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Accession of Lao PDR**

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Additional Questions and Replies

The following submission, dated 9 April 2009, is being circulated at the request of the Delegation of Lao People's Democratic Republic (Lao PDR).

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II. ECONOMIC POLICIES

- Investment Regime

Question 1

Paragraph 24, page 9 of JOB(07)/160/Rev.1: The report states that, "Foreign investment was also eligible for tax and duty exemptions or reductions according to Law No. 11/NA and Decree No. 301/PM, Article 34 and Annex 2. ... To qualify for investment incentives in promoted sectors (Annex 2), companies were required to fulfil a minimum of three among six stipulated conditions, namely (i) hiring at least 90 per cent of the labour force locally; (ii) using model technology; (iii) preserving the environment in accordance with the Law "On Environmental Protection"; (iv) a promoted activity complementing other domestic production; (v) using more than 50 per cent of local raw materials; and (vi) exporting 80 per cent or more of the total output."

Could Lao PDR please elaborate further on the definitions of the different types of foreign investment eligible for tax and duty exemptions or reductions, and the qualifications that apply?

In particular, could you please advise whether the investment incentives mentioned above are limited to specific forms of business organization, such as a joint venture between foreign and domestic investors, and whether there are any foreign equity restrictions?

Answer:

The law currently in force is the Law on the Promotion of Foreign Investment, No. 11/NA dated 22 October 2004. Article 5 of the Law states that foreign investments can be in three forms: (1) business cooperation by contract; (2) joint venture between foreign and domestic investors; and (3) 100 per cent foreign-owned enterprise. All forms of foreign investment are therefore qualified for investment incentives as provided for in Sections III and IV of the Decree No. 301/PM dated 12 October 2005 on Implementation of the Law on Promotion of Foreign Investment, except for construction material production business with the share of foreign investment exceeding 70 per cent and registered capital less than US\$1 million. See Article 22 of the Decree.

Lao PDR is in the process of revising its investment laws (both on promotion of domestic and foreign investments) with a view to rendering investment incentives compatible with WTO obligations and flexibilities for LDCs. The draft law is under preparation and expected to be submitted to the National Assembly for adoption by 2009.

Question 2

Paragraphs 25-26, page 9 of JOB(07)/160/Rev.1: Lao PDR requires foreign-invested companies to hire at least 90 per cent of the labour force locally to ensure that FDI creates job opportunities.

Would the Lao PDR Government consider lowering this percentage requirement in order to attract FDI?

What would the Government do, for example, in cases where foreign-invested companies experience difficulties in recruiting 90 per cent of their labour force locally?

Answer:

Lao PDR understands that there are no obligations in Annex 1A of the WTO Agreement that relate to granting access to Lao PDR's labour market. The Law on Labour No. 06/NA of 27 December 2006, Article 25, provides that unskilled foreign labour is allowed up to 10 per cent while for skilled, the percentage is increased to 20 per cent. In case there is a need for more foreign labour, the Law provides the opportunity for investors to request for a higher percentage from the Prime Minister's Office.

- **State Ownership and Privatization**

Question 3

Paragraph 28, page 10 of JOB(07)/160/Rev.1: According to the Report, "The preferred method of privatization was a joint venture model in which the State retained 51 per cent ownership initially, and then reduced its share."

We wonder whether the 51 per cent ownership retained by the State might restrict the privatized enterprises in their efforts to improve efficiency?

Will foreigners at subsequent stages be able to own shares and take control of the privatized enterprises?

Answer:

Since the beginning of the privatization process in 1990s the Government of Lao PDR has progressively reduced its share in the privatised State Owned Enterprises (SOEs): 763 of some 800 SOEs (or 95 per cent) were liquidated, privatised or foreign-invested as part of Lao PDR's efforts to reform and improve efficiency. For the remaining 5 per cent - or 37 enterprises - the Government intends to retain a 51 per cent ownership in these SOEs until such time when it considers feasible to reduce its stake. As the Government reduces its stake, it is expected that foreigners will be able to own those stakes and the Government will consider granting control of privatized enterprises.

Question 4

Paragraph 29, page 10 of JOB(07)/160/Rev.1: We note that Lao PDR has no plans to privatize the remaining 37 State-owned enterprises.

When Lao PDR establishes its stock market in the future, will shares in these State-owned enterprises be released for sale?

Would foreigners then be able to invest in the shares?

Answer:

Partial privatization of these enterprises is under consideration - please see the response to Question 3. Lao PDR's plan to establish a securities market is under study. Further, among the preparatory work that needs to be done, it is necessary to identify and train the responsible authorities, prepare the relevant laws, regulations and instructions, put in place the necessary infrastructure for the exchange and inform potential local investors about the opportunities and risks of a securities market. The criteria for companies or enterprises to be listed in the securities market has also to be prepared. SOEs that are profitable, having good governance and transparent, and which seek funds to meet their investment demands are the main target candidates to be listed in the securities market.

Foreign individuals or legal entities will be allowed to participate in the securities market in Lao PDR in accordance with the Decree on Securities and Securities Market which is under preparation, and other applicable laws and regulations.

- **Pricing Policies**

Question 5

We look forward to receiving the HS number for the products listed in Table 6 of JOB(07)/160/Rev.1 (Price Controls or Surveillance in Lao PDR).

When does Lao PDR expect to make this available to the WTO membership?

Answer:

Table 6 of the Factual Summary JOB(07)/160/Rev.1 should be split to two tables and the HS codes for the products are as follows:

Table 6(a): Price Controls in Lao PDR

	HS Number	Product Description	Measure
1.	2710, 2711	Fuel and gas	Maximum prices
2.	7213-7215	All kinds of steel for construction	
3.	2523	Cement	
4.	1006	Rice	Minimum prices

Table 6(b): Price Surveillance in Lao PDR

	HS Number	Product Description	Measure
1.	3918, 4409, 6904, 6905, 6907, 6908	Roof, floor and wall tiles	Price surveillance
2.	7907	Roof made of zinc	
3.	4407	Sawn wood	
4.	3208-3210	All kinds of house paint	
5.	3917	PVC pipes	
6.	8701	Tractors	
7.	8413	Water pumps	
8.	8432, 8433	Harvesting or threshing machinery	
9.	31	Fertilizer	
10.	2309	Animal feed	
11.	8437	Milling machinery (of cereals and vegetables)	
12.	8437.80	Milling machinery (of rice)	
13.	8712	Bicycles	
14.	8711	Motorcycles	
15.	NA	Student clothing	
16.	NA	Writing tools	
17.	NA	Raw materials for factories	
18.	30	Medicines	
19.	1701, 1702	Sugar	
20.	2103.10.00	Soya sauce	
21.	2103.90.30	Fish sauce	
22.	2922.42.20	Monosodium glutamate	
23.	1507, 1511, 1512, 1513	Vegetable oil	
24.	1106, 1101, 1102	Flour	
25.	0201, 0202, 0203, 0207, 0209, 0210, 1602	Meat (cattle, pork and poultry)	
26.	03	Sea fish and fresh water fish	

Note: NA stands for 'not applicable'.

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

Question 6

We appreciate that Lao PDR is studying how to ensure its trade regime complies with WTO trading rights obligations. We would like to remind Lao PDR that the GATT Article III requires that the imported product have access to the same channels of distribution as the like domestic product, with no requirements or conditions imposed on such importation unless they are also imposed on the domestic like product. We understand that a Lao PDR product may be sold directly to a customer, whereas an imported product may not be so sold because it must first be imported by a Lao PDR company or a foreign company with domestic presence. Denying a foreign (legal or natural) person the opportunity to directly import its product for a customer in Lao PDR without first establishing domestic presence is therefore not consistent with Lao PDR's trading rights obligations under the GATT 1994. This has been consistently recognized in the GATT decisions on this subject.

What changes to its legislation will Lao PDR be making to bring its regime into compliance with its WTO trading rights obligations?

Can Lao PDR please provide the current version of this legislation to the Working Party for review, and reference this legislation in its Legislative Action Plan? We of course will look forward to reviewing the proposed amendment to this legislation when it becomes available.

Answer:

Presently, the Decree on Import and Export Management No. 205/PM of 11 October 2001 provides for individuals and legal entities who have commercial presence in Lao PDR by virtue of the Law on the Promotion of Foreign Investment, No. 11/NA dated 22 October 2004 and therefore categorized as investors - to engage in the import and export activities. The Enterprise Law No. 11/NA dated 9 November 2005 which also provides for the requirements for enterprise registration allows foreign investors who have commercial presence to engage in import and export activities, subject to obtaining an investment licence. However, in light of comments and clarifications given by trading partners on the issue of trading rights, Lao PDR is undertaking consultations with relevant stakeholders.

Question 7

Paragraph 48 of JOB(07)/160/Rev.1: Concerning the "physical presence" requirement for foreign companies involved in export and import, Lao PDR indicates that at present, it does not provide for registration as importers or exporters of firms or individuals located outside the country, and that the issue would be subject to further study.

Lao PDR is requested to furnish further information on this issue, in particular on how a foreign company or an individual can carry out export and import without establishing itself (making an investment) in Lao PDR?

Answer:

Please see the response to Question 6.

A. IMPORT REGULATIONS

- Tariff rate quotas, tariff exemptions

Question 8

Question 23 of WT/ACC/LAO/16: We request that Lao PDR please provide the HS numbers for all the "investment goods" that would be subject to the 1 per cent tariff.

Does this 1 per cent tariff replace the tariff rate noted for these particular products in Lao PDR's schedule?

How do companies apply for the 1 per cent tariff? Can foreign companies apply for the reduced rate?

Answer:

Under the current Law on Promotion of Foreign Investment, the 1 per cent tariff (investment incentive) is given to investors for promoted sectors.

The measure under Annex 2 of Decree on Implementation of the Law on Promotion of Foreign Investment does not replace tariff rate provided in the tariff schedule of Lao PDR. The 1 per cent tariff is granted when approval of the investment is given under the Law on Promotion of Foreign Investment or the Law on Promotion of Domestic Investment, depending on whether the investment is being made in a promoted sector. The incentive applies equally to domestic and foreign companies.

As provided for in Additional Questions and Answers WT/ACC/LAO/16, "Investment goods" means raw materials, intermediate components and parts, machinery, equipment, and other materials used in the investment projects of production enterprises. As the incentive is related to an investment and not specific goods, HS numbers cannot be assigned due to the nature of the investment goods.

- Fees and charges for services rendered

Question 9

Paragraph 54 of JOB(07)/160/Rev.1: What steps is Lao PDR taking to reform the inspection fee of 0.01 per cent on imported fuels, steel bars, and cement converted to a specific rate prior to acceding to the WTO?

Answer:

The regulation on inspection fee on fuels, steel bars and cement is in the final stage of being amended from *ad valorem* to specified rate. It is expected to be adopted by 2009.

In addition, Lao PDR is pleased to inform that the *ad valorem* inspection fees for the importation of food were also converted to the specified rate following the adoption of the Presidential Decree on Fees and Service Charges No. 03/PO dated 19 November 2008, which replaced the Presidential Decree on Fees and Services Charges No. 02/PO dated 27 November 2002.

Lao PDR confirms that fees and charges for services related to imports and exports will be applied in conformity with the relevant provisions of the GATT 1994.

- **Application of internal taxes to imports**

Question 10

Paragraph 58 of JOB(07)/160/Rev.1: Could Lao PDR indicate whether the new VAT system to be in place by 2009 foresees a VAT refund mechanism for non-established taxable persons similar to the EU 13th VAT Directive? If this is the case, please provide details concerning its functioning.

Answer:

VAT is not collected on exported products.

Question 11

Question 25 of WT/ACC/LAO/16: Could Lao PDR reformulate and explain in detail the first paragraph of the answer concerning the application of turnover tax and VAT in different business turnover thresholds?

Answer:

In the initial phase, the implementation of the VAT will apply to enterprises with over 400 million kip annual turnover as these businesses have the technical capacity to register for a VAT number and file tax information given the nature of businesses in Lao PDR which are dominated by small and medium sized enterprises. Nevertheless, any smaller business wishing to register for VAT may do so voluntarily.

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

Question 12

Questions 27-38 of WT/ACC/LAO/16: We applaud the work the Government of Lao PDR and the Ministry of Industry and Commerce are undertaking to streamline and facilitate import and export procedures. We are pleased by the decision to ensure that all import and export procedures are WTO compliant. Such a system will greatly benefit Lao PDR.

When does the Ministry of Industry and Commerce expect to conclude the review?

When will the new import and export procedures be implemented?

When does Lao PDR intend to make this information available to the WTO? Lao PDR is strongly encouraged to work with WTO Members during the drafting phase to ensure the new procedures are WTO consistent.

We look forward to reviewing Notification No. 1376, which Lao PDR refers to in its answer to Question 27 in the Questions and Replies document WT/ACC/LAO/16. We request that Lao PDR please submit this document for Working Party review as soon as it is available. We note that many of Lao PDR's answers to subsequent Questions 29-33, 35, 37 and 38 appear to depend upon this revised Notification.

Answer:

The draft Decree on Import Licensing Procedures is now before the Prime Minister's Office for adoption. The draft incorporates key provisions of the WTO Agreement on Import Licensing

Procedures, including but not limited to, general principles (e.g. non-discrimination, transparency, right to appeal) and forms of import licensing (automatic and non-automatic).

The Decree is expected to be adopted by 2009. Currently, the MOIC is consulting with line ministries to streamline and shorten the list of goods subject to import licensing procedures which is expected to be adopted by 2009 to replace the Notification No. 1376/MOIC.DIMEX, dated 10 October 2006 on the List of Controlled Goods for Import and Export.

- **Customs valuation**

Question 13

Paragraph 67 of JOB(07)/160/Rev.1: references Lao PDR's possible implementation of a risk management system "to allow use of valuation methods, other than transaction value, on imports specifically identified as 'high risk' to revenue".

We stress that Lao PDR should focus on establishing a risk management system that allows it to use transaction value to the greatest extent possible, rather than dedicate critical resources to develop a system that allows/prefers the use of other valuation methods, and which would only be used in the short-term transition period prior to Lao PDR's full compliance with the CVA.

While we commend Lao PDR on its submission of the CVA Action Plan, we reiterate the concern expressed in paragraph 68 about Lao PDR's application of minimum values and its reliance on price reference databases, as described in paragraph 67 of the Factual Summary.

Answer:

Lao PDR is pleased to report that, in line with its Customs Valuation action plan (document WT/ACC/LAO/12/Rev.1), Article 4 of the Decree No. 362/PM "On the Implementation of the Customs Law" established a hierarchy of different methods to value goods based on the requirements of the Agreement on Customs Valuation. This Decree was adopted on 19 October 2007 and has been submitted to the Secretariat as noted in document WT/ACC/LAO/16/Add.1. Lao PDR continues to implement the above-mentioned action plan to implement the CVA, while at the same time controlling for fraud. In this context, it is worth mentioning that from 2004-2008, import duties represented on average over 10 per cent of the Government's revenue (see Table 1 of the Factual Summary document JOB(07)/160/Rev.1). Once the new system is in place, the risk management system may need to be introduced.

- **Rules of origin**

Question 14

Paragraph 70 of JOB(07)/160/Rev.1: Lao PDR indicates that Decree No.362/PM "On Implementation of the Customs Law" had been adopted on 19 October 2007, and that a regulation is being prepared to elaborate further on the implementation of these provisions of the Agreement.

Could Lao PDR inform Members of the current status of the implementing regulation?

Answer:

Lao PDR is revising the Decree on the Management of the Use of Rules of Origin No. 97/PM dated 8 December 1992. The scope of draft Decree covers both preferential and non-preferential rules of origin. It also outlines the roles and duties of the certification issuing and receiving authorities. The

draft is now under discussion between the Ministry of Industry and Commerce and the Ministry of Finance. After that it will be sent to the Ministry of Justice for comments before be forwarded to the Prime Minister for adoption by 2009.

Lao PDR is pleased to inform that draft Decree takes into account the provisions of the WTO Agreement on Rules of Origin in the application of preferential and non-preferential rules of origin, in particular the requirements of Article 2(h) and Annex II paragraph 3(d) of the Agreement.

B. EXPORT REGULATIONS

- **Customs tariffs, fees and charges for services rendered, application of internal taxes to exports**

Question 15

Paragraph 74 of JOB(07)/160/Rev.1: Lao PDR indicates that export duties are collected for revenue purposes and that it has no plans, at present, to phase out the remaining duties.

Could Lao PDR confirm that it is committed not to apply export duties on products which are not included in Table 10 of JOB(07)/160/Rev.1?

Furthermore, it seems that Lao PDR's interest of maximising revenue collection would be best served by reducing the high export taxes levied on a few products where the current rates are very high.

Answer:

Given their significance to the Government revenue, Lao PDR at present needs to continue to avail itself of these measures.

- **Export restrictions**

Question 16

Paragraphs 75-77 of JOB(07)/160/Rev.1: Lao PDR indicates that the lists of export prohibitions and licensing continues to be under review and would be revised with a view to reducing or adding precision to the export controls applied by Lao PDR.

Could Lao PDR indicate any timeline for revising its licensing system? We would also suggest Lao PDR to add this area to the legislative action plan.

Finally, Lao PDR justifies the export prohibition on logs on the grounds of them being exhaustible natural resources requiring conservation. Lao PDR is requested to provide information on whether there are comparable domestic restrictions to protect forests.

Answer:

Please see the responses to Question 12 with regard to updating the list of goods subject to import and/or export licenses or prohibitions. With respect to logs from natural forests, Lao PDR confirms that these measures are applied in a non-discriminatory fashion. Please note that logs from farmed plantations are allowed for export.

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- **Industrial policy, including subsidies**

Question 17

Paragraph 81 of JOB(07)/160/Rev.1: We request that Lao PDR please provide additional information regarding the "Industrial Zones" being planned by provincial authorities.

What would be the eligibility requirements for enterprises to operate in these zones, and what types of incentives are being envisioned for operating in these zones?

Answer:

As part of Lao PDR's economic development and modernisation plan, the Government has set up a Committee under the Prime Minister's Office to look into the question of industrial policy rationalization, including possible industrial zones. As this policy is still being formulated, the specific information requested has not yet been elaborated. However, Lao PDR will ensure that the policies adopted regarding any provincial industrial zones are in conformity with the WTO Agreement.

Question 18

Paragraph 84 of JOB(07)/160/Rev.1: We appreciate Lao PDR's efforts to comply with the notification obligations under Article 25 of the SCM Agreement. We would like to reiterate that the flexibilities granted to LDCs under Article 27 of the SCM Agreement do not at this time extend to incentive programmes contingent on local content.

We request a commitment by Lao PDR to eliminate such incentive programmes upon accession.

Answer:

At present, incentive programmes with the optional criteria of local content are available to foreign investors under the Decree of the Prime Minister No. 301/NA, dated 12 October 2005 on the Implementation of the Law on Promotion of Foreign Investment Implementing, Decree on Border Zones (Boten and Dansavanh Village - Decree No. 25/PM "On Dansavanh Village Border Trade Zone" of 25 March 2002; Decree No. 162/PM "On Border Trade Zone at Boten, Louangnamtha Province" of 8 October 2002) and a Special Economic Zone (Savan-Seno - Decree No. 177/PM "On the Management Regulations and Incentive Policies Regarding the Savan-Seno Special Economic Zone" of 13 November 2003). The Government has set up a Committee under the Prime Minister's Office to propose alternative measures to promote Lao PDR's industrial policy. As the measures referred to exist, a transitional period may be needed.

Question 19

Paragraph 84 of JOB(07)/160/Rev.1: We would reiterate our request for 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:

Lao PDR is studying this issue at the level of the Prime Minister's Office. Please see the response to Question 18.

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

Question 20

We note that the sections of the Questions and Replies document concerning TBT and SPS, as well as the revised checklists, indicate that additional information and new legislation and regulations are currently being promulgated or developed. We look forward to reviewing this information when it is available.

Answer:

On food safety, the Food Law No. 04/NA was adopted in 2004 and the National Policy on Food Safety No. 028/PM on 3 February 2009. The policy reiterates that Lao PDR standards adhere to standards, guidelines and recommendations developed by the relevant international organizations, including Codex Alimentarius, IPPC and OIE, as well as comply with the SPS and TBT Agreements. In addition, the key components of the policy include implementation of food safety through laws, regulations and standards; use of science-based risk assessment; adoption of an Integrated Food Chain Approach; promotion of greater international cooperation in the area of food safety; and strengthening human and institutional capacities. The Regulation on the Basic Principles in the Application of Sanitary and Technical Measures for Food Safety Management was adopted by the Ministry of Public Health in March 2009. All the basic principles of the SPS and TBT Agreements such as necessity, non discrimination, transparency, science-based risk assessment, and equivalence are included in this regulation.

The other relevant legislations in the pipeline include:

- Regulation on Labelling of Pre-packaged Food; and
- Regulation on Food Inspection.

Please see timeline in the revised SPS Action Plan (WT/ACC/LAO/13/Rev.2).

These policy, law and regulation have been prepared with expert inputs and comments including recommendations from legal experts of the WHO and FAO, and practices of neighbouring countries.

On animal and plant health, Lao PDR has adopted the Livestock Production and Veterinary Law No. 03/NA, dated 25 July 2008 and the Plant Protection and Quarantine Law in December 2008. They have been prepared with expert inputs and comments including recommendations from legal experts of the FAO and practices of neighbouring countries. The law provides for consistency with the requirements of international standard setting bodies of which Lao PDR is a contracting party (OIE and IPPC).

The other related legislations in the pipeline include:

- Law on Fisheries;
- Decree on Meat Inspection;
- Decree on Animal Epidemic Diseases;
- Decree on Livestock Production Management;
- Decree on Animal Quarantine;
- Decree on Zoonotic Diseases Control;
- Regulation on Plant Quarantine; and
- Regulation on Plant Inspection and Certification.

Please see timeline in the revised SPS Action Plan (WT/ACC/LAO/13/Rev.2).

On TBT, the Standardization Law No. 13/NA dated 26 December 2007 (erroneously translated in previous documents as "Standards Law") was adopted and a translation is provided in WT/ACC/LAO/16/Add.2. The Law covers standards, technical regulations and conformity assessment. Other legislation is under preparation. See progress in the revised TBT Action Plan (WT/ACC/LAO/14/Rev.2).

Question 21

As a general question we would like to ask for a clarification concerning Lao PDR's understanding of the meaning of "standards". According to the TBT Agreement, compliance with standards is voluntary - hence there should be no legal requirement to prove compliance with such standards. However, from its answers, it appears that Lao PDR believes that compliance with standards has to be proven.

Answer:

Article 20 of the Law on Standardization No. 13/NA dated 26 December 2007 provides that all standards are voluntary unless specifically indicated in the relevant regulations determined as mandatory. Mandatory requirements aim at protecting environment or safety, sanitary, health, national defence, or public order.

Question 22

Paragraph 86 of JOB(07)/160/Rev.1: Lao PDR refers to the new Standards Law. As its name is a bit confusing, we would request more information on the actual coverage and structure of this law. Is it a framework law for adoption of standards, as well as technical regulations and conformity assessment procedures?

We would also request information on the current state of play regarding the Standards Law - has it entered into force and if not, when will this happen? Furthermore, we would like to reinstate the question regarding the availability of the Standards law for review by the Working Party.

Furthermore, we would be interested to know what happens to regulations adopted before the entry into force of the Standards Law which are non-compliant with the provisions of the TBT Agreement. Will these regulations be repealed/replaced? What would be the timeframe for this?

Answer:

The Standardization Law No. 13/NA dated 26 December 2007, (erroneously translated in previous documents as "Standards Law") covers standards, technical regulations and conformity assessment procedures. Article 8, provides for the scope of the Law which mentions that this law applies to the activities relating to standardizations, such as formulating, promulgating, and implementing standards and technical regulations in the areas of the production, business trade, services, processes, environment, and other matters related to standardizations. The Law is composed of 11 parts and 103 Articles. Key provisions of the Law related to TBT Agreement are: Part II on types of standards, Part III on standards and technical regulations, Part V on conformity to standards and technical regulations, Part VI management system and testing system, and Part VII accreditation and certification. Lao PDR confirms that the Law on Standardization is a legal framework with the scope to cover standards (Part III - Articles 19 and 21), technical regulations (Part III - Articles 28 and 29) and conformity assessment (Part V).

The Decree implementing the Law on Standardization is under preparation as provided for in the revised LAP and TBT action plans (WT/ACC/LAO/9/Rev.3 and WT/ACC/LAO/14/Rev.2). Once the implementing Decree is adopted, all other regulations on standards and related matters that are in conflict with the Law on Standardization and its implementing Decree will be replaced or annulled.

The Law on Standardization was provided to the WTO Secretariat as per the document WT/ACC/LAO/16/Add.2.

References in the Factual Summary to "Standards Law" should read "Standardization Law".

Question 23

Question 54 of WT/ACC/LAO/16: Lao PDR states that it "recognized the results of conformity assessment conducted by the relevant bodies in exporting countries if similar to Lao PDR standards, including for construction materials, textiles and chemicals".

We would be interested to know how this similarity of standards is established (equivalence of legislation, reference to an international standard etc.). Furthermore, does Lao PDR already apply this principle of equivalence in the mentioned sectors (construction materials, textiles, chemicals)? If so, could Lao PDR provide some examples of how this equivalence is established?

Answer:

Lao PDR National Standards are mostly referred to international standards and Lao PDR is a member of International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC). Goods which meet international standards are cleared for import. However, currently Lao PDR does not have the laws or regulations to establish similarity of standards; and the principle of equivalence is still in the process of incorporation into Lao PDR national regulations. For example, on food safety the equivalence principle is provided for in Article 12 of Ministerial Regulation on the Basic Principles in the Application of Sanitary and Technical Measures for the Food Safety Management, No. 518/MOH, dated 18 March 2009. This Article says that "Lao PDR recognizes the standards of countries that have laws and regulations adopting the standards of Codex Alimentarius. In case the product fails to meet such standards, it can be rejected".

In order to ensure Lao PDR' legal system fully complies with the principle or equivalence and implements safety as well as other legal policy objectives, NAST is in the process of preparing the draft the Decree implementing the Law on Standardization with the assistance of international partners as indicated in TBT Action Plan (WT/ACC/LAO/14/Rev.2).

The Standardization Law covers the adoption of standards, as well as technical regulations and conformity assessment procedures. Pursuant to this law the related competent authorities are to create the legislation to cover the establishment of similarity of standards to be in compliance with SPS Agreement Article 4 and TBT Agreement Article 2 paragraph 7.

- Sanitary and phytosanitary measures

Question 24

Regarding the Lao PDR's response to Question 60 of WT/ACC/LAO/16 (reference Question 87 of WT/ACC/LAO/11), we respectfully seek clarification regarding the relationships between ASEAN and international standards such as OIE, Codex and IPPC. We note that in paragraph 86 of the Factual Summary (JOB (07)/160), page 29 that was referenced, the Lao PDR states that it participates in regional harmonization programmes of ASEAN SPS Measures.

As such, we respectfully request for Lao PDR to identify and explain these regional harmonization programmes of ASEAN SPS measures it is participating in.

We also seek clarification as to how these ASEAN SPS measures are similar or different to international standards such as Codex, OIE and IPPC. Further, we respectfully request for a copy of these said ASEAN SPS measures harmonization programmes.

Answer:

Some confusion might have arisen from paragraph 86 of JOB(07)/160 (paragraph 91 in JOB(07)/160/Rev.1) because the first two sentences are not related to the third, and the two issues could be separated into separate paragraphs. Paragraph 91 of JOB(07)/160/Rev.1 correctly notes that Lao PDR is "a member of the WHO Codex Alimentarius Commission, the International Office of Epizootics, and the International Plant Protection Convention. The SPS regulations and standards of Lao PDR were based on the relevant international standards, guidelines and recommendations." As noted in paragraph 96, Lao PDR is continuing the process of elaborating the regulations to modernise its SPS system.

The ASEAN programme is a related but separate issue. ASEAN countries individually adopted international standards of IPPC, OIE and Codex Alimentarius. ASEAN members are developing a harmonization framework for phytosanitary procedures comprising ten agricultural products at the outset and applicable to ASEAN members only. Work on a phytosanitary certification management system is completed. So far, ASEAN countries have concentrated mainly on exchanging legal normative documents, results of scientific studies relating to the phytosanitary area, and have developed a pest list on some major crops for conducting risk assessment. In Lao PDR's view, the ASEAN harmonization framework is in line with the rules of the WTO SPS Agreement.

Question 25

We seek clarification regarding the difference between the Lao PDR's 2004 and 2005 Draft Food Laws.

Is the Lao PDR redrafting or revising 2004 or the 2005 Draft Food Law which was referenced in paragraph 86 of WT/ACC/LAO/16, page 29?

Answer:

There was confusion on the Food Law. Lao PDR has only one Food Law No. 04/NA of 15 May 2004 which was referenced to in paragraph 92 of the Factual Summary (JOB(07)/160/Rev.1). Hence, the reference to a "Food Law 2005" is erroneous.

Question 26

On the Lao PDR's response on Question 63 of WT/ACC/LAO/16 regarding its reply on the type of training that it requires:

Please identify and explain in detail what is referred to as the "field visits on the SPS Agreement and its implications on national practices on food safety."

Answer:

Field visit refers to study tours of health officials to other WTO Member countries on how they adopt legislations to implement the SPS Agreement, establish SPS enquiry points and notification points and coordination mechanism.

Question 27

On the Lao PDR's response to Question 64 of WT/ACC/LAO/16 with respect to paragraph 89 of the Factual Summary:

Will each line ministry assign specific personnel to be the main contact/s or liaison officer/s to the SPS/TBT Enquiry Points housed under the National Science and Technology Authority and the Ministry of Industry and Commerce to fulfil their tasks?

Answer:

Lao PDR plans to house the SPS Enquiry Point at the Ministry of Agriculture and Forestry (MAF) while the TBT Enquiry Point at the National Authority for Science and Technology (NAST). The Ministry of Industry and Commerce (MOIC) will be responsible for SPS and TBT notification point. As SPS and TBT measures may not only concern the NAST and MAF the Decree currently being drafted will formally designate contacts at other relevant ministries such as Ministry of Health (MOH).

The Decree for establishing SPS and TBT Enquiry Points and notification points are under preparation and will be adopted by 2010.

Question 28

With respect to the Legislative Action Plan (WT/ACC/LAO/9/Rev.2), No. 13 on Regulation on the Establishment of SPS/TBT Enquiry Point:

Does the Lao PDR plan to establish a separate or joint online database on SPS measures with the planned online database on TBT measures?

If separate, how does the Lao PDR envision coordination of dually-notified TBT and SPS measures that are managed respectively by the TBT Enquiry Point in the Foreign Trade Policy Department of Ministry of Industry and Commerce and the Enquiry Point in the Department of Intellectual Property Standardization and Metrology of the National Science and Technology Authority?

Answer:

The online databases on SPS and TBT measures are yet to be established. Lao PDR is studying and drafting Decree for establishment of SPS/TBT enquiry and notification points and looking for technical assistance to support this initiative. See also the response to Question 27.

Question 29

With respect to the SPS Action Plan (WT/ACC/LAO/13/Rev.1) - To facilitate the Lao PDR's compliance with the application of the transparency provisions of the WTO SPS Agreement, we respectfully encourage the Lao PDR to include in this action plan the corresponding timelines for the establishment of the regulations on the SPS/TBT notification point and the SPS/TBT Enquiry Points.

Answer:

See the response to Question 27 with respect to the timeline on the Decree to establish the SPS/TBT notification point and the SPS/TBT Enquiry Point. See also the revised Legislative Action Plan

(WT/ACC/LAO/9/Rev.3) and Action Plans on SPS and TBT (WT/ACC/LAO/13/Rev.2 and WT/ACC/LAO/14/Rev.2).

- **Trade-related investment measures**

Question 30

Paragraphs 26, 100, 104 and 105 of JOB(07)/160/Rev.1: we would like to note that, notwithstanding the provisions available to LDCs under TRIMs, the SCM Agreement does not provide for any transitional measures for incentive programmes contingent on local content and, therefore, would appreciate a commitment by Lao PDR to eliminate such incentive programmes upon accession.

Answer:

Please see the responses to Questions 18 and 19.

Question 31

Paragraph 100 of JOB(07)/160/Rev.1 and the reply to Question 1 of WT/ACC/LAO/16: We note the interest of Lao PDR in availing itself of limited transition periods to phase out incompatible TRIMs.

What progress has been made in creating a comprehensive list of existing incompatible TRIMs?

We request that Lao PDR please submit such a list along with an action plan for phase out.

Answer:

See the responses to Questions 18 and 19. In addition, Lao PDR is seeking technical assistance from development partners in this respect.

- **Free zones, special economic areas**

Question 32

Paragraph 104 of JOB(07)/160/Rev.1: 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 request 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:

Lao PDR is in the process of reviewing these decrees to ensure compliance with WTO principles with respect to the differential treatment of imported goods and goods produced in SEZs and FEZs.

- **Agricultural policies**

Question 33

Regarding the response to Question 80 of WT/ACC/LAO/16, it would appear that one role of the State-owned enterprise is to buy farm products in times of excess production in order to

stabilize prices to producers. If this is the case, then the STE would appear to be providing market price support, irrespective of whether Government funding is involved. In this event, the amount of market price support should be calculated for the affected commodities and reported in Table DS:5.

Please confirm if this understanding is correct, and if so, please report this information in Table DS:5.

Answer:

There is no market price support as indicated 'NIL' in Table DS:5 of document WT/ACC/SPEC/LAO/1/Rev.1.

Question 34

Questions/Comments on WT/ACC/SPEC/LAO/1/Rev.1: Regarding Domestic Support and Export Subsidies in the Agricultural Sector Supporting Table DS:2, we respectfully seek clarification on measure type (a).

In particular, what is the nature of these investment and operating credits, and are the operating credits for short term operating expenses?

Answer:

Under Supporting Table DS:2, the credits at lower than normal market interest rates are generally available to low-income and resource-poor farmers and groups of farmers for their purchases of agricultural inputs and equipment designed to promote rural and agriculture. These short term credits are available only to low-income farmers in the country's poorest districts. They are provided given the significant contribution of the agricultural sector to the development of these poor districts in terms of employment and people's livelihoods. In Lao PDR's view, the measure is implemented in accordance with Article 6.2 of the Agreement on Agriculture.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

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

Question 35

Paragraph 126 of JOB(07)/160/Rev.1: This provides that the new Intellectual Property Law including copyright and related rights will be supplemented by implementing regulations and decrees.

What is the projected timeline for a draft of the implementing regulations and decrees to be made available for review by Member countries?

Answer:

The timeline for the adoption of the implementing decrees and regulations of Intellectual Property Law is during 2011-2012. See also the revised Legislative Action Plan (WT/ACC/LAO/9/Rev.3) and the revised TRIPS Action Plan (WT/ACC/LAO/15/Rev.2).

Question 36

Paragraph 126 of JOB(07)/160/Rev.1: This refers to the establishment by 2010 of a "copyright and related rights information centre".

What will be the functions and responsibilities of the centre?

Answer:

Information on copyrights and related rights will be available through the Copyright Division and will be housed under the Department of Intellectual Property.

The main functions of the centre are:

- Drafting legislations for copyrights and related rights management;
- Notification of copyrights and related rights information;
- Establishment of copyrights and related rights information database; and
- Acting as a forum for receiving complaints on copyrights and related rights and mediate to address the complaints.

Question 37

Article 81 of the new Intellectual Property Law states (in English version): "The copyright or related rights notification does determine the rights of the applicant."

Please clarify whether the notification does or does not determine the applicant's rights.

Answer:

Please note that the Government of Lao PDR, at the time this question was asked, had not provided the WTO Secretariat with its official version of the Law on Intellectual Property in English. Therefore, most of the questions under the IPR section below appear to have arisen from an improperly translated unofficial copy of the said Law.

The last sentence of Article 81 of the Intellectual Property Law No. 08/NA dated 24 December 2007 should read: "The copyrights and related rights notification does not determine the rights of the applicant".

In addition, Article 79 (Notification of Copyrights or Related Rights) provides that copyrights or related rights are the rights which are automatically granted when the work is created. Registration is not required, but the work can be recorded with the organizations responsible for such activities to be used as evidence or for information purposes, especially in the event of an infringement or a dispute. This is in compliance with the TRIPS Agreement and the Berne Convention which does not require the registration of copyrights and related rights.

Application form and supporting documentations are provided in Article 80 (Copyrights or Related Rights Notification Documentations).

Question 38

Article 83(4) of the new Intellectual Property Law provides that one of the categories of "copyright owner" is "the owner of the traditional art and literature, namely the local community." Article 3(25) provides that "copyright" means a work "which is created by the author".

What "works" within "traditional art and literature" are eligible for copyright protection?

Who is considered the "author" of these works?

How is the term of copyright protection determined for these works under Article 93?

Answer:

The "works" within "Traditional art and literature" which are eligible for copyright protection are provided for in Article 87 of the Law on Intellectual Property No. 08/NA dated 24 December 2007.

Article 87 (Copyright over Traditional Art and Literature) provides that traditional art and literature are local or group traditional compilations of creations which reveal the way of life of the community, whereby the performance is culturally and socially consistent and transmitted orally through the generations or copied or made similar, such as:

- Local stories, poems, maxims, proverbs;
- Local songs, dances, music;
- Traditional dance, games, rites and competitions; and
- Musical instruments, paintings, drawings, sculptures, architectural designs which have been created using local materials and equipment.

Individuals or entities which use works of traditional art and literature must protect the source of the traditional performance and preserve its original values. It involves moral rights not commercial rights.

This Article only refers to cultural performances without a commercial purpose.

The local community is considered the "author" of these works.

The term of protection for these works is not determined. See also Article 93 of the Law on Intellectual Property regarding the term of copyright and related rights protection.

Question 39

Article 95(1) refers to "use of works circulated by sound-image broadcasters to make sponsored sound-image broadcasts."

What are "sponsored sound-image broadcasts"?

Answer:

"Sponsored sound image broadcasts" should be correctly translated as "Broadcasting programmes with sponsorship".

For the better understanding of Members, the provisions of "Limitations on copyrights subject to compensation" under Article 95 of the Intellectual Property Law No. 08/NA dated 24 December 2007 are elaborated below:

- The use of published works without obtaining permission but paying royalties or remuneration include broadcasting organizations using published works for the purpose of carrying out broadcasting programmes with sponsorship shall not be liable for obtaining permission from, but shall be liable to pay royalties or remunerations to the copyright owner.

Question 40

Article 97(1)(1.1) refers to "use of sound-image recordings circulated directly or indirectly for commercial benefit aiming to make a sponsored sound-image broadcast".

Please provide an illustration of this provision in which such use would not be subject to approval, but subject to compensation.

Answer:

For the better understanding of Members, the provisions of "Limitation on related rights subject to compensation" under Article 97 of the Intellectual Property Law No. 08/NA dated 24 December 2007 are elaborated below:

- "1. Individuals or entities using related rights in the following cases shall not be liable for obtaining permission from, but shall be liable to pay royalties or remunerations as agreed to, the authors, copyright owners, performers, sound/video recordings and broadcasting organizations:
- 1.1 Directly or indirectly using a published sound/video recording for commercial purpose in order to carry out broadcasting programmes with sponsorship.
 - 1.2 Using a published sound/video recording in their business and commercial activities."

Question 41

Article 97(1)(1.2) refers to "use of circulated sound-image recordings in the operation of business and for commerce".

Please provide an illustration of this provision in which such use would not be subject to approval, but subject to compensation.

Answer:

Please see the response to Question 40, cited at Article 97(1)(b).

- **Trademarks, including service marks**
- **Geographical indications, including appellations of origin**

Question 42

Questions Regarding Geographical Indications (GIs) and Decree of the President on the Promulgation of the Intellectual Property Law (the Decree):

Article 25(3) of the Decree bars registration of GIs that are the same as or similar to, protected trademarks, if the use "leads to misunderstanding as to the origin of the said goods."

Pursuant to the "misunderstanding" provision of that Article, is it the case that a GI would not be registered if the reputation of another party's trademark is such that use of the GI would mislead the consumer as to the origin ("true identity") of the goods?

Conversely, if use of the GI would not mislead the consumer with respect to true identity, would the GI be registered?

Answer:

A GI would not be registered if the reputation of another party's trademark is such that the use of GI would mislead the consumer as to the origin ("true identity") of the goods.

If use of the GI would not mislead the consumer with respect to the true identity the GI would be registered.

Question 43

Article 100(1.6) bars the owner of a GI from preventing use of a similar trademark, "where the trademark became protected before the date of the filing of the GI application for registration." We glean from that the Decree allows for co-existence. We note that TRIPS Article 16.1 obligates Members to grant protection to owners of all trademarks.

Is Article 100(1.6) consistent with the requirements of TRIPS Article 16.1?

Answer:

Please also see the response to Questions 42. Lao PDR confirms that the Law on Intellectual Property No. 08/NA dated 24 December 2007 is consistent with the requirements of TRIPS Article 16.1.

Article 100(1.6), as correctly translated, should be understood as: Using a trademark identical with or similar to a protected geographical indication if such mark has acquired the protection in a truthful manner before the date of filing of a registration application for such geographical indication.

Question 44

Article 25(3) of the Decree bars registration of foreign GIs that are "not protected," presumably in the foreign jurisdiction.

Would registration be refused if the GI is "not protected" but is nevertheless recognized as a GI in Lao PDR?

Answer:

Foreign GIs that are not protected in the foreign jurisdiction cannot be registered in Lao PDR regardless of whether they are recognized as GIs in Lao PDR or not. See Article 25(2) of the Intellectual Property Law No. 08/NA dated 24 December 2007. This article is in conformity with Article 24.9 of the TRIPS Agreement.

Question 45

Article 51 of the Decree provides that the term of a GI registration is permanent.

Do third parties have a right to seek cancellation of a GI registration?

Answer:

Lao PDR confirms that third parties have the right to seek cancellation of a GI registration if the registration has been made in bad faith (meaning the criteria for the GI are not respected). See also Articles 57, 115, 116 and 117 of the Intellectual Property Law No. 08/NA dated 24 December 2007.

Question 46

Article 19 of the Decree requires that a GI certificate will not be issued unless, among other conditions, there is "recognition, conscience and the experience of the manufacturer and original, local manufacturing processes."

Does "recognition" refer to knowledge of the GI, and if so, among which consumers?

Answer:

The section of Article 19(2) should read: "...reputation, skill and experience of the producer and production method..."

There is no exact Lao PDR term for "reputation" but this is the meaning that is sought to be captured in the Intellectual Property Law No. 08/NA dated 24 December 2007.

Question 47

Article 23(6) of the Decree bars the registration of trademarks that "are the same as, or similar to "trademarks of any products [and] goods or services already registered."

Would registration be denied even in cases in which the mark for which registration is sought, although similar to a registered trademark, is used on goods that are not similar to the goods associated with the registered mark?

Answer:

The registration will be denied even though the mark that is sought for registration is used on goods that are not similar to the goods associated with the registered mark, unless the new registration is sought by the owner of the registered mark. Article 108 of the Intellectual Property Law No. 08/NA dated 24 December 2007 also provides more clarification on this.

Question 48

How is the Lao PDR Trademark register made public for purposes of notice and cancellation?

Answer:

The Lao PDR's trademark register is made public through the official gazette (Article 38, Intellectual Property Law No. 08/NA dated 24 December 2007).

- **Plant variety protection**

Question 49

Articles 60-73 of the Draft Law on Intellectual Property relating to protection of plant varieties are not consistent with the International Union for the Protection of New Varieties of Plants (UPOV) convention.

Will Lao PDR consider becoming a UPOV member?

Answer:

Lao PDR understands that the TRIPS Agreement does not require membership of the UPOV Convention and will focus its limited capacities on implementing TRIPS requirements.

- **Requirements on undisclosed information, including trade secrets and test data**

Question 50

TRIPS Article 39 requires "Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to Governments or Governmental agencies in accordance with paragraph 3."

Does Lao PDR have legislation that is consistent with TRIPS Articles 39.1-3?

Answer:

The provisions that provide protection for undisclosed information or trade secrets are contained in Articles 20, 101, 107, and 111 of the Law on Intellectual Property No. 08/NA dated 24 December 2007.
