

# WORLD TRADE ORGANIZATION

RESTRICTED

WT/ACC/LAO/16

6 May 2008

(08-2135)

---

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

Original: English

## **ACCESSION OF THE LAO PDR**

### Additional Questions and Replies

The following submission, dated 21 April 2008, is being circulated at the request of the Government of Lao People's Democratic Republic (Lao PDR).

---



**TABLE OF CONTENTS**

<b>II.</b>	<b>ECONOMIC POLICIES.....</b>	<b>1</b>
-	Investment Regime.....	1
-	State Ownership and Privatization .....	2
-	Pricing Policies .....	2
-	Competition Policy.....	4
<b>III.</b>	<b>FRAMEWORK FOR MAKING AND ENFORCING POLICIES .....</b>	<b>4</b>
-	Powers of Executive, Legislative and Judicial Branches of Government .....	4
-	Authority of Sub-Central Governments .....	5
<b>IV.</b>	<b>POLICIES AFFECTING TRADE IN GOODS .....</b>	<b>5</b>
-	Trading Rights .....	5
<b>A.</b>	<b>IMPORT REGULATIONS.....</b>	<b>8</b>
-	Tariff rate quotas, tariff exemptions .....	8
-	Fees and charges for services rendered.....	9
-	Application of internal taxes to imports .....	9
-	Quantitative import restrictions, including prohibitions, quotas and licensing systems .....	10
-	Customs valuation.....	13
-	Rules of origin .....	14
<b>B.</b>	<b>EXPORT REGULATIONS .....</b>	<b>14</b>
-	Export restrictions .....	14
<b>C.</b>	<b>INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS .....</b>	<b>15</b>
-	Industrial policy, including subsidies .....	15
-	Technical barriers to trade, standards and certification.....	16
-	Sanitary and phytosanitary measures.....	18
-	Trade-related investment measures .....	26
-	State-trading entities.....	27
-	Free zones, special economic areas.....	29
-	Agricultural policies.....	29
<b>V.</b>	<b>TRADE-RELATED INTELLECTUAL PROPERTY REGIME.....</b>	<b>30</b>
-	GENERAL.....	30
-	Application of national and MFN treatment to foreign nationals.....	30
-	<b>SUBSTANTIVE STANDARDS OF PROTECTION, INCLUDING PROCEDURES FOR THE ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS .....</b>	<b>31</b>
-	Copyright and related rights.....	31

-	<b>Trademarks, including service marks.....</b>	<b>34</b>
-	<b>Geographical indications, including appellation of origin .....</b>	<b>34</b>
-	<b>Patents.....</b>	<b>34</b>
-	<b>ENFORCEMENT .....</b>	<b>35</b>
<b>VI.</b>	<b>POLICIES AFFECTING TRADE IN SERVICES.....</b>	<b>36</b>

## II. ECONOMIC POLICIES

### - Investment Regime

#### Question 1

**Paragraph 24 of the Factual Summary, Question 12 of WT/ACC/LAO/11: We note that in order to qualify for incentives, foreign companies must use more than 50 per cent local raw material (local content requirement). We note that this requirement is incompatible with TRIMs.**

**We would ask Lao PDR to submit an action plan for phasing out these local content requirements.**

#### Answer:

As indicated in the response to Question 12 of document WT/ACC/LAO/11, Lao PDR wishes to recall the Ministerial Decision at Hong Kong, China, with respect to a transition period as regards TRIMs, including local content requirements, for LDCs in light of their financial, trade and development needs (Hong Kong Ministerial Declaration, paragraphs 35-36 and Annex F).

Lao PDR takes note of the request for submission of an such action plan.

#### Question 2

**Factual Summary (page 7, paragraph 20, Table 2): Table 2 shows "Activities Closed to Foreign Investment".**

**Are the foreign enterprises registered in Lao PDR allowed to establish their own business chambers or join the General Chamber of Commerce and Industry of Lao PDR? If yes, please provide details of the procedure?**

#### Answer:

The statute, the Articles of Association, establishing the Lao National Chamber of Commerce and Industry (LNCCI) does not provide for the creation of own or joint chambers of industry of commerce by foreign enterprises registered in Lao PDR. Any enterprise, foreign-owned, joint venture or domestically-owned registered in accordance with laws and regulations of Lao PDR may apply for membership of the LNCCI and its business associations or groups.

#### Question 3

**Thank you for clarifying (Factual Summary, paragraph 19) the legislative basis for investment regulation. Could you provide details on which activities fall under the different categories of Implementing Decree No. 301/PM, as either open to foreign investment, conditionally open to foreign investment, or open to foreign investment subject to concessions granted by the Government? Also, could you provide more detail of the six conditions referred to in paragraph 23, three of which foreign companies must fulfil in order to access investment promotion incentives?**

Answer:

Details of activities that fall under the different categories as those open to foreign investment, conditionally open to foreign investment, or open to foreign investment subject to concessions granted by the Government are provided for in Implementing Decree of the Law on the Promotion and Protection of Foreign Investment No. 301/PM dated 12 October 2005, Articles 23, 24 and 25 respectively, as well as Annexes 3 and 4. A copy of this Decree is available in document WT/ACC/LAO/5/Add.1 refers.

As provided for in Annex 2 of the Decree No. 301/PM, three of six conditions must be met for qualifying for investment incentives. These are:

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

- **State Ownership and Privatization**

**Question 4**

**Factual Summary (pages 9 and 10 , paragraphs 26 and 27, Table 5): According to the report, in 2002, 37 enterprises remained State-owned, and no plans had been formulated to privatize them.**

- **Please elaborate further on why the Lao PDR Government has no plans to privatize these State-owned enterprises?**
- **We would appreciate receiving detailed information on the progress of privatization of State-owned enterprises up to 2007.**

Answer:

Privatization of State-owned Enterprises (SOEs) in Lao PDR had started in 1990 following the enforcement of Ministers Council's Resolution No. 17/PCM dated 16 March 1990 on the Transfer of Ownership of State-owned Enterprises. Consequently, the number of SOEs has decreased from 800 units in 1990 to 37 units in 2002.

Lao PDR has a policy that SOEs of key importance to the economic and social development, national defence and security of the country shall not be privatized. The current 37 SOEs are considered to be under the above-mentioned category of SOEs.

- **Pricing Policies**

**Question 5**

**With respect to the information provided on pricing policies in paragraph 28 of the Factual Summary:**

- **Could the representative of Lao PDR provide specific HS numbers for the products that fall within the categories listed in Table 6 (Price controls in Lao PDR)?**

- **Additionally, could the representative provide explanations for why the specific groups of products are subject to price surveillance?**

Answer:

Please note that Table 6 in the Factual Summary distinguishes between "price control" measures and "price surveillance" measures, which are not the same. Lao PDR would request that the title of Table 6 of the Factual Summary reflect that the table refers to both price controls and price surveillance.

Lao PDR takes note of Members' requests on assigning HS numbers.

Price surveillance involves monitoring against a high price increase which can impact on social or consumer welfare caused by currency fluctuations or high inflation. It is not a price control whereby the Government intervenes in the market price.

#### **Question 6**

**Factual Summary (page 11, paragraph 28, Table 6): The report lists 30 products/product groups subject to price controls, and among these, fuel and gas are subject to maximum price measures.**

- **How does the maximum price measure operate?**
- **Does the Lao PDR Government have any plan to relax the price controls on these products?**

Answer:

The maximum price is calculated by suppliers, taking into account cost structure, including profit margin. The proposed maximum price is then submitted to the Internal Trade Department of the Ministry of Industry and Commerce for consideration and approval. The Internal Trade Department will verify, and if approved, monitor maximum price in the market.

The Internal Trade Department under the Ministry of Industry and Commerce is in the process of amending the Ministerial Instruction No. 0334/MOC/ITD dated 22 March 2002. Consequently, the list of goods under price control and surveillance will be reduced.

Lao PDR confirms that as far as maximum prices are concerned, the interests of exporting countries as provided for in the GATT Article III:9 will be taken into account.

#### **Question 7**

**Factual Summary (page 12, paragraph 29): The report states, "For rice, price controls implied a minimum price in support of farmers' incomes."**

**Please could Lao PDR provide us with details of the price control plan?**

Answer:

As far as rice is concerned, the Government has annually set minimum price for rice in the husk calculated based on the production costs in each year. The objective is to ensure a minimum revenue for poor farmers. Lao PDR reiterates the necessity of this measure as around 80 per cent of the

Lao people earn their living from agricultural activities, and particularly rice farming and related activities. These are resource poor farmers who are engaged in subsistence farming.

#### **Question 8**

**Thank you for explaining (Factual Summary, paragraph 28) that 26 products are subject to "price surveillance", which involves trade officials inspecting traders' premises to check that prices are adequately displayed, and to "ensure adherence to pricing regulations". Aside from the requirement to display the prices of products, are there additional pricing regulations that must be followed?**

Answer:

There are no other requirements.

#### **- Competition Policy**

#### **Question 9**

**Factual Summary (page 12, paragraph 30): The report states, "The representative of the Lao PDR said that Decree No. 15/PM "On Trade Competition" of 4 February 2004 provided the legal basis for the promotion of fair competition in Lao PDR."**

**Could Lao PDR please elaborate further on whether the Decree establishes an independent, single enforcement agency to ensure optimal development and enforcement of the law?**

Answer:

The Decree on Trade Competition No. 15/PMO dated 4 February 2004, Article 5 provides for the establishment of the Trade Competition Committee within the Internal Trade Department of the Ministry of Industry and Commerce.

As to our knowledge, this is not a WTO treaty obligation, Lao PDR is working to overcome the limited human resource and weak institutional capacity, to establish this Committee. Nevertheless, the Internal Trade Department continues to study from the experience of other countries, including that of neighbouring countries.

### **III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES**

#### **- Powers of Executive, Legislative and Judicial Branches of Government**

#### **Question 10**

**Thank you for clarifying that commercial chambers established under the Law "On the People's Courts of Lao PDR" would not have jurisdiction over disputes concerning administrative actions taken by the Government. Noting your statement (in paragraph 35) that "in practice, administrative rulings on trade issues were rarely redressed in the court system", could you provide further information on the avenues available to companies to seek enforceable redress of injury incurred as a result of Government actions?**



Answer:

Cases or disputes relating to administrative relations are under jurisdiction of the civil chambers of the courts as provided for in Article 47 of the Civil Procedure Law, and hence can hear cases relating to acts of administrative officials. The civil chambers of the courts of Lao PDR therefore have jurisdiction over disputes concerning trade-related administrative relations and companies can seek redress of injury incurred as a result of Government officials in the courts.

- **Authority of Sub-Central Governments**

**Question 11**

**We note the statement (in paragraph 40) that Lao PDR would "ensure that the sub-central authorities comply with WTO obligations". Could you provide more information on what legal avenues are open to companies faced with the apparent breach by sub-central authorities of WTO obligations?**

Answer:

The legal avenues open to companies faced with the apparent breach by sub-central authorities of WTO obligations, are provided for in the Law on the Office of the Public Prosecutor No. 50/NA dated 21 October 2003. In particular, Article 3 of the Law provides for the rights and duties of the Office of the Public Prosecutor to monitor and inspect proper and uniform adherence to laws and regulations of Lao PDR by all ministries, ministry-equivalent Organisations, Government Organisations, local administrations, enterprises, and citizens.

**IV. POLICIES AFFECTING TRADE IN GOODS**

- **Trading Rights**

**Question 12**

**From paragraph 43 of the Factual Summary, we understand that a firm in Lao PDR may not import products, even for its own use, unless those products are set out in the business certificate.**

**Is this correct? If so, please explain the rationale for this requirement, and indicate whether firms must similarly identify in their business certificate the domestic products they may be purchasing.**

Answer:

As far as the products do not fall under the list of products that are prohibited for import or export, a firm or enterprise registered in accordance with relevant laws and regulations of Lao PDR may import products for its own use. The requirement to have the products specified in a business certificate relates to firms registered as an import and/or export enterprise to import or export for commercial purpose only.

**Question 13**

**Lao PDR indicates that persons and firms located outside Lao PDR do not have the right to import because that right is conditioned on physical presence in Lao PDR (paragraph 45). This means that a consumer in Lao PDR may purchase domestic products directly from a domestic**

manufacturer, but that same consumer may not purchase products directly from foreign producers. In order for that consumer to purchase the foreign product, the product must go through a firm with a physical presence in Lao PDR. This is an additional step in the sales process that is not imposed on domestic products. As a result, imported products are not permitted equal access to the same channels of distribution as domestic products.

Please explain how Lao PDR will modify its rules accordingly to allow for trading rights consistent with its WTO obligations, specifically GATT Articles III and XI. Also, we reiterate our request to see Lao PDR's laws governing trading rights, including the current requirement to have physical presence for importation.

Answer:

Any consumer can import products into Lao PDR for his/her own use, subject to the Customs Law. Thus, there is no discrimination whether the consumer purchases from domestic or foreign producers.

Lao PDR is continuing to study whether aspects of its import regime modify the conditions of competition between the foreign and domestic products.

#### **Question 14**

**It appears that, because Lao PDR denies to firms located outside Lao PDR the right to import (paragraph 45), Lao PDR has not provided for registration requirements for such firms (paragraphs 41-42). In conjunction with modifications to Lao PDR's laws to accord the right to import to persons and firms located outside Lao PDR, we request information on the registration requirements with which those persons and firms will be expected to comply.**

Answer:

Lao PDR currently does not provide such a right to firm located outside the country. We continue to study this issue.

#### **Question 15**

**We thank Lao PDR for their response to Questions 18 and 25 of document WT/ACC/LAO/11.**

- **However could Lao PDR please clarify why an importer of vehicles, petroleum, and luxury goods must get approval from provincial trade officials whereas importers of other products get justifications issued directly from the Ministry?**
- **Why is there a different process for these specific products?**

Answer:

Additional Questions and Replies (document WT/ACC/LAO/11), the response to Question 18, paragraph 3, as confirmed in paragraphs 41 and 43 of the Factual Summary, note that business registration is required with the Ministry of Industry and Commerce for these products.

#### **Question 16**

**We appreciate Lao PDR's statement that the list of areas closed to foreign investment does not include "activities related to importation and exportation" (WT/ACC/LAO/11, Question 20).**

**However could Lao PDR please provide a copy of Prime Minister's Decree No. 301 or a complete list of the sectors closed to foreign investment?**

Answer:

The activities closed to foreign investment are contained in Table 2 of the Factual Summary, which is taken from the Prime Minister Decree Implementing the Law on the Promotion and Protection of Foreign Investment No. 301/PM.

Its full copy has been provided to the WTO Secretariat. See document WT/ACC/LAO/5/Add.1.

#### **Question 17**

**We note that in response to Question 22 in WT/ACC/LAO/11, Lao PDR indicates that in order to import, a person or firm must have a "licence of import".**

**Please explain whether this means that they may import subject only to the registration requirements set out in paragraphs 41-42 of the Factual Summary, or whether there is a separate "licensing" procedure for persons and firms that wish to import.**

Answer:

The business registration as outlined in paragraphs 41-42 of the Factual Summary is different from the licence of import which is required for each importation outlined in paragraphs 56-61.

#### **Question 18**

**Paragraph 45 of the Factual Summary, Question 17 of WT/ACC/LAO/11: Lao PDR explains that foreign companies are allowed to export and import, provided that they are registered in Lao PDR and "have a physical presence". We would ask Lao PDR to clarify the meaning of a "physical presence"? Does this mean establishment in Lao PDR? The question would be, can a foreign company and an individual carry out export and import as an exporter and/or importer or record, without establishing itself (making and investment) in Lao PDR?**

Answer:

The requirement to "have a physical presence" means that the firm shall be registered as an import and/or export enterprise in accordance with relevant laws and regulations of Lao PDR.

Lao PDR does not provide for import and export to be carried out by individuals or firms which do not have a physical presence in the country.

#### **Question 19**

**Question 18 of WT/ACC/LAO/11: We wonder why it is not possible to register imports of vehicles, petrol and luxury goods directly to the Ministry of Industry and Commerce. Could Lao PDR explain what is the verification needed from provincial offices and why is this necessary?**

Answer:

See the response to Question 15.

### Question 20

**Question 20 of WT/ACC/LAO/11: In what register should a foreign company or individual register itself if it wants to import or export as an importer or exporter of record?**

Answer:

See the response to Questions 13, 14 and 18.

### Question 21

**Factual Summary (page 17, paragraph 43): Fuels and gas are subject to additional requirements (safe handling); petroleum (together with other goods) is subject to eight general criteria for import/export registration.**

**Could Lao PDR please provide further clarification of the content and review processes for these specific restrictions or requirements on importing fuels, gas, and petroleum?**

Answer:

Paragraph 43 of the Factual Summary refers to eight criteria in the Abrogated Ministerial Regulation No. 462/MOC of 8 December 1993, which has been replaced by Prime Minister's Decree No. 206/PM of 10 October 2001. The requirements of importing fuel and gas are outlined in WT/ACC/LAO/5, Question 20.

### Question 22

**Thank you for providing more information on the process of obtaining licenses for importation and exportation. Noting that registration at Ministry level is required for "enterprises engaged in importation of vehicles, petroleum and luxury goods, or exportation of wood and wood products; and for foreign-invested enterprises with a registered capital of US\$200,000 or more", can you explain the practical effect of this requirement, on the approval process and processing times?**

Answer:

As outlined in paragraph 41 of the Factual Summary, the above-mentioned categories of enterprises are registered at the Ministry of Industry and Commerce with the purpose of division of labour between the central and local authorities. This aims at speeding up the process of approval and time in light of limited institutional capacity and the number of personnel.

#### **A. IMPORT REGULATIONS**

- **Tariff rate quotas, tariff exemptions**

### Question 23

**Factual Summary (page 18, paragraph 50): The report states that, "A tariff of one per cent was levied on investment goods under the foreign investment regime, and yarn and textiles used in the production of exported garments were exempt from import duty."**

- **What is Lao PDR's definition of "investment goods"?**
- **Is the same one per cent tariff levied on Lao PDR's domestic enterprises?**

Answer:

"Investment goods" means raw materials, intermediate components and parts, machinery, equipment, and other materials used in the investment projects of productive enterprises.

The import duty exemption/reduction incentive is applied to investment goods imported for processing into the final goods.

- **Fees and charges for services rendered**

**Question 24**

**We note (from paragraph 51) that import permits for food products attract an additional processing fee of 0.05 per cent of the value of the import. Could you explain how this fee is justified, and whether it relates to the actual costs of processing import permits for food?**

Answer:

The *ad valorem* fee for food imports is being reviewed and is expected to be converted to a specific sum payment.

- **Application of internal taxes to imports**

**Question 25**

**JOB(07)/160, paragraphs 53-55: The Secretariat notes that according to Article 14 of the Tax Law, the taxable base for turnover tax on imported goods included import duty and excise tax, if applicable, whereas domestically-produced goods circulated in Lao PDR were taxed on the basis of the actual sales price, the actual value of the contract for goods produced under contractual arrangements, the total services income for services providers, and the actual price paid by the customers for sales on credit.**

**Furthermore, the Secretariat notes that Lao PDR intends to replace the turnover tax with a value added tax (VAT) by January 2009. However, enterprises not required to pay the VAT would continue to comply with the turnover tax.**

**Can Lao PDR please explain further how the VAT and turnover tax will be applied? In particular, can Lao PDR please explain how these tax systems are consistent with Article III?**

Answer:

The application of turnover tax and VAT in different business turnover thresholds is for the effective implementation, including registration and monitoring, given the complexity of the VAT, limited institutional capacity, and the nature of businesses in Lao PDR which are dominated by small and medium sized enterprises.

In addition to paragraph 55 of the Factual Summary, Lao PDR is working on replacing the turnover tax with the VAT as per the timeline indicated in the revised Legislative Action Plan (WT/ACC/LAO/9/Rev.2). Lao PDR is making every effort to bring its tax regime in line WTO obligations.

#### Question 26

**We welcome Lao PDR's announcement (in paragraph 55) that turnover tax would be abolished in favour of a value added tax (VAT) by January 2009. We note that only enterprises with annual turnover exceeding KN 400 million will be required to comply with the new VAT regime; other enterprises would continue to pay turnover tax. Can you explain the WTO justification for applying a different tax regime to some businesses only?**

Answer:

See the response to Question 25.

- **Quantitative import restrictions, including prohibitions, quotas and licensing systems**

#### Question 27

**Lao PDR noted that certain products were added to the "list of goods requiring approval from the ministries concerned" including logs and medical supplies (WT/ACC/LAO/11, Questions 29 and 33).**

- **Is this list different from the list of goods subject to import licensing (paragraph 57, JOB(07)/160)?**
- **If yes, can Lao PDR please provide the WTO with the new complete list of such goods (with HS numbers) requiring such approval?**

Answer:

The list of goods in the Factual Summary JOB(07)/160 is the same as the list in WT/ACC/LAO/11, but the former is more updated.

It is worth nothing that the Ministry of Industry and Commerce is in the process of revising the Notification No. 1376/MOIC.DIMEX dated 10 October 2006, with a view to streamlining and facilitating import and export procedures.

Under the draft revised Notification, the list of goods that require import-export licensing has been specified with HS code, description of goods, and responsible agencies.

#### Question 28

**We appreciate all the work Lao PDR is undertaking to ensure its import licensing regime is WTO consistent. We look forward to any information Lao PDR can provide on the new regime (WT/ACC/LAO/11, Questions 30, 38).**

**When does Lao PDR expect to have a new import licensing regime in place?**

Answer:

Lao PDR is preparing an Action Plan on bringing its import-export regime into compliance with Import Licensing Procedures (ILP) Agreement. Once completed, it will be submitted to the WTO Secretariat.

**Question 29**

Lao PDR notes that it does not have specific provisions on existing regulations governing the timeframe the Government of Lao PDR will allow for the processing of import applications. We urge Lao PDR to implement an import licensing application process that is fully WTO compliant (WT/ACC/LAO/11, Question 49).

Answer:

See the response to Question 27.

**Question 30**

We appreciate the work Lao PDR has done to narrow the list of prohibited products (Table 8, paragraph 56, JOB(07)/160).

We request that Lao PDR please update this table with the list of relevant HS codes.

Answer:

See the response to Question 27.

**Question 31**

We thank Lao PDR for providing an updated list of goods subject to import licensing (Table 9, paragraph 57, JOB(07)/160).

We request that Lao PDR please update this table with the list of relevant HS codes.

Answer:

See the response to Question 27.

**Question 32**

The Secretariat's report, paragraph 58, notes that, "The relevant authorities could elaborate their own detailed lists of goods subject to import or export control." We recommend that Lao PDR provide a table of these specific products formatted in the following manner:

HS Number	Product Description	Ministry or Government Agency Responsible for Import/Export Control	Fee(s) for Import Licence
-----------	---------------------	---	---------------------------

Answer:

See the response to Question 27.

**Question 33**

We respect Lao PDR's right to prohibit trade for security reasons.

- However could Lao PDR please clarify what "under strict control of the Ministry of Information and Culture" (WT/ACC/LAO/5, Annex VI) means with regards to

- "receivers and transmitters through satellites, internet, equipment for radio broadcasting and television station"? These products are not on the list of prohibited products (Table 8) or the list of products subject to import licensing (Table 9); and**
- **How does Lao PDR treat these products? Can Lao PDR please provide a list of relevant HS codes?**

Answer:

The import and export of receiving and transmitting radio equipment has to be subject to import-export licensing for the purpose of national security and frequency safety. This item is now added to the revised list.

See also the response to Question 27.

**Question 34**

**Paragraph 61 of the Factual Summary, Question 40 of WT/ACC/LAO/11: Could Lao PDR indicate any timeline for revising its licensing system?**

**This area should be added to the legislative action plan.**

Answer:

See the response to Question 28.

**Question 35**

**We are pleased that the list of products subject to import prohibitions has been shortened to five product groups, and that Lao PDR will be supplying the HS codes of affected goods in due course (paragraph 56). Noting (in paragraph 58) that other authorities could establish their own lists of goods subject to import controls, could you explain how these lists are developed and promulgated?**

Answer:

See the response to Question 27 as regards the progress on revising the Notification No. 1376/MOIC.DIMEX dated 10 October 2006. The Ministry of Industry and Commerce is consulting with relevant line ministries how to consolidate the list of goods that require approval and are prohibited from import and export.

**Question 36**

**Can you provide more information on the process by which approval can be obtained from the Prime Minister's Office for the importation of ordinarily-prohibited goods under "exceptional cases"?**

Answer:

See the response to Question 31, the penultimate paragraph, of additional Questions and Replies (WT/ACC/LAO/5) as regards process to obtain approval from the Prime Minister's Office for the importation of ordinarily-prohibited goods under "exceptional cases".



**Question 37**

**We note (from paragraph 58 of the Factual Summary) that Lao PDR's non-automatic import licensing procedures are currently subject to review. We are interested in the procedures involved in the importation of agricultural products, and would appreciate information on the import licensing process involved, and how this might change after your review.**

Answer:

See the progress on review of the import licensing procedures in the response to Questions 27 and 28.

**Question 38**

**We are pleased to learn (in paragraph 59) that the indicative import plan mechanism has been abolished. Does this mean that all goods not prohibited or subject to non-automatic import licensing could be imported under automatic licenses without the need for other processes? If not, please explain what processes remained to be followed.**

Answer:

Lao PDR confirms that the indicative import plan has been abolished as per the Ministry of Industry and Commerce's Order on Import and Export Facilitation No. 0453/MOIC.DIMEX dated 26 March 2007.

See also the response to Questions 27 and 28.

- **Customs valuation**

**Question 39**

**We have continuing concerns about Lao PDR's reliance on price databases, as described in paragraph 64 of the Factual Summary. We would like to advise Lao PDR that the WCO has issued guidelines restricting such databases to use as a risk assessment tool. The prices in the databases are not to be used to determine the customs value for imported goods, as a substitute value for imported goods, or as a mechanism to establish minimum values.**

Answer:

The Decree on the Implementation of the Customs Law No. 362/PM dated 19 October 2007, Article 4 (Customs value of imported goods) establishes as a basis for determining customs values in Lao PDR the same hierarchy of methodologies of customs valuation as provided for in the WTO Agreement on Implementation of Article VII of the GATT 1994.

A copy of the Decree on the implementing of Customs Law has been provided to the WTO Secretariat (document WT/ACC/LAO/16/Add.1 refers).

It should be noted that Lao PDR has requested for a transition period until the end of 2012 for achieving compliance with the CVA as provided for in the Action Plan on CV (document WT/ACC/LAO/12/Rev.1).

**Question 40**

**Question 53 of WT/ACC/LAO/11: We thank Lao PDR for submitting the CVA Action Plan, and note the request of Lao PDR for a transition period until end 2011 for achieving full compliance with the CVA, and its request to receive TA in this area.**

Answer:

Lao PDR looks forward to working with development partners to secure technical assistance to implement the Customs Valuation Action Plan.

- **Rules of origin**

**Question 41**

**Paragraph 66 of the Factual Summary, Question 60 of WT/ACC/LAO/11: Has the revised Implementation Decree incorporating provisions of the WTO Agreement on Rules of Origin already entered into force?**

Answer:

The Decree on Implementation of the Customs Law No. 362/PM was adopted on 19 October 2007. Lao PDR is in the process of preparing a regulation to further elaborating the implementation of the provisions of Article 2(h) and Annex II paragraph 3(d) of the Rules of Origin Agreement.

**B. EXPORT REGULATIONS**

- **Export restrictions**

**Question 42**

**Export duties: Paragraph 70 of the Factual Summary: What is the rationale for imposing export duties on the products listed in Table 10?**

Answer:

Lao PDR, as a least-developed country, has a relatively narrow tax base and export duties are collected for revenue purposes.

**Question 43**

**Does Lao PDR have plans to phase out export duties in the future?**

Answer:

Lao PDR has no plans at present to phase out these duties.

**Question 44**

**We note Lao PDR's explanation (in paragraph 73) that mining and forestry products were subject to export restrictions in order to conserve natural resources. We would welcome further information on how conservation objectives are considered in determining the grant of export licenses, and how these objectives are balanced against the objective (noted in paragraph 78) of promoting foreign investment in mining.**

Answer:

The Sixth National Socio-economic Development Plan of Lao PDR provides for the attainment of balanced development with respect to economic, social and environmental aspects. Hence, the Government of Lao PDR has tried to promote sustained economic growth including through promoting domestic and foreign investment that would benefit the people while ensuring social and environmental sustainability. The mining industry is one of the priority sectors being promoted and developed in line with this development plan.

**C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS**

- **Industrial policy, including subsidies**

**Question 45**

**We appreciate Lao PDR's efforts to comply with its obligations under Article 25 of the SCM Agreement to notify all subsidy programmes, including subsidies contingent upon the use of domestic over imported goods (WT/ACC/LAO/11, Question 63).**

**We urge Lao PDR to make a commitment that upon accession it will eliminate all local content requirements in its incentive programmes.**

Answer:

Lao PDR is endeavouring to comply with its future obligations under Article 25 of the SCM Agreement and, as a landlocked LDC, seeks to avail itself to the rights and flexibilities as provided to LDCs in the SCM Agreement. Lao PDR will make the effort to comply with the transparency obligations laid out in such agreement upon accession.

See also the response to Question 1 with respect to local content requirement.

**Question 46**

**We appreciate the additional information provided by Lao PDR as to the 20 per cent threshold in its local content subsidy programme in the Boten and Dansavanh Village Border Trade Zones (WT/ACC/LAO/11, Question 101).**

**We urge Lao PDR to make a commitment that upon accession it will eliminate all local content requirements in its incentive programmes, including programmes in its free trade zones.**

Answer:

See the response to Questions 1 and 45.

**Question 47**

**Paragraph 79 of the Factual Summary: We note that Annex II of the Implementing Decree to the Investment Laws sets local contents requirements (50 per cent) as criteria for receiving investment incentives.**

**We would ask Lao PDR to identify all local content subsidies and provide an action plan for their gradual elimination. Lao PDR should also prepare a notification on all its subsidies to the WTO Subsidies Committee.**

Answer:

Annex II of the Implementing Decree of the Law on the Promotion and Protection of Foreign Investment identifies the local content requirement as one possible criteria among six, only three of which are to be fulfilled.

See also the response to Questions 1, 45 and 78.

**Question 48**

**We would welcome further information regarding the ongoing revision of the Mining Law, designed (as explained in paragraph 78) to "create a more enabling environment for investment in this area". Could you explain what amendments are proposed?**

Answer:

The proposed amendments include:

- Streamlining licensing procedures to facilitate investment in the mining industry; and
- A clearer division of rights and duties between the central and local mining authorities in regulating and promoting mining activities in Lao PDR.

The proposed revision of the Mining Law has been prepared in consultations with relevant stakeholders including line ministries and related businesses in Lao PDR. The draft Law is presently with the Ministry of Justice for review, and if approved, will be submitted to the Prime Minister's Office and thereafter to the National Assembly for adoption.

- **Technical barriers to trade, standards and certification**

**Question 49**

**We appreciate Lao PDR's efforts to provide a description of its system of standards, technical regulations and conformity assessment in JOB(07)/160. However, we still have a number of questions.**

**We note that in WT/ACC/LAO/11 (Question 66, page 24) Lao PDR indicated that it would make available the draft of the Standards Law. A review of this law and the implementing regulations and decrees, as drafts become available, will provide Working Party Members with a better understanding of how the obligations of the TBT Agreement are being incorporated into Lao PDR's system.**

Answer:

The draft Law on Standards was endorsed by the National Assembly on 26 November 2007, and is in the final process of promulgation by the President of the National Assembly and the President of Lao PDR.

The Decree and regulations implementing the Law on Standards are in the process of preparation. See also the Action Plan on TBT Agreement (document WT/ACC/LAO/14/Rev.1).

#### Question 50

Based on the information in paragraph 82, we understand that in addition to the Standards Law Lao PDR is also finalizing a Regulation on Information Procedures.

- **What is the status of that regulation? Is a draft available for Working Party Member review?**
- **How will the Regulation on Information Procedures relate to the Standards Law, particularly since Lao PDR has indicated that the Standards Law will incorporate the elements in the TBT Checklist, including transparency?**

Answer:

The Law on Standards, Article 91, provides for the overall duties of the National Science and Technology Authority (NSTA), previously known as the Science Technology and Environment Agency (STEA). After the promulgation of the Law on Standards, the NSTA will formulate the Regulation on Information Procedures. See the Action Plan on TBT Agreement (document WT/ACC/LAO/14/Rev.1) which outlines the plan on legislative progress. Article 34 of the Law on Standards further elaborates the duties of the National Standards Council to formulate the standards in a transparent manner.

#### Question 51

With regard to your response to Question 68 on "domestic regulations" (WT/ACC/LAO/11, page 25):

- **How will Lao PDR ensure that the domestic regulations that do not have to await the passage of the Standards Law conform with the obligations under the TBT Agreement?**

Answer:

The Law on Standards is built on the key provisions of the TBT Agreement in the existing Decree of the Prime Minister regarding the Management of the Standard and Quality of Goods and Products No. 85/PM of 1995 in addition to other requirements of the TBT Agreement.

Please note that Lao PDR has requested for a transition period until 2012 as indicated in the Action Plan on TBT (document WT/ACC/LAO/14/Rev.1).

#### Question 52

We note that the transition period Lao PDR has requested has been adjusted from 2010 to 2012.

- **Could the representative from Lao PDR explain why an additional two years has been added to the request?**
- **Furthermore, on what basis did Lao PDR determine that an additional two years would be required?**
- **Has an assessment of Lao PDR's needs been completed? If so, could Lao PDR share those findings with Working Party Members?**

Answer:

Please note that the 2010 timeline referred to the date for the passage of the Law on Standards and implementing regulations. The year 2012 referred to the date for compliance with the TBT

Agreement which requires the development of national infrastructure, including technical assistance to identify and support the plan of actions such as formulation of implementing regulations, raising public awareness, capacity building, providing testing facilities etc.

As stated in the Action Plan on the TBT Agreement (document WT/ACC/LAO/14/Rev.1), technical assistance is required to identify the exact needs.

#### **Question 53**

**We thank Lao PDR for submitting the Action Plan on TBT. We take note of the transition period until 2012 indicated for full compliance.**

Answer:

Lao PDR looks forward to working with development partners to secure technical assistance to implement the TBT Action Plan (document WT/ACC/LAO/14/Rev.1).

#### **Question 54**

**We note (from paragraph 82) that "testing facilities for construction materials, textiles and chemicals would be in place by 2011", but also (from paragraph 85) that Lao PDR "recognised the rules of conformity assessment conducted by the relevant bodies in exporting countries". Can you confirm that Lao PDR recognised all conformity assessment conducted in exporting countries, including for construction materials, textiles and chemicals?**

Answer:

Lao PDR recognises the rules of conformity assessment conducted by the relevant bodies in exporting countries in particular based on national standards including for construction materials, textiles and chemicals.

#### **Question 55**

**We welcome your statement (in paragraph 84) that a single enquiry point for TBT issues would be established within the National Organization for Science and Technology (NOST). We would be interested to know when this enquiry point will begin operating.**

Answer:

As indicated in the Action Plan on the TBT Agreement (document WT/ACC/LAO/14/Rev.1), the TBT enquiry point will be operative upon Lao PDR's accession to the WTO.

- **Sanitary and phytosanitary measures**

#### **Question 56**

**With reference to WT/ACC/LAO/11 (Questions 80-85) and WT/ACC/LAO/6, we respectfully reaffirm our request for the Lao PDR to communicate how it plans to incorporate the following principles of the WTO SPS Agreement into its domestic regulations:**

- **Necessity: measures are applied only to the extent necessary to protect human, animal or plant health;**

- **Regulations based on science:** animal, plant health and food safety measures shall be based on scientific evidence;
- **Equivalence:** Members shall recognize different measures that achieve the same level;
- **Risk Assessment:** develop scientific evidence and conduct risk assessments to ensure that measures are based on science and applied only to the degree needed to protect health;
- **Non-discrimination:** measures do not arbitrarily or unjustifiably discriminate between different Members or between domestic and foreign suppliers; and
- **Control, inspection and approval procedures:** ensure that procedures, including systems for approval of the use of additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs comply with the Agreement.

Answer:

Lao PDR wishes to update Members on the current status of its legislative developments on SPS as follows:

With respect to animal health, the draft Law on Veterinary is in the stage of drafting and should be submitted to the National Assembly in 2009 for final comments and approval. The draft Law has been prepared and commented with international experts under the EC and World Bank-funded projects. This incorporates the key principles of the WTO SPS Agreement.

With respect to plant health, the elaboration of a technical assistance project is being finalized and the project is expected to begin by mid 2008 under the Integrated Framework. The key components of the project are the strengthening of SPS capacity which will focus on (i) strengthening SPS institutional, legal and regulatory framework; (ii) determining risk-based policies and control measures for SPS; and (iii) strengthening the role of the private sector in a SPS regime. Lao PDR will ensure that the above mentioned principles under the WTO SPS Agreement will be reflected in the regulatory framework on plant health being developed under this project.

With respect to food safety, the draft regulations to implement the Food Law (2004) are being drafted and the aforementioned principles will be reflected therein. See also the progress on implementing the Food Law (2004) in the SPS Action Plan (WT/ACC/LAO/13/Rev.1).

**Question 57**

**We note that in WT/ACC/LAO/13 (SPS Action Plan), there is no provision for Issue No. 3 Plant Health for drafting corresponding measures in accordance with the SPS Agreement.**

**How does the Lao PDR intend to develop plant health measures compliant with the SPS Agreement?**

Answer:

See the response to Question 56 on plant health.

**Question 58**

**With respect to the information provided in response to Question 81 of WT/ACC/LAO/11, concerning Lao PDR's incorporation of science-based regulations:**

- **Please provide a copy of Resolution No. 09/PMO, dated 27 November 2003.**

Answer:

A copy of the Science and Technology Policy of Lao PDR as endorsed by the Government in the Resolution No. 09/PMO, dated 27 November 2003 has been provided to the WTO Secretariat (document WT/ACC/LAO/16/Add.1 refers).

**Question 59**

**We note in WT/ACC/LAO/6 that a reasonable comment period procedure for Members will be established after accession.**

- **We respectfully request that Lao PDR enforce such a procedure upon accession rather than after; and**
- **Please provide examples of laws or regulations that affect the rights and interests of the general public and where comments were solicited from the public and the corresponding timeframes allotted.**

Answer:

All laws in Lao PDR that have been adopted since the passage of Presidential Ordinance on Legal Act Drafting No. 02/OPR of 20 October 2003 have followed the procedures that require public consultations, particularly in laws that relate to many parties and the vital interests of the people (Article 37 of the Presidential Ordinance on Legal Act Drafting No. 02/OPR).

A copy of the Ordinance has been provided to the WTO Secretariat (document WT/ACC/LAO/16/Add.1 refers).

**Question 60**

**In response to Question 87 of WT/ACC/LAO/11, which sought clarification on the extent to which Lao PDR follows international standards when formulating SPS regulations, Lao PDR noted that "in practice" it follows the standards of ASEAN, and where no ASEAN standards exist, it follows OIE/IPPC/Codex. However, this appears to reverse the presumption set out in Article 3 of the SPS Agreement, which calls for SPS measures to be based on "international standards". Annex A to the SPS Agreement makes clear that "international standards" refers to IPPC, OIE, Codex or any other International Organization that is open for membership to all WTO Members.**

**In cases where ASEAN standards and guidelines differ with international standards, will Lao PDR equally recognize and accept international standards like Codex, OIE and IPPC as part of its efforts to harmonize its domestic SPS and TBT Laws with international standards?**

Answer:

The response to Question 87 of WT/ACC/LAO/11 does not appropriately characterize the relationship between ASEAN and international standards. Paragraph 86 of the Factual Summary (JOB(07)/160), page 29, correctly outlines the current situation. The SPS standards in Lao PDR are based on international standards and guidelines under the OIE, IPPC and the Codex Alimentarius.

**Question 61**

**In reply to Question 92 of WT/ACC/LAO/11, Lao PDR explains that technical assistance is required to enhance institutional capacity and laboratory build-up.**



**Please specify and explain the technical assistance that Lao PDR needs to enhance institutional capacity and laboratory build-up.**

Answer:

The Ministry of Agriculture and Forestry in collaboration with the Ministry of Health and the National Science and Technology Authority is finalizing a project under a multi-donor trust fund, the Trade Development Facility (TDF), with the World Bank and development partners under the Integrated Framework. The key components of the project on strengthening SPS capacity will focus on (i) strengthening SPS institutional, legal and regulatory framework; (ii) determining risk-based policies and control measures for SPS; and (iii) strengthening the role of the private sector in a SPS regime. Lao PDR looks forward to working with Members on laboratory build up to ensure that it is able to meet the requirements of SPS Agreement as indicated in the Action Plan on SPS Implementation WT/ACC/LAO/13/Rev.1.

#### **Question 62**

**We appreciate Lao PDR's reply to Question 96 concerning Lao PDR's legal and institutional framework affecting SPS. We have some follow-up questions on Lao PDR's reply.**

**What are the requirements for:**

- **Issuing permits for imported food; and**
- **Registration of food premises and products**

**Please provide copies of these requirements.**

- **How does the Food and Drug Department (FDD) plan to provide food safety information to the public?**
- **How does the Food and Drug Quality Control Center (FDQCC) plan to monitor food contaminants?**
- **Please provide a copy of the SPS and TBT legislation that has been provided to the WTO Secretariat.**

Answer:

The Food Law of 2004 provides for the principles to be taken into account with respect to food importation and food business activities (Articles 17 to 24) to assure food safety, hygiene and quality.

The Ministry of Health is currently drafting regulations to elaborate detailed requirements on implementing the Food Law.

Examples of the requirements for issuing import food that could be incorporated in the draft regulations would include food safety and quality certification such as Good Manufacturing Practices (GMP), or Hazard Analysis and Critical Control Points (HACCP).

Examples of the requirements for registration of food premises and products that could be incorporated in the draft regulations include food processing in line with Good Manufacturing Practices, label of product, employee health certification, establishment authorization or business authorization, layout of premises, and flow chart of food factory.

The information on food safety is regularly channelled to the public through mass media e.g. television, radio, and printed materials; community gathering; mass Organizations, e.g. Lao Youth Union, Lao Women Union, and Lao Trade Federation; and training for food producers.

Food monitoring is provided for in Part VI (Food management and inspection) of the Food Law of 2004. It includes analysis of food samples by the Food and Drug Quality Control Center (FDQCC) which also together with the Food and Drug Department (FDD) monitors food contaminants under projects, including aid-funded programmes at the Ministry of Health.

### **Question 63**

**With respect to Lao PDR's SPS Action Plan (WT/ACC/LAO/13, 20 July 2007):**

- **Please specify and explain the type of training that Lao PDR requires to be able to draft and finalize regulations on Food Safety and on the Implementation of the Food Law, in accordance with the SPS Agreement.**

#### Answer:

The training includes workshops and field visits on the SPS Agreement and its implications on national practices on food safety.

In addition, the Ministry of Health also needs experts/consultants in the area of food safety to assist in formulating implementing regulations of Food Law to ensure compliance with the WTO SPS Agreement and international practices.

See also the response to Question 61 with respect to recent updates on technical assistance on SPS capacity building.

### **Question 64**

**With respect to paragraph 89 of the Factual Summary:**

- **Please explain how its Ministry of Commerce and its SPS/TBT Enquiry Point coordinate regarding the submission of Lao PDR's SPS notifications to the WTO?**

#### Answer:

As provided for in the revised Legislative Action Plan WT/ACC/LAO/9/Rev.2, the SPS/TBT Enquiry Point will be established in the National Science and Technology Authority (NSTA) whereas the SPS/TBT Notification Point under the Ministry of Industry and Commerce, both of which will be operative upon Lao PDR's accession to the WTO.

As the SPS/TBT Enquiry Point, the NSTA will be the channel for forwarding all enquiries from WTO Members to the line ministries as well as responding to the enquiries from WTO Members.

As the SPS/TBT Notification Point, the MOIC will be responsible for preparing notifications and forwarding laws and regulations on SPS/TBT as required to the WTO Secretariat.

Line ministries responsible for SPS/TBT will provide necessary laws and regulations and information to the National Science and Technology Authority and the Ministry of Industry and Commerce to fulfil their tasks.

## Question 65

SPS questions on the Legislative Action Plan (WT/ACC/LAO/9/Rev.1 of 20 July 2007).

**Section I: We note that Section I under the Introduction states that Food Law (2004) is one of several laws that is either new or amended and has recently been approved by the Lao PDR National Assembly:**

- **Please confirm if this Law is new or amended;**
- **Please explain how this Law harmonizes with international standards like Codex, OIE and IPPC as appropriate. What steps has Lao PDR taken to harmonize this Law with international standards; and**
- **Further, please provide a copy of the new or amended Food Law (2004).**

Answer:

The Food Law No. 04/NA dated 15 May 2004 is a newly developed law that was adopted by the National Assembly in 2004.

The Food Law, Section 2, Article 13 provides the basis for the adoption of new food standards in Lao PDR to be based on the standards of the Codex Alimentarius.

With regard to standard harmonization with the OIE and IPPC, see the response to Questions 56 and 60.

The following are national food standards that have been adopted based on the Codex Alimentarius standards:

- Regulation on drinking water in sealed containers; and
- Regulation on production, import and export of safe food.

The following are national food standards that are in the processing of being adopted and which are based on the Codex Alimentarius standards:

- Regulation on food labelling;
- Regulation on Good Manufacturing Practices (GMP) and Hazard Analysis and Critical Control Points (HACCP); and
- Regulation on food additive substances.

The Codex Alimentarius standards are applicable in the following where national food standards have not yet been adopted to date:

- Standards on food substances such as: sweet, colorant, preservatives, food additives, etc.; and
- Standards on food residues and contamination e.g. chemical substance, bacteria, fertilizer residue, polluted emission etc.

## Question 66

**Section II: No. 5, Law on Standards - SPS and No. 6, Law on Metrology - SPS:**

- **Please identify the type of assistance that you require to further work on the Draft Law;**
- **Please specify the type of assistance that you need for publication, dissemination, training and establishing testing facilities;**

- **Please explain how this Basic Draft Law on SPS harmonizes with international standards;**
- **Please provide the scheduled dates (if known) for adopting this Law in 2007 and for National Assembly approval in 2009; and**
- **Please explain the transition period that you require to comply with the provisions of the TBT and SPS Agreements.**

Answer:

Lao PDR is in the process in elaborating its detailed technical assistance requirements under the Integrated Framework, including a multi-donor trust fund, known as Trade Development Facility, to support the country's efforts to bring its SPS regime into compliance with WTO SPS Agreement. Further details and recent developments can be found in the website: [www.integratedframework.org](http://www.integratedframework.org).

With respect to harmonization with international standards, see the response to Questions 56 and 60.

Expected dates to approve laws are contained in the revised Legislative Action Plan (WT/ACC/LAO/9/Rev.2).

Lao PDR looks forward to working with development partners to secure technical assistance to implement the SPS and TBT Action Plans (documents WT/ACC/LAO/13/Rev.1 and WT/ACC/LAO14/Rev.1).

**Question 67**

**Section II: No. 8, Law on Plant Protection and Plant Quarantine - SPS:**

- **Please specify the technical and financial assistance required to draft this Law;**
- **Please specify the additional technical and financial assistance Lao PDR needs on capacity building, human resources and infrastructure development per the Action Matrix of the Integrated Framework in Lao PDR recommendations;**
- **Please explain how this Law harmonizes with international standards; and**
- **Please identify the transition period that you need to comply with the provisions of the SPS Agreement.**

Answer:

See the response to Questions 56, 60 and 66.

The transition period for compliance with the SPS Agreement is indicated in the Action Plan on SPS. Lao PDR looks forward to working with development partners to secure technical assistance to implement the SPS Action Plan (document WT/ACC/LAO/13/Rev.1).

**Question 68**

**Section II: No. 9, Regulations to Implementing the Food Law:**

- **Please specify the type of assistance and training that you need to draft this Regulation.**

Answer:

See the response to Question 63.

### Question 69

#### Section II: No. 10, Regulation on the Establishment of the SPS/TBT Notification Point - SPS and TBT:

- Please explain the planned staffing for the SPS and TBT Enquiry Points.

#### Answer:

As outlined in the revised Legislative Action Plan (WT/ACC/LAO/9/Rev.2), the regulatory and institutional framework is under preparation. Assistance is being received from the US and Singapore to train staff.

### Question 70

#### Section II: No. 14, Regulation to Establish a GATS Enquiry Point:

- Please explain what a GATS Enquiry Point is; and
- What is the difference between the SPS/TBT and GATS Enquiry Point?

#### Answer:

The GATS Enquiry Point, as provided for in Article III of the WTO GATS Agreement, is to be established in the Foreign Trade Policy Department of the Ministry of Industry and Commerce.

The SPS/TBT Enquiry Point, as provided for in Article 7 and Annex B.3 of the WTO SPS Agreement and Article 10 of the WTO TBT Agreement, is to be established in the Department of Intellectual Property, Standardization and Metrology of the National Science and Technology Authority.

### Question 71

**We thank Lao PDR for submitting the Action Plan on SPS. We take note of the transition period until 2012 indicated for full compliance.**

#### Answer:

Lao PDR looks forward to working to secure technical assistance from Members to support its efforts to comply with the WTO SPS Agreement as per indicated in the Action Plan on SPS (document WT/ACC/LAO/13/Rev.1).

### Question 72

**We welcome your statement (paragraph 89) that a single enquiry point for SPS issues would be established within NOST. We would be interested to know when this enquiry point will begin operating.**

#### Answer:

The SPS/TBT Enquiry Point will be operative upon Lao PDR's accession to the WTO under the National Science and Technology Authority (formerly NOST). Paragraph 89 of the Factual Summary can be updated in this regard.

### Question 73

We welcome the information (in paragraph 90) that, for food quality compliance purposes, certificates issued in the exporting country would be accepted and recognised. We have the following questions regarding this policy:

- **Is the provision of this certificate a precondition to obtaining an import licence for a product, or can the certificate be proffered upon actual importation of the product?**
- **Does the provision of a quality compliance certificate obviate the need for any further licensing or compliance testing?**
- **Is this policy enshrined in a legislative instrument, and, if so, which one?**
- **We note that a quality certificate is needed for each shipment. Why is this requirement necessary to ensure food safety, in cases when an importer is importing products from a country and supplier previously found to satisfy safety requirements?**
- **We would welcome more detailed information on the process of obtaining a licence for the importation of agricultural products.**

#### Answer:

Yes, obtaining this certificate is a precondition for obtaining an import licence prior to the actual importation of the product.

The provision of quality compliance certificate will facilitate obtaining the licence to import. It will obviate the need for compliance testing.

The above mentioned policy is enshrined in the Food Law of 2004 and the Regulation on the Control on Production and Export-Import of Safe Food No. 586/MOH dated 12 May 2006.

The certification of food quality is required for every shipment. The Food and Drug Department has the constant challenge of ensuring that food in the market is safe, hygienic and of quality as provided for in the Food Law (2004). Lao PDR continues to experience incidences of imported food and drinks that have expired shelf life.

See the progress on review of the import licensing procedures including for agricultural products in the response to Questions 27 and 28.

- **Trade-related investment measures**

### Question 74

**We are very concerned by investment-discouraging measures such as the requirement that foreign invested companies use 90 per cent local workforce. While we understand the motivations of the Lao PDR Government, such measures ultimately make Lao PDR a less attractive place for foreign investment, and will be counter-productive for local employment.**

#### Answer:

Paragraph 24 of the Factual Summary, as it currently reads, could be incorrectly understood as linking the requirements on hiring local workforce, training, and technology transfer to TRIMs Agreement disciplines. Thus, Lao PDR requests this to be appropriately reflected in the Factual Summary.

As a least developed country, Lao PDR does not believe that employment rights for foreigners are appropriately negotiated under TRIMs.

In addition, Lao PDR reiterates that Article 27 of the SCM Agreement provides flexibilities for LDCs to use export performance requirements. Thus, this is also to be appropriately reflected in the Factual Summary.

**Question 75**

**Regarding measures incompatible with the TRIMs agreement, we take note of Lao PDR's response to Question 98 of WT/ACC/LAO/11 that "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."**

**For purpose of clarity, please confirm that Lao PDR shares our understanding that such phase-out period for existing measures will last for seven years from the date of accession, and that it will have effect for those existing measures notified to the Council for Trade in Goods.**

Answer:

As regards the transition period, the understanding of Lao PDR is that LDCs can avail of the transition period as provided for in the Hong Kong Ministerial Declaration (paragraphs 35-36 and Annex F).

See also the response to Question 1.

- **State-trading entities**

**Question 76**

**JOB(07)/160, paragraphs 93-94: We note the 16 State-owned enterprises that Lao PDR says are "currently involved in importation or exportation of goods".**

**It would be helpful to have these enterprises set out in a table to be annexed to the Factual Summary, indicating the sectors in which they operate and what the nature of their "involvement" with importation/exportation is. Any description provided would allow the Working Party to better evaluate those enterprises against the obligations in GATT Article XVII.**

Answer:

List of State-owned Enterprises involved in importation or exportation of goods is as follows:

	Name of SOEs	Responsible Agency	Sectors	Registered Activities	Exclusive or Special Privileges Granted? (yes/no)
1	Lao Trade Import-Export Company	Ministry of Industry and Commerce	Construction and technical equipments	Import of construction materials, electrical equipment and export of wood and handicraft products.	no
2	Lao International Import-Export	Ministry of Industry and Commerce	Construction and technical equipments	Import of construction materials, electrical equipment and export of wood and handicraft products.	no

	Name of SOEs	Responsible Agency	Sectors	Registered Activities	Exclusive or Special Privileges Granted? (yes/no)
3	Technical Equipment Supply Enterprise	Ministry of Industry and Commerce	Construction and technical equipments	Import of technical equipments including telecommunication equipments.	no
4	Lanexang Development Co. Ltd	Ministry of Industry and Commerce	Construction and technical equipments	Import of construction materials, spare parts, electrical equipments; export of wood and handicraft products.	no
5	Construction Materials, Surveys & Analyses Co.	Ministry of Industry and Commerce	Construction and technical equipments	Import of construction materials and technical equipments.	no
6	Lao International Trade Service Company	Ministry of Industry and Commerce	Construction and technical equipments	Import of technical equipment including various consumption goods; export of handicraft products.	no
7	Lao State Fuel Company	Ministry of Industry and Commerce	Energy	Import of gasoline, diesel, lubricants and gas.	no
8	Barite Exploration Co.	Ministry of Energy and Mining	Mining	Operation ceased.	no
9	Lao Cotton State Enterprise	Lao Women's Union	Textile	Export of Clothing and other cotton-made products.	no
10	Pharmaceutical Factory No. 2	Ministry of Public Health	Public health	Import of chemical products and export of medicines.	no
11	Pharmaceutical Factory No. 3	Ministry of Public Health	Public health	Import of chemical products and export of medicines.	no
12	State Printing Enterprise	Ministry of Information and Culture	General printing	Printing equipment.	no
13	Agricultural Machinery Company (Tha Ngone)	Ministry of Agriculture and Forestry	Agriculture and forestry	Import of agricultural machinery and materials; export of agricultural, forest and wood products.	no
14	Development of Agro-Forestry Industry Co. (DAFI)	Ministry of Defence	Agriculture and forestry	Import of agricultural machinery and materials; export of agricultural, forest and wood products.	no
15	State Enterprise for Agriculture and Industry Development	Ministry of Defence	Agriculture, forestry and manufacturing	Import of agricultural machinery and materials; export of agricultural, forest and wood products.	no
16	Bolisat Phattana Khet Phoudoi (Mountainous Area Development Company)	Prime Minister's Office	Agricultural, forest and rural development	Import of agricultural machinery and materials; export of agricultural, forest and wood products.	no

Please note the SOEs listed in the above table are not granted any exclusive or special privileges to import and export within the meaning of the GATT Article XVII.

Note also that the oversight of Bolisat Phattana Khet Phoudoi is now responsible by the Prime Minister's Office. Please reflect this change in the Factual Summary accordingly.



#### Question 77

We note that in this section, Lao PDR makes reference only to the State-owned enterprises "currently involved in importation or exportation of goods".

We remind Lao PDR that the disciplines of the GATT Article XVII apply to all State-owned and controlled enterprises, regardless of involvement with importation/exportation (e.g., those mentioned in response to Question 157 of WT/ACC/LAO/11), and that Lao PDR will be expected to undertake a commitment in this section accordingly.

#### Answer:

See the response to Question 76.

- Free zones, special economic areas

#### Question 78

**Paragraph 96 of the Factual Summary:** We note that goods produced in the SEZs and FEZs, are not subject to normal import duties when they enter the domestic market of Lao PDR, but reduced duties based on the percentage of the local contents used.

We would urge Lao PDR to remove this differentiated treatment of imported goods and goods produced in FEZs, and to apply normal import duties without any reductions also to goods produced in FEZs.

#### Answer:

The FEZs and SEZs in Lao PDR are in their early stages of development and SEZs and FEZs have been identified as priority policy areas for the further development of the country.

As provided for in the response to Questions 1 and 75, the Government of Lao PDR wishes to avail itself of the transition period for the use of TRIMs.

- Agricultural policies

#### Question 79

We welcome information provided by Lao PDR on agricultural support measures. We would prefer these measures be scheduled in local currency units, to provide a more accurate measure of actual support paid to farmers.

#### Answer:

The check-list on agricultural support will be amended accordingly (see document WT/ACC/SPEC/LAO/1/Rev.1).

#### Question 80

We would appreciate more information on the operation of the State-owned enterprise (described in paragraph 106) established to purchase farm products at market prices for resale in the domestic market. Could the market stabilisation purpose of this enterprise equally be served by relaxing import constraints on agricultural products?

Answer:

State-owned enterprise purchases farm products at market prices and sells them back into the domestic market at a later time in order to stabilise supplies and prices. The relaxation of import restrictions would be one possible policy instrument at times of shortage, but would be inefficient at times of excess production. The Government provided initial investment as provided in WT/ACC/SPEC/LAO/1 of 19 July 2006. Since then the company has operated at a profit requiring no further Government funding.

**Question 81**

**Factual Summary (page 35, paragraph 105):** The report states that, "Lao PDR reported outlays on development programmes (Article 6.2) for input subsidies (investment and operating credits provided by the Agriculture Promotion Bank, and electricity at reduced rates to poor farmers), and a market price support programme for rice".

- **Please explain how Lao PDR defines poor farmers?**
- **Please explain how the market price support programme differs from the price control plan mentioned on page 12, paragraph 29 of the factual summary, for rice?**
- **Please also describe how Lao PDR decides and calculates the minimum farm gate price and the external reference price for rice?**

Answer:

Poor farmers refer to the farmers who are resource poor and who are living under poverty. The Prime Minister's instruction on poverty eradication No. 10/PM of 25 June 2001 provides the definition that: "Poverty is the lack of ability to fulfil basic human needs such as not having enough food, lacking adequate clothing, not having permanent housing and lacking access to health, education and transportation services".

The minimum price referred to in Table 6, page 12 of the factual summary, is the market price support for rice.

With reference to the minimum farm gate price for rice, see the response to Question 7. The external reference price for rice is provided in the response to Question 112 of the document WT/ACC/LAO/11.

**V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME**

- **GENERAL**
- **Application of national and MFN treatment to foreign nationals**

**Question 82**

**Berne Article 3, incorporated by TRIPS Article 9, requires that Member countries grant protection to authors who are nationals of Member countries, to authors who are not nationals of Member countries for works first or simultaneously published in a Member country and residents of Member countries, even if not nationals of that country. Protection must be granted to both published and non-published works.**

**Paragraph 115 of the Factual Summary notes that Lao PDR does not accord this national treatment obligation. How and when does the Lao PDR Government plan to correct this?**

Answer:

The Law on Intellectual Property was endorsed by the National Assembly in November 2007 and is in the process of promulgation by the President of the National Assembly and the President of Lao PDR.

The Law on Intellectual Property is in conformity with the Berne Convention Article 3 as well as the TRIPS Agreement Article 9 to protect the authors of both nationals and non-nationals of member countries. Lao PDR's intellectual property legislation does not provide any additional favourable treatment to Lao PDR nationals *vis-à-vis* foreigners. See Article 6 and 7 of the Law on Intellectual Property on the Most-Favoured-Nation and the National Treatment provisions, respectively. Paragraph 115 of the Factual Summary needs to be appropriately amended.

- **SUBSTANTIVE STANDARDS OF PROTECTION, INCLUDING PROCEDURES FOR THE ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS**
- **Copyright and related rights**

**Question 83**

**Paragraph 117 on page 41 of the Factual Summary notes that Lao PDR has no copyright and related rights legislation. The answers to Questions 119 and 120 of WT/ACC/LAO/11, page 42, note that many of the required obligations will be incorporated in separate Decrees and Regulations.**

**When will the Law on Intellectual Property and the necessary Decrees and Regulations be enacted?**

Answer:

The Law on Intellectual Property, which contains the provisions on Copyrights and Related Rights, was endorsed by the National Assembly in November 2007 and is in the process of promulgation.

At present, the implementing regulations as well as the existing regulations are being formulated and amended according to the new Law with the assistance of the EC under the ASEAN-EU Cooperation Project on Intellectual Property (ECAP III Project). See also the TRIPS Action Plan (document WT/ACC/LAO/15/Rev.1).

**Question 84**

**Paragraph 119 on page 41 of the Factual Summary and part (vi) of the answer to Question 121 of WT/ACC/LAO/11, page 43 indicates that registration and term of protection for audiovisual works and sound recordings will be addressed in specific Decrees and Regulations. However, Article 19 of the Draft Law on Intellectual Property appears to cover unpublished phonograms as well as audiovisual works.**

- **Please confirm that Article 19 covers audiovisual works and explain where the term for published phonograms is addressed.**
- **The draft Law requires registration of a copyright for protection which is contrary to the Berne Convention. Your representative previously noted that Decrees and Regulations will be issued to address questions including registration procedures. It is unclear whether Lao PDR intends to remedy this issue through the decrees and**

**regulations, but as those instruments cannot go beyond the Law, does Lao PDR intend to revise the draft Law to remedy the issue?**

Answer:

Members' comments were taken into account in finalizing the draft Law on Intellectual Property. The Law on Intellectual Property covers audiovisual works as stipulated in Article 74 as well as in Article 90 of the Law concerning the rights of producers of audiovisual works, and in Article 94 concerning the terms of protection for published phonograms within fifty years from the date of first publication.

The Law on Intellectual Property does not require the registration of a copyright for protection, and the copyright works will be protected automatically upon their creation as stipulated in Article 79 of the Law on Intellectual Property concerning the claim of copyrights and related rights.

#### **Question 85**

**Article 6 of the Draft Law on Intellectual Property and the answer to Question part (ii) of Question 121 list items that do not receive copyright protection.**

**What is meant by "copy or imitation"? Would satire, mimic and impressions be covered by copyright?**

Answer:

The previous draft Law on Intellectual Property has been substantially amended.

From our understanding, the terminology "Copy" means the new work has been created from original work without any modification. "Imitation" means the new work has been created from original work but slightly modified with the aim to confuse the public.

The Law on Intellectual Property does not cover satire, mimic and expressions of work as indicated in Article 76 concerning the areas that would not be protected as copyright works.

#### **Question 86**

**Article 3 of the Draft Law on Intellectual Property provides that "the Government may designate a Government Agency or a third person to execute the right(s) in relation to any intellectual property right without the approval of the owner..." This appears to conflict with the requirement that the author be given certain exclusive rights.**

**Please explain how this provision could be used with regard to copyright and related rights.**

Answer:

Members' comments were taken into account in finalizing the draft Law on Intellectual Property.

The Law on Intellectual Property, Article 53 concerns compulsory licensing on the use of patent and petty patent (utility model), and Article 71 concerns the exception in case of emergency for new varieties of plants. But there no such compulsory licensing in the area of copyrights and related rights.

Nevertheless, the Law on Intellectual Property Articles 97 and 98 allow exceptions in copyright as provided for in TRIPS Article 13. These Articles also comply with the Berne Convention

Article 10(2) "recognition of teaching purpose", Article 11*bis* (1) and (2) "news reporting on current events", and Article 13 "recording musical work", and a special compulsory licence regime for reproduction and translation of texts by developing countries, subject to strict conditions (The Berne Appendix).

#### Question 87

**TRIPS require protections for compilations of data, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations.**

**Where does Lao PDR provide this protection?**

Answer:

The Law on Intellectual Property protects the compilation of data in different forms as stipulated in Article 75 concerning derivative works from copyrights.

#### Question 88

**The draft Law on Intellectual Property fails to provide copyright owners with rights required by TRIPS, including Articles 1-21 of the Berne convention. Please advise where each required right is granted. Specifically, please advise where the following rights are granted:**

- **Rights of reproduction, broadcasting and communication by wire or wireless means, including loudspeaker, for literary and artistic works;**
- **Rights of public performance and communication to the public of dramatic, dramatico-musical works and musical works and translations thereof;**
- **Rights of public recitation and communication to the public of recitations for literary works and translations thereof;**
- **Rights of adaptation, arrangement or other alteration for literary and artistic works;**
- **Rights to authorize the cinematic adaptation and reproduction, distribution, public performance or communication to the public of the works thus adapted for literary or artistic works;**
- **Right of rental for computer programmes;**
- **Rights for the fixation of their unfixed performance and the reproduction of such fixation for performers;**
- **Rights to the broadcasting and communication to the public of their live performance for performers; and**
- **Rights to the direct and indirect reproduction and rental of their phonograms for the producers of phonograms.**

Answer:

Members' comments were taken into account in finalizing the draft Law on Intellectual Property.

The Law on Intellectual Property protects copyright owners with the rights as required by the TRIPS Agreement:

- Article 84 concerns the rights of copyrights owners;
- Article 85 concerns the rights of owners of cinematography and drama;

- Article 86 concerns the copyrights related to computer programme and data collection;
- Article 90 concerns the rights of phonogram producer; and
- Article 91 concerns the rights of Audiovisual Broadcasting Organizations.
  
- **Trademarks, including service marks**
  
- **Geographical indications, including appellation of origin**

#### **Question 89**

**Paragraph 124 on page 43 of the Factual Summary notes that the existing legislation does not provide protection for geographical indications, but provision would be included in the new Intellectual Property Law.**

**Please explain how a later geographical indication would be handled if it conflicts with an earlier registered trademark.**

Answer:

Members' comments were taken into account in finalizing the draft Law on Intellectual Property.

If there is a conflict between a later geographical indication (GI) and an earlier registered trademark, the case will be considered on basis of Articles 23 and 25 of the Law on Intellectual Property. The later GI that is in conflict with an earlier trademark will not be allowed to register.

- **Patents**

#### **Question 90**

**Article 3 of the Draft Law on Intellectual Property provides that "the Government may designate a Government Agency or a third person to execute the right(s) in relation to any intellectual property right without the approval of the owner... such execution shall be carried out within the limitations for which it was authorized, and the owner of the right shall be paid reasonable compensation."**

**Please explain the circumstances under which the Government would designate another party to execute the right(s) with regard to patents, what the limitations would be, and what criteria would be used to determine that the compensation to the right owner is reasonable?**

Answer:

Article 53 of the Law on Intellectual Property concerns compulsory licence on the use of patent and petty patent (utility model) which provides that: In case of urgent needs related to national defence and security, foodstuff, safety of Lao people on health and sanitary, which is not for commercial purposes, the Government could allow individual or legal entity to use the patent and petty patent without the consent of the right holder but the Government's permission should determine the limitation of use and the appropriate compensation by notifying the right holder. However, the patent or petty patent owner has the right to oppose the Government's permission as well as compensation that is considered not appropriate within 60 days from the date of receiving notification. In case of national emergency such as natural disaster or war, the Prime Minister could also allow individual and legal entity to use the patent and petty patent in which the conditions of use is also the same as stated above.

**Question 91**

**According to paragraph 136 of the Factual Summary, the Lao PDR representative acknowledged that Lao PDR would need to develop more specific legislation to comply with Article 39 of the TRIPS Agreement including a Decree on the protection of undisclosed information.**

**Please explain which law the Decree will be implementing.**

Answer:

The Law on Intellectual Property provides for the protection of undisclosed information as stipulated in Article 20 which concerns the conditions of subject matters to be considered as trade secrets or undisclosed information.

- **ENFORCEMENT**

**Question 92**

**According to paragraphs 145 and 146 of the Factual Summary, the representative of Lao PDR said that the existing legislation on trademarks and patents, petty patents and industrial designs allowed recourse to criminal proceedings in case of infringement of intellectual property rights, and that the new Intellectual Property Law and its implementing decrees would also include sanctions against infringement of all intellectual property rights.**

**Please explain how existing legislation complies with TRIPS Article 61, which requires that criminal procedures and penalties are to be applied at least in cases of wilful trademark counterfeiting or infringement of copyrights rights on a commercial scale, and that deterrent penalties must be made available.**

Answer:

The Law on Intellectual Property, Article 134, provides for criminal procedures and penalties.

**Question 93**

**Paragraph 144 on page 47 indicates that the current Customs Law provides for customs authorities to inspect and seize infringing goods. It is also noted that the implementing Decree is being revised to add further provisions to meet WTO requirements.**

- **Does the current Customs Law allow for inspection and seizure of both imported and exported infringing goods?**
- **Please explain what the additional provisions in the Decree will include.**

Answer:

The Customs Law, Article 76, provides for the rights of customs officers to inspect and seize goods that violate intellectual property rights.

A copy of the Customs Law and the Decree implementing the Customs Law has been provided to the WTO Secretariat (see document WT/ACC/LAO/5/Add.1).

## **VI. POLICIES AFFECTING TRADE IN SERVICES**

### **Question 94**

**Factual Summary (pages 48 and 49, paragraphs 147 - 152): The Lao People's Democratic Republic makes no commitments on securities and futures-related services in the Financial Services Sector and accounting, audition, and bookkeeping under Professional Services.**

**We would appreciate knowing the reasons for the absence of commitments in these areas and whether Lao PDR has any development plans for the future?**

#### Answer:

As an LDC, Lao PDR is guided by the WTO General Council's 2002 Decision on LDC Accession and the GATS Agreement Article IV and XIV wherein LDCs are only required to commit sectors commensurate with their level of trade, financial and development means.

Lao PDR's weak institutional and regulatory capacity limits its ability to make commitments in services sectors that are beyond its means.

---