoides oryzae Ditylenchus angustus Virus Virus Virus
Maize	White-fringed beetle Broad-nosed grain weevil Bacterial leaf blight Dry rot	Graphognatus leucoloma Caulophilus latinasus Erwinia stewartii Diplodia Zeae
Groundnut	White-fringed beetle Bean weevil Grounut chlorotic rosette	Panthomorus leucoloma Acanthoscelides obrectus Groundnut rosette virus
Tobacco	Colorado potato beetle Tobacco blue mold	Leptinotanrarsa decemlineata Peronospora tabacina
Coffee	American leaf spot Leaf blight Coffee wilt	Omphalia flavida Colletotrichum coffeanum Gibberella xyliarioides
Sugarcane	White cane grub Leaf scald Nematode	Phytalus smithi Xanthomonus albilineans Tylenchorhynchus martini

Commodity/ Host Plant	Common Name	Scientific Name/Causal organism
Potato	Colorado potato beetle Whitefringed beetle Potato worm Potato cyst nematode Black wart Bacterial ring rot Powdery scab	Leptonotera decemlineata Graphognatus leucoloma Phthorimaea operculella Globodera pallida Synchytrium endobioticum Corynebacterium sepedonicum Spongospora subterranea
Cassava	Bacterial blight	Xanthomonas manihotis
Sweet potato	Foot rot Stem rot White rust disease Virus diseases	Plenodomus destruens Fusarium oxysporum f.sp.ba Coleosporum ipomoeae Viruses
Cotton	Cotton boll weevil Pink boll worm Whitefringed beetle Bacterial leaf blight Cotton wilt Cotton root rot	Anthonomus grandis Pectinophora gossypiella Graphognatus leuncoloma Xanthomonas malvacearum Fusarium oxysporum f.vasinf Phymatotrichum omnivorum
Tomato	Tomato bacterial canker Bacterial leaf blight Bacterial speck Tomato pith necrosis Yellow tomato cyst Nematode Virus Virus Virus Viroid	Corynebacterium michiganense Xanthomonas campestris pv. vesicatoria Pseudomonas syringae pv. tomato Pseudomonas corrugata Globodera rostochiensis Tomato black ring virus Tomato bushy stunt virus Tomato ring spot virus Potato spindle tuber viroid
Onion and other Allium spp	Leek Smut	Urocystis cepulea Frost
Citrus	Mal secco disease Virus Virus Virus Virus Viroid Viroid	Deuterophoma tracheiphila Tirsteza Citrus crinkly leaf virus Citrus leaf rugose virus Citrus ring spot virus Citrus exocortis viroid Citrus cachexia viroid
Tea	Blister blight Root lesion nematode Root knot nematode	Exobasidium vexans Pratylenchus loosi Meloidogyne
Coconut and other palms	Palm weevils Lethal yellowing Heart rot Red ring nematodes Cadang cadang disease	Rhynchophorus spp. Mycoplasma-like organism Phytomonus sp. Rhadinaphelenchus cocophilus Coconut cadang-cadang viroid

Commodity/ Host Plant	Common Name	Scientific Name/Causal organism
Banana and other Musaceae	Moko disease Bunchy top Black leaf streak	<i>Pseudomonas solanacearum</i> Virus <i>Mycosphaerella fijiensis</i> var
Pineapple	Mealy bug	<i>Dysmicoccus brevipes</i>
Rubber	South American leaf blight	<i>Mycocyclus ulei</i>
Papaya	Papaya ring spot virus	Virus (mild strain)
cassava	Cassava bacterial blight	<i>Mycoplasma</i> spp
