

Lewis, Donald J.

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Integration of Landlocked Countries into the Global Economy and Domestic Economic Reforms: The case of Lao People's Democratic Republic

By

*Donald J. Lewis**

*is Associate Professor, Faculty of Law, Hong Kong University (HKU), Hong Kong, China. The opinion figures and estimates are the responsibility of the author and should not be considered as reflecting the views or carrying the approval of the United Nations, ARTNeT, HKU. Any remaining errors are the responsibility of the author. The author may be contacted at falburo@yahoo.com

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Abbreviations

ADB	Asian Development Bank
AFAS	Framework Agreement on Services
AFTA	AEAN Free Trade Area
AIA	ASEAN Investment Area
APA	Almaty Programme of Action
APTA	Asia-Pacific Trade Agreement
ARTNeT	Asia-Pacific Research and Training Network on Trade
ASCM	Agreement on Subsidies and Countervailing Measures
ASEAN	Association of South East Asian Nations
CB	Capacity Building
CBTA	GMS Cross-Border Transport Agreement
CPMI	Committee for Promotion and Management of Investment
CPIA	Country Policy and Institutional Assessment
CV	Countervailing
DDA	Doha Development Agenda
DONLUPAD	Department of National Land Use Planning and Development
EC	European Commission
FDI	Foreign Direct Investment
GATS	General Agreement on Trade in Services
GATT 1994	General Agreement on Tariff and Trade 1994
GMS	Greater Mekong Subregion
GSP	Generalized System of Preferences
IAI	Initiative for ASEAN Integration
ICT	Information and Communication Technology
IDA	International Development Association
ITA	Information Technology Agreement
ITC	International Trade Center
Lao PDR	Lao People's Democratic Republic
LDC	Least-Developed Country
LPDI	Law on the Promotion of Domestic Investment
LPFI	Law on the Promotion of Foreign Investment
MOIC	Ministry of Industry and Commerce of Lao PDR
MFN	Most-Favored Nation Treatment
NAMA	Non-Agricultural Market Access

NEM	New Economic Mechanism
NGPES	National Growth and Poverty Eradication Strategy
NGTF	Negotiation Group on Trade Facilitation
NLPC	National Land Policy Committee
NSC	National Steering Committee
NSEDP	National Socio-Economic Development Plan
NTB	Non-Tariff Barrier
NTC	National Trade and Transport Facilitation Committee
OECD	Organization for Economic Cooperation and Development
S & D Treatment	Special and Differential Treatment
SME	Small-and-medium-sized Enterprise
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
TA	Technical Assistance
TBT	Agreement on Technical Barrier to Trade
TRIMs	Agreement on Trade-related Investment Measures
TRIPs	Agreement on Trade-related Aspects of Intellectual Property Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
US	The United States
VAT	Value Added Tax
WB	World Bank
WP	Working Party on Accession by the Lao PDR

Introduction

The special needs and difficulties of landlocked countries as they seek to achieve integration into the global economy have been increasingly recognized by the international community as requiring particular attention. Correspondingly, the proper mix of domestic policies and trade policy reforms for landlocked countries present a complicated agenda due to the inevitable requirements of economic structural adjustment and improved market access required for effective global integration. The Lao People's Democratic Republic (Lao PDR), now in the midst of its accession to the WTO, provides a useful platform to identify and analyze such needs and difficulties as well as what may or may not be appropriate corresponding reforms.

In this report, Laos' challenges encountered as part of the WTO accession process will be surveyed. Subsequently, the linkages between Laos' domestic reform processes and WTO accession will be analyzed, with a particular focus on certain key sectors and institutional arrangements. Based upon foregoing, policy recommendations for the Lao PDR government and regional and international organizations, particularly, UNESCAP will be presented in the conclusion to this report. Throughout this report, the status of Laos as a landlocked country and a least developed country (LDC) are stressed as giving rise to special considerations and policy responses.

1. Overview of the Laos WTO Accession Process: Challenges

Since 1986, which marks the beginning of international economic integration and domestic economic reforms for Lao PDR, the Lao government has endeavored to implement an "open door" policy and to transition from a centrally-planned to a market-oriented economy. In this regard, the Lao PDR government has adopted a series of measures to propel its integration into the global economy, the most significant of which have been Laos' accession to ASEAN, as well as to the ASEAN Free Trade Area (AFTA), on 23 July 1997. In order to implement ASEAN and AFTA, the Lao reform and integration process has been accelerated and has brought about, on the whole, substantial benefits to the country, which have in turn spurred the Lao government to adopt policies in favor of increasing integration into the global trading and WTO systems.

In July 1997, Lao PDR submitted its request for WTO accession. In February 1998, the Working Party on Accession by Lao PDR (WPAL) was established. In March 2001, the

Lao PDR government lodged its Memorandum on the Foreign Trade Regime with the WTO. Subsequently, the WPAL has held three meetings: October 2004, July 2006 and November 2007. The Lao PDR government answered 263 questions in the first meeting and 101 questions in the second meeting, which covered agricultural subsidies, SPS and TBT, TRIPs, the Laos' Legislative Action Plan and an initial offer on goods. On 9 July 2007, in preparation for the third WPAL meeting in November 2007, the third set of questions and answers were submitted, covering Laos' action plans on customs valuation, SPS, TBT and TRIPs, the revised Legislative Action Plan and an initial offer on services.

In spite of the success of its WTO accession negotiations to date and its continuing efforts to achieve international economic integration, Lao PDR, as an LDC as well as a landlocked country, is still confronted with a range of significant challenges, not only due to the external pressures derived from the accession process and the requests of WTO Member *demandeurs*, but also arising internally from Lao domestic interest groups and other sources.

Two Sources of Challenges

On one hand, the challenges posed by WTO accession are partly external. Strictly speaking, the difficulties Lao PDR faces in its WTO accession directly derive from accession requirements themselves; in other words, these are external, rather than internal, challenges and are, consequently, more direct and more easily accommodated. The WTO accession process consists of four stages: (1) fact-finding, (2) bilateral negotiations, (3) drafting of the terms of accession, and (4) decision and ratification. Currently, Laos' WTO accession remains at the early stage as regards "fact finding". At this stage, Laos must report to the WTO all aspects of its trade and economic policies that have a bearing on compliance with the WTO agreements. At the next stage, Lao PDR will undertake bilateral negotiations with individual WTO Members, respectively. Such a process leads to two basic outcomes: (1) adapting/ adjusting domestic laws and regulations to meet the fundamental obligations of the WTO agreements; and (2) negotiating with WTO Members on tariff rates and specific market access commitments, as well as on other policies affecting trade in goods and services. Such external pressures and their related challenges have and will continue to impact significantly on Lao PDR's institutional arrangements as well as on trade and domestic policy and legal systems.

On the other hand, Lao PDR, particularly as an LDC and landlocked country,

lacks adequate capacity to respond fully to such external pressures and demands and their concomitant challenges. Lack of territorial access to the sea, remoteness and isolation from world markets aggravates Lao poverty, substantially inflates transportation costs and lowers its overall participation in the global economy. Moreover, its exports are heavily dependent on certain commodities. Such incapacity also contributes to a range of domestic weaknesses and shortages that makes it difficult for Laos to fulfill WTO market access requirements. As the Laos' Vice Minister of Industry and Commerce, Mrs. Khemmani Pholsena evaluated, the WTO accession negotiations are and will be "highly technical, lengthy and painful"¹ for the Lao PDR government. For Lao PDR, such internal challenges come from the country's longer-term deficiencies, which are rooted in the Lao PDR policy environment and domestic institutional arrangements as well as the organization of the national economy. In this sense, the internal challenges facing Lao PDR are more fundamental and systematic and, consequently, more difficult to overcome than external challenges.

The following sections of this report will consider certain key current challenges which Laos faces as a result of its WTO accession drive from both external and internal perspectives.

Institutional Arrangements

The external aspect of institutional arrangements which Lao PDR faces in connection with WTO accession derive primarily from GATT 1994 Article X and GATS Article III, which require publication and administration of trade regulations. GATT 1994 Articles X:1 and 2 as well as GATS Articles III:1 and 2 impose transparency obligations upon WTO Members as regards the publishing all trade laws, regulations, judicial decisions and administrative rulings of general application, and inter-governmental agreements affecting international trade policies. Moreover, Article X:3(a) requires WTO Members to administer laws in a uniform, impartial and reasonable manner. Finally, in order to promptly review and correct administrative action relating to customs matters, Article X:3(b) and (c) requires WTO Members to maintain or establish independent, objective and impartial remedial procedures through which enforceable decisions should be made.

¹ See Section V in Mrs., Khemmani Pholsena, Laos' Accession to the WTO: Progress and Way Forward, presentation on National Workshop: Trade Policy Opportunities and Development Challenges, 17-18 July 2007.

However, there still exist internal weaknesses in Lao PDR, as represented by the Lao incapacity to meet external WTO requirements on such institutional arrangements, especially Laos' government management and institutions. As the following Table I:1 shows, according to the World Bank (WB) authoritative Country Policy and Institutional Assessment or CPIA in 2006, the Lao relevant IDA Resource Allocation Index is overall below the average level of IDA borrowers, which indicates that the Lao PDR development level for public sector management and institutions is lower than the average of the world's poorest countries.²

Table I: 2006 Laos' IDA Resource Allocation Index (IRAI) in Public Sector Management and Institutions

Item	Lao PDR	Average IDA Borrowers
Property Rights and Rule-based Governance	3.0	2.9
Quality of Budgetary and Financial Management	3.0	3.2
Efficiency of Revenue Mobilization	2.5	3.4
Quality of Public Administration	3.0	3.0
Transparency, Accountability and Corruption in the Public Sector	2.0	2.9
Average	2.7	3.1

Source: IDA, 2006 Country Policy and Institutional Assessment, available at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/IDA/0,,menuPK:51235940~pagePK:118644~piPK:51236156~theSitePK:73154,00.html> (last visited on 13 November 2007).

First, the Lao government lacks sufficient transparency with respect to publication of its trade-related policies and laws. Potential foreign and domestic investors and traders

² International Development Association or IDA is part of the World Bank that helps the world's poorest countries by lending. The main factor that determines the allocation of IDA resources among eligible countries is each country's performance in implementing policies that promote economic growth and poverty reduction. This is assessed by the CPIA. In CPIA, the overall country score is referred to as the IDA Resource Allocation Index (IRAI). So, IRAI indicates the policy performance of the world's poorest countries as the borrowers of IDA. See details on the IDA website at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/IDA/0,,menuPK:51235940~pagePK:118644~piPK:51236156~theSitePK:73154,00.html> (last visited on 13 November 2007).

currently still encounter difficulties in accessing information about the Lao PDR trade regime. Moreover, laws and regulations in written are still not the same as those in practice: during implementation, procedures and substantive rules seem more liberal. In other words, in Lao PDR, unpredictability and non-transparency exist not only in terms of what is published and publicly available in writing, but also as regards actual practices. It may further be concluded from the WB findings in Table I:1 that transparency, accountability and, perhaps, corruption in the Lao public sector are sub-optimal, even as compared with other items in that table.

Second, Lao PDR domestic line agencies are not well-coordinated with the Ministry of Industry and Commerce (MOIC) of Lao PDR, as this lack of coordination was amongst the principal reasons delaying the progress of the Lao accession. The MOIC, as the coordinating agency for the Lao WTO accession, takes overall responsibility for distributing WPAL-generated questions to the line agencies concerned. However, some line agencies were unable to provide appropriate replies to the questions while others appeared to have a lack of understanding of WTO rules and principles. What the Lao government needed was a coordination system to prepare responses to the questions and then to forward them to the relevant line agencies for feedback (this coordination system has in fact been subsequently established). Another example of problems concerning the uniform application of administration of trade policy is Laos' customs administration, which is decentralized, and customs procedures which are not applied uniformly across provinces. This lack of inter-agency coordination detrimentally impacts on the efficiency of revenue mobilization, the quality of budgetary and financial management as well as on overall public administration, as the above WB Table shows.

Finally, although commercial courts were recently introduced, Lao PDR has not established administrative tribunals to date. A certain number of cases concerning the civil responsibility of the State are dealt with by the courts. Arbitration was recently institutionalized under the Ministry of Justice, with two sub-centers in Luang Prabang and Savannakhet. At present, Lao PDR still does not have legislation which provides specific rights of appeal against actions by government bodies in the trade area. Rights of appeal generally are implemented through administrative procedure by lodging complaints with the Prime Minister's Office, and in a number of areas, procedures establish officially-recognized rights. However, it is still doubtful whether such a complaint procedure meets the requirements of objectivity and impartiality set forth in Article X:3, especially in light of reports of bribery and other corrupt practices by officials involved in

customs.³ Accordingly, it may be seen that rule of law in governance in Laos, although having improved dramatically in recent years as stated in Part II of this report, remains at the intermediate level of the poorest countries in the world.

Agriculture Issues

Under the WTO Agreement on Agriculture, market access in agricultural products can only be subject to tariffs and tariff-rate quotas. All other quantitative restrictions on imports should be subject to “tariffication”, pursuant to GATT 1994 Article XI requiring general elimination of quantitative restrictions. Recently, in the Doha Round negotiations, WTO Members have engaged in renewed negotiations on further liberalized market access commitments for agricultural products, especially sensitive agricultural products. One of the possible compromises tabled is to raise tariff-rate quotas for sensitive products and lower out-of-quota tariffs. However, such a trend challenges Laos’ current import regulation system on agricultural products. Previously, Lao PDR relied heavily on restrictive import measures to control in-bound agricultural trade. One of major areas covered by prior Lao import quotas has been sensitive agricultural products. At present, although reforms are proceeding, many sensitive agricultural products in Lao PDR are still subject import quantitative restrictions and other non-tariff barriers, except tariff-rate quotas. Given the requirements of GATT 1994, the WTO Agreement of Agriculture and the Doha Round negotiations, it will be necessary, but challenging, for Lao PDR to set up a system of tariff-rate quotas to replace other existing non-tariff barriers to market access for agricultural products. On the other hand, there is also good news for Lao PDR. As an LDC, Lao PDR need not lower their agricultural tariffs at all, and should enjoy special treatment on food aid and aid for agricultural development according to a special Ministerial Decision⁴ made pursuant to Article 16, WTO Agreement on Agriculture.

As for agricultural subsidies, during the Uruguay Round, GATT contracting parties agreed to reduce trade-distorting domestic support that was being provided above a de minimis level which is 10 percent of the total level of production for developing countries and 5 percent for others. Laos’ WTO negotiations will likely revolve around whether Laos will bind export subsidies at zero and commit to keeping trade-distorting

³ See United Nations, *An Exploration of the Need for and Cost of Selected TF Measures in Asia and the Pacific in the Context of the WTO Negotiations*, 40 (Thailand: United Nations Publication, 2006).

⁴ See G/AG/W/42/Rev.7.

domestic support that the government might introduce in the future below a certain threshold. Such a commitment also depends upon the results of the Doha Round negotiations concerning the base period for Aggregate Measurement of Support (AMS) and percent reductions for trade-distorting support.

NAMA

Under GATT 1994, besides the aforesaid agricultural products, non-agricultural products are also subject to market access requirements as regards import tariff bindings as well as the general elimination of quantitative restrictions. Specifically, in the Doha Round, NAMA is being treated as a specific and separate area for negotiation. However, Lao PDR still imposes significant tariffs on a wide range of non-agricultural products which will need to be reduced and a host of non-tariff restrictions will also need to be eliminated through impending bilateral negotiations. In Lao PDR, import business registration is the prerequisite for import, which actually limits trading rights and is inconsistent with GATT 1994. Moreover, Laos' coverage of goods subject to import prohibition or import controls is over-broad, some of which measures may not survive scrutiny under Article XI and its exceptions in GATT 1994. Third, under Laos' current Indicative Plan, importers still need to provide an annual import plan in value terms to the Ministry of Industry and Commerce (MOIC) which will be forwarded to the border check point and be deducted against each imported shipment, otherwise traders can not perform importation. Such restrictions are intrinsically inconsistent with the WTO spirit of free trade. It is doubtful whether such measures may be justified by the Article XVIII GATT 1994 exception on balance of payments. On the other hand, the 1979 Enabling Clause accords developing countries with special and differential treatment (S&DT). Developed countries should not expect reciprocal treatment from developing countries. This may reduce the impact of developed countries' market access limitations on Laos' strategic export industries, such as the textile industry, post-accession. Moreover, in the ongoing Doha Round negotiations, the NAMA Negotiating Group Chair has proposed Paragraph 6 flexibilities for LDCs and recent-acceded Members concerning NAMA. If finalized, this could provide a good cushion for the NAMA impact on Lao PDR for its accession as well. Finally, the General Council's Decision on LDC accessions recognizes the special needs of LDCs and calls for additional flexibilities so as to facilitate their involvement in trade in goods negotiations as well as liberalization.

There are also two inter-linked issues. The first is whether Lao PDR would be required to join the plurilateral agreement, Information Technology Agreement (ITA),

which requires participants' zero import tariffs on listed information technology products. As regards the second challenge, Lao PDR may be requested by some WTO Members to "multilateralize" its past preferential liberalizations pursuant to regional and bilateral agreements. The legal basis for such a demand is Article 1, GATT 1994. However, the MFN exception set forth in GATT Article XXIV and the 1979 Enabling Clause may provide some flexibility for Lao PDR in preserving certain preferential arrangements at both the multilateral and regional levels.

Services

Generally, WTO acceding countries are required to submit a checklist on measures affecting trade in services⁵. In practice, some developing countries encounter difficulties in compiling those measures (noteworthy in this regard is the case of Cambodia) and are only willing to open negotiations on specific commitments rather than being expected to provide a full response to the services checklist.⁶ Some provisions in GATS, typically its Preamble, Articles IV and XIX, provide some flexibility for developing countries and LDCs in services negotiations. Moreover, the General Council's Decision on LDC accession recognizes the special needs of LDCs and calls for additional flexibilities so as to facilitate their involvement in trade in services negotiations as well as services liberalization generally.

As part of its current services negotiations, Lao PDR may be expected to adopt a similar approach, putting a focus on specific commitments for certain services, with some degree of flexibility being acknowledged by developed Members in the nature and extent of their services requests. At the same time, some WTO Members are likely to seek an equivalent level of WTO services commitments that Laos may have already agreed to pursuant to other regional and bilateral agreements. Generally, all countries that have joined the WTO have undertaken at least some commitments in business services (notably professional services such as accounting, legal, and architectural services), construction, and financial services. Most new Members have made commitments in some sub-sectors, such as distribution, environmental, tourism, and education services. A smaller share of Members has also made commitments in certain sub-sectors within

⁵ See WT/ACC/5.

⁶ See footnote 19 of the World Bank, East Asia PREM, Building Export Competitiveness in Laos: Background Report 111, available at http://www.integratedframework.org/files/Lao_PDR_DTIS.pdf (last visited on 7 September 2007).

communications—mostly telecom and courier services, but fewer in postal and audiovisual services. Social services, health, and recreational services sectors have experienced relatively fewer commitments. Developing countries have tended to phase-in certain of their commitments over time. Thus, Laos is likely to be pressed to open those sectors of its services market by reference to previous commitments.

Of particular importance is Lao PDR's previous commitments under the Agreement between the United States of America and the Lao People's Democratic Republic on Trade Relations (US-Lao PDR BTA) in 1997. In that agreement, in exchange for Normal Trade Relations (NTR) with the US, Lao PDR made much broader and deeper commitments to the US on trade in services, which was viewed as unusual. In its Chapter III on trade in services, with regard to market access, Laos promised not to impose any restrictions on the ability of nationals and companies of the US to engage in trade in services in the sectors listed in paragraphs 1 and 2 of Article 34, including some sectors of services which were rarely fully opened by LDCs, e.g., basic telecommunications services, audiovisual services, and health and medical care services. Lao PDR even promised it would not impose in those sectors Article 34 GATS limitations on the number of service suppliers, with some conditions, total value of service transactions or assets in certain forms, total number of service operations, natural persons that may be employed in those service sectors, and types of legal entity or joint ventures and participation of foreign capital. In addition, Lao promised to provide national treatment to US service and service suppliers unconditionally. Conversely, the US was only bound to implement existing specific commitments in its GATS services schedule. The above commitments by Laos in the US-Lao PDR BTA are beyond and, to some extent, inconsistent with the character of specific commitments found in GATS, as they place an unreasonable burden on Lao PDR. Although the US-Lao PDR BTA expired three years after its effective date, the US, EU and Australia still are tabling services requests with Lao PDR in their WTO negotiations based upon that agreement.

TRIMs, SCM and Other FDI-related Aspects

As for FDI policy, Laos' investment regime has been widely criticized due to some inconsistencies with the WTO agreements, which reflects current external challenges from the WTO and its some of its Membership.

Lao investment incentives have been particularly noted by some WTO Members. In this regard, the main body of Laos' investment laws, namely, both the Law on the Promotion of

Foreign Investment (2004) (LPFI) and the Law on the Promotion of Domestic Investment (amended in 2004) (LPDI) aim to promote export-oriented production and import substitution.⁷

More specifically, LPDI Article 11 and Decree No.301/PM of the Prime Minister “Regarding the Implementation of the Law on the Promotion of Foreign Investment” Article 34 and Annex 2 provide for export subsidies and import substitution subsidies, and LPFI Article 18 provides for export subsidies. Both export subsidies and import substitution subsidies are prohibited by Article 3.1 of the SCM Agreement (SCM). LPFI Article 18 entitles foreign investment enterprises involved in export production in promoted sectors to receive a range of duty and tax reductions and exemptions. LPDI Article 11 provides domestic investment enterprises involved in export production in promoted sectors and replacing imported goods certain duty and tax reductions and exemptions. In Decree No.301/PM, Article 34 and Annex 2 establish foreign investors’ eligibility for tax and duty exemptions or reductions which is tied to export percentages. In this regard, an enterprise exporting 80 percent or more of its output was eligible for the full range of incentives. In promoted sectors, in Annex 2, foreign companies are required to fulfill a minimum of three of six stipulated conditions, one of which was to use more than 50 percent local raw material in production. Under the local content requirement, import duty remission or exemption is only granted for products or materials not available domestically.

Although Lao PDR as an LDC is eligible for exemption from the prohibition of export subsidies according to SCM Article 27.2 (a) and Annex VII, the country is still subject to SCM Article 27.3, which provides eight years from the date of entry into force of the WTO Agreement as the grace period for entire elimination of import substitution subsidies. Moreover, Lao PDR has been invited to use the format of document G/SCM/6/Rev.1 to provide a subsidy notification according to SCM Article 25. Thus following some WTO Members’ demands, Lao PDR must take responsibility for 1) identification of clearly import substitution subsidies; (2) provision of an action plan to the WPAL with a date certain for the elimination of such subsidies; and (3) notification of all subsidies which include prohibited subsidies contingent upon export or the use of domestic over imported goods.⁸

⁷ See Law on the Promotion of Domestic Investment (2004), Article 9; Law on the Promotion of Foreign Investment (2004), Article 16.

⁸ See Accession of the Lao PDR to the World Trade Organization: Factual Summary of Points Raised, 27, JOB (07)/160, (26 October 2007).

Under the objectives set forth in the two investment laws of the National Assembly of Lao PDR, as specified above, Implementing Decree N.301/PM Article 34 and Annex 2 include the local content requirement, which could be construed as inconsistent with GATT 1994 Article III on national treatment as well as TRIMs Article II:2. Such measures do not fall within the scope of Article 1 of the TRIMs Annex. However, Article 1 in the TRIMs Annex actually provides only an “illustrative”, not an “exhaustive” list of trade-related investment measures inconsistent with national treatment, thus Lao PDR still runs the risk that its local content requirement provisions in existing investment laws could be characterized as WTO-inconsistent.

In its defense, Lao PDR has argued that certain flexibilities are granted to LDCs by the Hong Kong WTO Ministerial Conference Declaration. Accordingly, transitional arrangements and transitional periods should be available to Lao PDR. But all new Members, such as Cambodia and Nepal, have agreed to eliminate such measures by the date of accession to the WTO, and this may lead to external pressure being exerted on Laos for immediate consistency with TRIMs upon its accession.

Some other aspects concerning FDI are also criticized. The most controversial area concerns FDI-related labor laws. LPFI Article 12.5 requires foreign-invested companies to hire at least 90 percent of their work force locally. LPFI Article 13 obliges foreign investors to train, upgrade professional skills, and transfer technology to local employees. Laos' Labor Law (2006) set up more general provisions on the employment of foreign workers. Article 7 of the Labor Law provides any labor unit may employ foreign workers “when necessary, if no appropriately qualified workers are available” in Lao PDR and the employment of foreign workers shall be limited in number and in duration, and “a detailed scheme shall be established for the transfer of skills to Lao workers to replace such foreign workers once the duration of their employment contract has been completed”. With certain exceptions, the introduction of foreign workers should be authorized by the Labour Administration prior to their entry into Lao PDR. Article 7 of the Labor Law further requires the Lao government not to authorize foreign workers to engage in certain activities “which are considered necessary to be reserved for Laos' citizens” according to a specified list. Article 39 of the Labor Law does not provide equal protection of foreign workers' remuneration when compared to that of domestic workers. All of the above provisions appear to be discriminatory against foreign workers, and the Lao PDR government does not appear to have justified such discriminatory measures by reference to any of the exceptions available in WTO agreements.

Besides the above WTO legal shortcomings, a World Bank report⁹ has also identified several problem areas which may be regarded as related to internal challenges or constraints faced by Laos as part of the WTO accession process. These problems include capacity and institutional constraints, infrastructural costs of doing business in Laos and access and cost of key inputs for business. The issue of infrastructural costs is illustrated in the later analysis on freedom of transit in this report.

Capacity constraints in Laos are particularly evident in the inconsistencies which exist between central and local authorities, as has been identified and discussed in the above analysis of institutional arrangements. Institutional constraints also exist because of Laos' lack of institutional capacity to effectively enforce its own laws, including its investment regime legislation. In the following table, the 2008 Doing Business study illustrates the ineffective enforcement of contracts in Lao PDR as one example of the adverse effects brought about by such institutional constraints.

Table II: Enforcing Contracts (2006-2007)

Indicator	Lao PDR	Region	OECD
Procedures (number)	42	37.3	31.3
Duration (days)	443	549.8	443.3
Cost (% of claim)	31.6	47.8	17.7

Source: World Bank, Doing Business 2008, available at <http://www.doingbusiness.org/ExploreEconomies/?economyid=107> (last visited on 13 November 2007).

Note: The ease or difficulty of enforcing commercial contracts is measured below. This is determined by following the evolution of a payment dispute and tracking the time, cost, and number of procedures involved from the moment a plaintiff files the lawsuit until actual payment.

As another example, it would appear unreasonable that most companies in Laos are still paying a 35% profit tax, while the Lao government announced some time ago a reduction in the profit tax rate. Such institutional constraints further contribute to the corruption of officials in charge of law enforcement, which has been reported by private

⁹ See World Bank, East Asia PREM, Building Export Competitiveness in Laos: Background Report 114, 118, available at http://www.integratedframework.org/files/Lao_PDR_DTIS.pdf (last visited on 7 September 2007).

investors in Laos.¹⁰

Financing and labor are two key inputs for FDI. Business access to formal debt and capital financing and financial services is very limited in Laos due to its underdeveloped financial services sector. At the same time, thinly capitalized domestic financial service providers face the prospect of significantly increased foreign competition due to potential market access commitments in the financial services sectors by Laos in connection with its WTO accession. The underdeveloped banking system in Lao PDR¹¹ leads to comparatively weak credit system available for investors as opposed to averaged countries in the region, let alone as amongst OECD countries. See Table III. It is also noteworthy that Lao PDR currently has no equity/capital markets.

Table III: Getting Credit (2006-2007)

Indicator	Lao PDR	Region	OECD
Legal Rights Index	2	4.5	6.4
Credit Information Index	0	1.9	4.8
Public registry coverage (% adults)	0.0	5.5	8.6
Private bureau coverage (% adults)	0.0	10.8	59.3

Source: World Bank, Doing Business 2008, available at

<http://www.doingbusiness.org/ExploreEconomies/?economyid=107> (last visited on 13 November 2007).

Note: Measures on credit information sharing and the legal rights of borrowers and lenders are shown below. The Legal Rights Index ranges from 0-10, with higher scores indicating that those laws are better designed to expand access to credit. The Credit Information Index measures the scope, access and quality of credit information available through public registries or private bureaus. It ranges from 0-6, with higher values indicating that more credit information is available from a public registry or private bureau.

Turning to labour conditions in Lao PDR, employees' rights are satisfactorily protected under current labor policy and laws; however, employers complain that less flexibility for employers creates some rigidity in the labor market, especially as regards

¹⁰ See World Bank, East Asia PREM, Building Export Competitiveness in Laos: Background Report 101, available at http://www.integratedframework.org/files/Lao_PDR_DTIS.pdf (last visited on 7 September 2007).

¹¹ The credit provided to the economy is less than 15% of GDP compared with an average for the ASEAN countries that exceeds 100 percent. Eighty percent of the SMEs do not take out loans. Footnote 25 in World Bank, East Asia PREM, Building Export Competitiveness in Laos: Background Report 117, available at http://www.integratedframework.org/files/Lao_PDR_DTIS.pdf (last visited on 7 September 2007).

working hours and termination of employment contracts by employers, as Table IV demonstrates.

Table IV: Employing Workers (2006-2007)

Indicator	Lao PDR	Region	OECD
Difficulty of Hiring Index	11	19.2	25.2
Rigidity of Hours Index	40	20.8	39.2
Difficulty of Firing Index	60	19.2	27.9
Rigidity of Employment Index	37	19.7	30.8
Non-wage labor cost (% of salary)	5	9.4	20.7
Firing costs (weeks of wages)	19	37.8	25.7

Source: World Bank, Doing Business 2008, available at

<http://www.doingbusiness.org/ExploreEconomies/?economyid=107> (last visited on 13 November 2007).

Note: The difficulties that employers face in hiring and firing workers are shown below. Each index assigns values between 0 and 100, with higher values representing more rigid regulations. The Rigidity of Employment Index is an average of the three indices.

Freedom of Transit and Related Issues

As a landlocked country, Lao PDR serves as a transit country for its neighbors, all of which have become WTO Members. Lao PDR also has to utilize the logistics of its neighboring countries (especially Thailand and Vietnam) to transport goods to sea ports. Correspondingly, GATT 1994 Article V on freedom of transit requires transit Members to recognize and protect the other Members' freedom of transit and provides for MFN on trade in goods through traffic in transit. Furthermore, transit Members shall not be subject to any unnecessary delays or restrictions and shall be exempted from any duties and charges relating to transit. Thus, after WTO accession, as a concomitant of the guarantee of freedom of transit afforded to neighboring countries, Lao PDR must institute measures to protect its neighboring countries' freedom of transit.

Freedom of transit should be protected along with the facilitation of cross-border

procedures because both domestic transit and cross-border transportation are inalienable sections in the whole process of traffic in transit. The reduction of fee and simplification of formalities concerning importation and exportation are typically necessary for Lao PDR, as a landlocked country. Table V illustrates Laos' current disadvantages in the efficiency of trading across borders.

Table V: Trading Across Borders (2006-2007)

Indicator	Lao PDR	Region	OECD
Documents for export (number)	9	6.9	4.5
Time for export (days)	50	24.5	9.8
Cost to export (US\$ per container)	1,750	885.3	905.0
Documents for import (number)	10	7.5	5.0
Time for import (days)	50	25.8	10.4
Cost to import (US\$ per container)	1,930	1,014.5	986.1

Source: World Bank, Doing Business 2008, available at

<http://www.doingbusiness.org/ExploreEconomies/?economyid=107> (last visited on 13 November 2007).

Note: The costs and procedures involved in importing and exporting a standardized shipment of goods are detailed under this topic. Every official procedure involved is recorded - starting from the final contractual agreement between the two parties, and ending with the delivery of the goods.

Other relevant WTO provisions associated with freedom of transit, and falling under the rubric of trade facilitation generally, are GATT 1994 Articles VIII and X. In particular, GATT 1994 Article X requires that freedom of transit should be protected by the publication and administration of relevant trade regulations.

Annex D of “July Package”, subsequent negotiations of the NGTF and Annex E of the Hong Kong Ministerial Declaration, which address further development and refinement of GATT 1994 Articles V, VIII and X, have not been viewed negatively by the developing countries or by LDCs. On account of the substantial progress made in these WTO trade facilitation negotiations, Lao PDR faces challenges that its interests may not

have been fully protected as a landlocked country, although it has nonetheless participated to some extent in these WTO negotiations. TA and support for CB have been reaffirmed in the NGTF deliberations but methods of enforcement have not been specified, for example, with respect to implementation of ICT and automation measures by LDCs. Moreover, the important documents in the NGTF negotiations¹² do not include the implementation costs of the identified measures for developing countries and LDCs as well as prioritization and sequencing concerns. These issues have been raised but not specified in detail in Annex E of the Hong Kong Ministerial Declaration. In addition, in the NGTF negotiations, some developing and LDC countries have advanced the notion that new WTO commitments on the part of developing countries should not be subject to DSB action and should not lead to possible non-compliance penalization.¹³ However, such suggestions have not been included in Annex E of Hong Kong Ministerial Declaration. These developments may place additional, future external constraints on Lao PDR once it accedes to the WTO.

On the other hand, there are also good signs. For instance, Annex E of the Hong Kong Ministerial Declaration includes Article V GATT 1994 improvements. As a landlocked country, Lao PDR generally favors multilateral liberalization with respect to transit reforms.

Other Challenges Outlined

Besides the aforesaid issues, there are also other important WTO issues bearing on the Lao PDR accession. WTO rules on customs valuation pose a challenge to Laos' decentralized customs and government administration. WTO TBT and SPS Agreements require Lao PDR to set up an effective standards regime and organization to notify relevant information and respond to inquiries from other WTO Members. Laos' intellectual property law is still in an early stage of development, and is also likely to be subject to scrutiny by WTO Members as per TRIPs.¹⁴ All of these examples constitute external challenges to Laos during the accession process.

Lao PDR also faces other internal challenges as well. One such challenge is the general lack of legal consciousness in Lao society. This lack of legal consciousness

¹² See TN//W/43/Rev.1 and TN//W/43/Rev.2.

¹³ See Donald Lewis, *Trade Facilitation: Issues and Negotiations* 10 (2005).

¹⁴ See World Bank, East Asia PREM, *Building Export Competitiveness in Laos: Background Report* 39, 44, available at http://www.integratedframework.org/files/Lao_PDR_DTIS.pdf (last visited on 7 September 2007).

underlies Lao PDR's weak legal protection and enforcement. In the short term, this reduces the credibility of the actual implementation of WTO commitments by Lao PDR. In the longer term, Lao socio-economic development is likely to be hampered due to such legal deficiencies.

II. Domestic Reform Process and WTO Accession: Linkages

Confronted with external and internal challenges as illustrated above, Lao PDR has undertaken domestic reforms to link its domestic policies and laws to proposed WTO commitments.

Lao PDR has vigorously demarcated its roadmap for such linkages. To try to ensure that the benefits of domestic reforms flow through to the poorest members of Lao society, the government has adopted a NGPES in 2003. The Committee for Planning and Investment is responsible for coordinating the preparation and implementation of the NGPES, and, also, the NSEDP. The last NSEDP finished at the end of 2005, and the sixth plan for the period 2006–2010 has been adopted by the National Assembly. Meanwhile, the National Export Strategy has also been enacted in late 2005. The NGPES refers to trade policy and lists tariff reductions scheduled under AFTA as part of the government's package of policies for eradicating mass poverty. It also sets Laos' aim to graduate from LDC status by 2020. The sixth NSEDP (2006-2010) reaffirmed Laos' objective to fully implement this integration roadmap and related commitments "to become a prestigious member of international organizations (including WTO) and in multilateral relationships such as AFTA and GMS".¹⁵

In 2006-2007, the National Assembly considered and adopted the socio-economic development plan, state budgetary plan, rural development and poverty reduction programme of the Government. It considered the work of the People's Supreme Court and Supreme Public Prosecutor, adopted three new laws,¹⁶ amendments to four laws¹⁷ and determined a plan for overseeing the rural development and poverty reduction programme.

¹⁵ Lao PDR: Sixth National Socio-economic Development Plan (2006-2010), Part I Chapter IV Section F: 5.

¹⁶ Those are Law on Commercial Banks, Law on Protection of Children's Right and Interests and Law on Value-added Tax.

¹⁷ Those are amendments to Law on National Assembly, Law on State Budget, Law on Labor and Law on Court Fees.

In 2007-2008, the National Assembly will concentrate on translating policies and decrees of the Party into laws to further international integration and linkages. It will make efforts in formulating seven new laws: Law on Intellectual Property, Law on Standardization and Measurements, Drug Law, Sports Law, Law on Fire Prevention and Extinguishment, Law on Protecting Plants and Law on Auctions. Amendments will be made to some laws, including the Law on Foreign Investment, Law on Local Governance, and the Tax Law. Moreover, three newly drafted laws will be considered for adoption, namely, the Law on the People's Security Forces, Law on State Audits and Law on State Inspection.

In the following sections, three aspects of the Lao PDR reform process will be emphasized: institutional arrangements, FDI policies, and the role of "landlockedness". The lessons and "good practices" of Nepal, a landlocked LDC similar to Laos, recently acceded to the WTO, will also be considered for possible reference by Laos.

Institutional Arrangements

Progress in Lao PDR still needs to be made as regards the publication of trade regulations pertaining to GATT Article X and GATS Article III. However, as for other aspects of administrative transparency, especially regarding management and expenditures of the state budget, some laws have been or are in the process of being formulated, including Law on Oversight of the National Assembly, Law on Anti-corruption, Law on State Budget, and the Law on State Inspection. Such laws aim to help activities of organizations and individuals in the administrative sector to be transparent, improve the state management mechanism, and, further, to eliminate social ills, especially corruption as well as violations of the law.

According to GATT 1994 Article X:3(a), all trade regulations should be administered in a uniform manner. The uniformity requires two levels of coordination: coordination between line agencies on the horizontal level, and coordination between central government and local governments on the vertical level. In the following discussion, general institutional arrangements and related laws will be mentioned by reference to the Lao customs system.

Horizontal coordination has been enhanced mainly through a National Steering Committee or NSC created by the Lao government. The NSC is chaired by the Deputy

Prime Minister, who is also the Minister of Foreign Affairs, with the Minister of Industry and Commerce as deputy chairman. The NSC mandate is to directly lead the preparatory work for accession to WTO. The 19 members of the committee, who are mainly ministers, comprise the government agencies affected by accession. The Vice-Minister of Industry and Commerce was appointed as the lead negotiator for the accession process. He has the operational responsibility for the negotiations over WTO accession. The Director-General of the Foreign Trade Department was appointed as deputy to the Vice-Minister with responsibility for policy development and coordination among agencies through an inter-agency accession committee. A small unit has been established within the department to deal with foreign trade policy matters including WTO work. The head of the unit reports directly to the Vice-Minister of Industry and Commerce.¹⁸ Specifically, in customs, it has been a long-existing problem that border regulation is not well-coordinated. Imported and exported products should undergo inspection by several government agencies, such as MOIC, Customs, etc. These problems could be partly eased through the implementation of an automated Customs database system (c-2000). That system was developed locally with TA under UNDP project 96/005.¹⁹ Its creation facilitates customs transaction data gathering and statistics, which allows other agencies easier and quicker access to customs data without the need for their own independent inspections.

On the vertical level, Laos' constitution, following Leninism, has affirmed that the principle of democratic centralism should be applied to the relationship between central and local governments. In other words, local government should be led by the central government while retaining its own power to decide some local affairs. The Law on Government, the Law on Local Administration, which were enacted in 2003 during the domestic reform process, have also recognized that unified and systematic local administration throughout the country is necessary to ensure the effective implementation of the laws and socio-economic development plans.²⁰ These legal developments should result in trade regulations being administered in a uniform manner. In Laos' customs system, the responsibility for administration of the customs houses and checkpoints in the 18 provinces has been largely delegated to the provincial governments by the central government of Laos. Thus, the Laos' Customs Department does not exercise full

¹⁸ See United Nations, The Doha Development Agenda: Perspectives from the ESCAP Region 239, 240, available at <http://www.unescap.org/tid/publication/t&ipub2278.asp> (last visited 10 September 2007).

¹⁹ See World Bank, East Asia PREM, Building Export Competitiveness in Laos: Background Report 79 and 81, available at http://www.integratedframework.org/files/Lao_PDR_DTIS.pdf (last visited on 7 September 2007).

²⁰ See Article 1 of the Law on Local Administration.

managerial control over field operations across the country. Confronted with a situation which is inconsistent with WTO rules, the Customs Department has prepared an organizational strategy to introduce a national administration. The first stage is the strengthening of the Department's monitoring and control of Customs offices through a program of field monitoring visits by teams led by senior departmental managers.²¹ The second stage entails implementation of a new departmental organization structure in order to increase the capacity of the Department to exercise direct managerial control of field operations and to carry out essential headquarters policy and program management functions.

Also, Lao PDR takes step to improve its administrative impartiality and objectivity as per Article X:3 GATT 1994. Although having no administrative litigation procedure, the Law on Civil Procedure, newly amended in 2004, has already authorized the civil chamber of the Lao courts to apply civil proceedings to cases relating to administrative relationships, including "the acts of administrative officials in connection with the imposition of penalties,...the improper seizure of assets [and] other mistakes [made by administrative officials]"²². That law provides for the proceedings as to re-opening of such cases.²³ With regard to current provisions in that law, it could be assessed that Lao PDR is now in substantial compliance with the requirements of Article X:3(a) and (b), although the time periods for such trials seem to require further definition in order to meet the requirement of "prompt" review and correction as set forth in Article X:3(b).

Moreover, other laws²⁴ in Lao PDR have established diverse channels to control the administration of law, such as people's complaints and petitions to the National Assembly and government, oversight of the National Assembly, state audits, state inspections, anti-corruption measures, state budget controls, etc. Typically, in new Customs Law, which entered into force on 25 May 2005, rights as to administrative review have been provided to any owner of goods "who does not agree with the amount of customs duties, other obligations and fines paid" towards "the Customs Authority as to request for

²¹ Those teams have the authority to provide direction to local staff on proper procedures and to ensure corrective action is taken. The teams are required to provide a written report of their visits to the Director General. See the details of the reform in World Bank, East Asia PREM, Building Export Competitiveness in Laos: Background Report 82, available at http://www.integratedframework.org/files/Lao_PDR_DTIS.pdf (last visited on 7 September 2007).

²² Law on Civil Procedure, Article 47.

²³ See Law on Civil Procedure, Part VIII.

²⁴ Such law include but is not limited into the Law on Oversight of the National Assembly, Law on Anti-corruption, Law on State Budget, Law on State Inspection

the review of documents or reconsider the case in accordance with the laws and regulations”.²⁵ Customs Law 2005 Article 29 even stipulates detailed procedures for administrative appeals and judicial review as to customs declarations. It provides that the customs declarant has the right to file a written appeal with the Customs Authority under specific conditions and time limits; the Custom Authority must consider and provide an answer to the appeal within a definite period and must provide explanations, reasons and make recommendations as necessary; the customs declarant has the right to appeal to the next higher authority and, alternatively, file a claim in court. Although still not clarified, such court claims might be understood as providing test cases for administrative litigation.

FDI Policies

With the rising perception of the importance of FDI in economic development and reform, FDI in Lao PDR has shown substantial growth in recent years. In 2005, actual investment increased one third with regard to 2004, from near US\$ 300 million to US\$ 400 million. In 2006, the gross FDI in Lao PDR was estimated at more than US\$500m.²⁶

FDI policy reform and perception enhancement are the primary underlying reasons for the foreign capital surge into Lao PDR. In Laos, as the central element for policy reform in the context of development of a market economy as a rule-based economy, a fairly developed legal regime has been created with a view to achieving WTO-consistency. Until now, such a legal regime has concentrated on investment laws which directly regulate FDI, such as the Law on the Promotion of Foreign Investment (2004) (LPFI) (replacing the Law on the Promotion and Management of Foreign Investment of 1994) and its Implementing Decree No. 300/PM, Law on the Promotion of Domestic Investment (amended in 2004) (LPDI) and its Implementing Decree No. 301/PM. Also, there are relevant laws concerning business activities which are supportive of the FDI legal regime: Insurance Law (1990), Law on Civil Procedure (Amended in 2004), Decree No. 15/PM on Trade Competition (2004), Enterprise Law (2005) (replacing Business Law (1994)), Customs Law (2005), Tax Law (2005), Labor Law (2006), Law on Value Added Tax (VAT) (2006), and Law on Commercial Banks (2006).

²⁵ See Customs Law 2005, Article 66. The Customs Authority basically means the responsible customs agency, who implements the legal power or collect duties or fines. See Customs Law, Article 4.

²⁶ See World Bank Vientiane Office, Lao PDR Economic Monitor 20, available at http://siteresources.worldbank.org/INTLAOPRD/Resources/293582-1096519010070/2006nov_lao_economic_monitor.pdf (last visited on 12 September 2007).

According to a report by the Deputy Permanent Secretary of MOIC for UNESCAP ARTNeT in July 2007, the following list endeavors to stress Laos' core policies and legal reforms as regards FDI in recent years:

- Single Stop Service
- Making business start-up easier
- Private sector development
- Decentralization
- Investment facilitation and promotion²⁷

In fact, all of these measures intend to facilitate and promote investment, including FDI. The first two items in the list, which are more WTO-relevant, are particularly emphasized as follows.

The Committee for Promotion and Management of Investment (CPMI) served as a “one-stop-service” for investment approval. Pursuant to LPFI Article 19, the CPMI examines the investment applications and supporting documents in coordination with the relevant sectoral and local authorities, who could comment on the projects. Article 20 provides qualified foreign investors should obtain a foreign investment license, an enterprise certificate and a tax registration certificate at the same time from the CPMI at the place where the foreign investment are licensed. On the contrary, domestic investors still need to file an application to a trade authority plus CPMI. Qualified domestic investors submitting an application to a trade authority shall obtain an enterprise registration certificate and tax registration certificate at the trade authority where applications are submitted in addition to the same documents as the ones received by foreign investors from CPMI.²⁸ And the time for the granting of licenses has no serious difference between domestic investment and foreign investment.²⁹

Newly adopted investment-related laws also relax the requirement and simplify and shorten the procedure on the start-up of foreign investment enterprises. Pursuant to the LPFI in 2004, within the limitation of the screening approach for foreign investment applications, there is more rapid response in terms of the number of days to respond to

²⁷ Sirisamphanh Vorachith, Country Note on Trade and Investment Policy Coordination: Country: Lao PDR for ARTNeT Consultative Meeting on Trade and Investment Policy Coordination 16-17 July 2007, Bangkok, Thailand, available at http://www.unescap.org/tid/artnet/mtg/tipc_laonotes.pdf (last visited on 16 November 2007).

²⁸ See LPFI Articles 12 and 13.

²⁹ See LPFI Article 20 and LPFI Article 13.

applications.³⁰ The Enterprise Law, based upon original Business Law, reduces the amount of documentation required and does away with stringent conditions such as minimum capital requirements, and thus decreases the ambiguities of procedures and shortens the timeframe of business registration approval.³¹ Moreover, the Enterprise Law replaces the positive list approach with a negative list approach for issuing registrations for business entities. Only within a few controlled sectors are sectoral or business approvals/licenses required.

All of above illustrated measures provide foreign investment with more equal or even superior treatment compared with domestic investment, as is consistent with the basic principle of the WTO on non-discrimination. Such consistency is especially important to trade in services. Because internal regulations may constitute a major obstacle for free trade in services, GATS Article XVII specifically refers to national treatment for foreign services and service suppliers contingent upon Members' specific commitments. The above measures do not appear to be inconsistent with Article XVII. Moreover, besides those provisions considered in Part I of this report, other investment measures are in general consistent with TRIMs.

Furthermore, Laos' government has implemented a series of reforms to develop supportive legal regimes to facilitate FDI into the country in order to improve the investment climate. On the institutional level, as for publication under GATT 1994 Articles X:1 and 2, the Lao government has set up websites and an official quarterly newsletter to disseminate FDI information to investors and to promote foreign investment. As for policy coordination under GATT 1994 Article X:3(a), NLPC has been established as the coordinative organization for line ministries and agencies involved in land administration and management and reorganized DONLUPAD as the secretariat of NLPC; also, provinces have been granted more autonomy on approval of FDI and the roles and responsibilities of responsible authorities at the central and local levels have been clarified.³²

Another major area of domestic reform is tax law. First, pursuant to 2005 Tax

³⁰ See LPFI Article 20.

³¹ See World Bank, East Asia PREM, Building Export Competitiveness in Laos: Background Report 104, 105, available at http://www.integratedframework.org/files/Lao_PDR_DTIS.pdf (last visited on 7 September 2007).

³² See details in those measures in Policies and Good Practices in Investment Promotion and Facilitation in United Nations ESCAP, Least Developed Countries: Bhutan, Lao People's Democratic Republic and Timor-leste 17, 19 (Thailand, UNESCAP publication, 2005).

Law Article 28, whether imported or domestically produced, the listed goods and services are subject to excise tax equally, as is typically consistent with GATT 1994 Article III and also the more flexible GATS Article XVII which is contingent upon specific commitments. Previously, the excise duty regime based on Notification No.1061/MOF of 13 June 2003 had imposed substantially higher duties on imports than on domestic production. Second, according to 2005 Tax Law Articles 11 and 12, importation of goods from abroad and services are also subject to business turnover tax. In that law, Article 13 further provides for exemption from business turnover tax, which includes the importation of 10 categories of goods, such as plants and animals, materials for research and scientific analysis, which are also consistent with GATT 1994 Article III.

On the other hand, in 2005 Tax Law, problems still exist. Article 14 set the taxable basis for turnover tax on imported goods as including import duty and excise tax, if applicable, while domestically-produced goods circulated within Lao PDR are taxed on the basis of actual value of the sales contract, actual sales price, and total services income for services providers, etc. Thus, it appears that imported goods have a more burdensome taxable basis, which includes import duty and excise tax, compared with domestically-produced goods. More obviously, Article 17 sets a table of rates of business turnover tax which differentiate domestic production from importation and sale of goods. As per that table, as for most listed goods, domestic production bears 5%-10% less business turnover tax burden than importation. As an example, Article 13, Section 24 expressly states that domestic manufacture of bio fertilizer is exempted from business turnover tax while imported bio fertilizer is subject to that tax with a tax rate of 5%.

As an updated document of Laos' accession³³ discloses, Lao PDR intended to replace the turnover tax with value added tax (VAT) by January 2009. A single rate of 10 percent was being contemplated; with exports zero-rated. The National Assembly had adopted the VAT Law in December 2006 and the Ministry of Finance was currently drafting regulations to implement the Law. As a single rate is planned to be applied, inconsistency of 2005 Tax Law Article 17 with GATT 1994 Article III is expected to be solved by the application of the VAT system. However, VAT would initially be applied to only businesses with annual turnover exceeding KN 400 million; thus enterprises not required to comply with the new VAT system would continue to pay turnover tax pursuant to the 2005 Tax Law. Such a separate application of 2005 Tax Law and VAT Law will weaken the effect of the improvement in VAT Law.

³³ See Accession of the Lao PDR to the World Trade Organization: Factual Summary of Pointes Raised, 19, 20, JOB (07)/160, (26 October 2007).

Relevant financial laws facilitate not only funding inputs for standard FDI, but also particular FDI in financial sectors. Take 1990 Insurance Law and 2006 Law on Commercial Banks as examples. 1990 Insurance Law provides insurance enterprises in the form of only partnership or branched of foreign insurance companies have the right to conduct insurance business in Lao PDR.³⁴ That provision seems especially in favor of foreign investment in insurance in Lao PDR. Moreover, that insurance law intends to establish a modernized insurance system to facilitate the introduction of FDI. On the other hand, it could be said that the form of foreign investment in Laos' insurance sector is restricted to branches of foreign insurance companies. Also, the scope of business conducted by insurance enterprises is strictly limited.³⁵ Those provisions reserve national treatment and market access in trade of insurance services. It is still unclear whether they could be fully written into the Schedule of Specific Commitments on Services attached to proposed Protocol on the Accession of Lao PDR. The 2006 Law on Commercial Banks seems more advanced than the 1990 Insurance Law. It permits all forms of companies set forth in the Enterprise Law (except the sole limited company) for the establishment of banks.³⁶ Also, the Commercial Banks Law emphasizes equality in business operations and state policies concerning promotion and encouragement of both domestic and foreign investment in banking business.³⁷ On the other hand, there are only a few unequal restrictions on foreign investment, such as ones on minimum investment capital.³⁸ So, in general, the 2006 Law on Commercial Banks approaches compliance with GATS requirements on market access and national treatment. Also, the Commercial Banks Law stipulates in detail rules ranging from banking operations to insolvency, as well as rules on banking supervision and inspection, and thereby contributes significantly to the improvement of the financial environment for FDI in Lao PDR.

In addition, Lao PDR has made other efforts to improve domestic FDI-related policies and laws in order to achieve WTO-consistency. For instance, on 4 February 2004, the Lao government adopted Decree No.15/PM "On Trade Competition", which provides the basic legal framework for the promotion of fair competition, including competition between foreign investment and domestic investment.

³⁴ See Insurance Law (1990) Articles 4 and 5.

³⁵ See Insurance Law (1990) Articles 4 and 5.

³⁶ See Law on Commercial Banks (2006) Article 17.

³⁷ See Law on Commercial Banks (2006) Articles 4 & 6.

³⁸ See Law on Commercial Banks (2006) Article 13.

Role of “Landlockedness”

Lao PDR, as a landlocked country, bears certain special characteristics which affect the process of domestic reform and international economic integration. As evaluated by the World Bank, “landlockedness” primarily presents three dimensions of difficulty for the Lao domestic economy: (1) physical isolation from foreign markets; (2) efficiency of logistics services; and (3) availability of infrastructure and border crossings.³⁹ The first dimension is not a significant problem thanks to the short distance between Lao cities and gateway ports in Thailand and Vietnam. The second dimension mainly reflects the linkage between landlockedness and GATT 1994 Article V, GATS, whilst the third dimension primarily relates to GATT 1994 Article VIII.

In 2004, the Lao-Thai Transit Agreement was finally ratified, having been first proposed in 1999. The agreement is generally consistent with GATT 1994 Article V although in practice national treatment is not always applied to goods in transit, particular as regards choice of modes of transport. Moreover, that bilateral agreement grants the right to transit to both of the two countries’ trucking companies, private and public, by road or international port. Also, the agreement provides for mutual recognition of trucking companies’ licenses while requiring that transporters comply with national laws and regulations while transiting that country. Such provisions actually lay down the openness of Laos’ market in road transportation services, which might be served as reference in bilateral negotiations on the Lao WTO accession. Finally, the agreement calls for facilitation of cross-border movements and avoidance of unnecessary customs inspection subject to provision of proper transport documents, which essentially reduces the fees and times for cross-border importation and exportation. Accordingly, the Lao-Thai Transit Agreement is compatible with GATT 1994 Article VIII. Similarly, Lao has signed a bilateral agreement with Vietnam. The meetings between transport officials of the Government of Lao PDR and the Governments of Thailand and Vietnam are held at least twice a year to review the implementation of their respective agreements. Besides bilateral discussions, Lao PDR has joined a series of regional arrangements in ASEAN and GMS⁴⁰, which aim at further

³⁹ See World Bank, East Asia PREM, Building Export Competitiveness in Laos: Background Report 51, available at http://www.integratedframework.org/files/Lao_PDR_DTIS.pdf (last visited on 7 September 2007).

⁴⁰ Those regional agreements include but are not limited to: under ASEAN, the Framework Agreement on Mutual Recognition Arrangements, the Framework Agreement on the Facilitation of Goods in Transit, the

simplification and unification of regulations on cross-border and inter-state transportation.

Also, in domestic law, Lao PDR actively implements international, regional, bilateral agreements. Typically, Article 33 of Customs Law (2005) promises goods in transit shall be subject to the suspension of customs duties on the condition of presentment of the “movement permit of goods in transit accompanied by security to the customs officers along its transport route and the border customs checkpoint at the point of export in order to manage the transit”.⁴¹ Moreover, the Laos’ customs procedures for clearing imports and exports have already been significantly improved and simplified in recent years. The commodity classification has been converted to the Harmonized System. A single administrative document similar but not identical to the UN Layout Key format was introduced in 2000. This document is used for imports, exports, and transit goods, and replaced 16 documents. Direct clearance of goods at the factory is permitted in certain situations. The average time to clear cargo has been substantially reduced both in Laos and at the transit facilities in Klong Toey.⁴²

Lessons and “Good Practices” from Nepal

Nepal, similar to Lao PDR, as an LDC and landlocked country, successfully acceded to the WTO in 2003 – 14 years after its Working Party was established in 1989. Nepal’s lessons and “good practices” during its WTO accession may serve as a valuable reference for Lao PDR.

Generally speaking, Nepal successfully utilized some available flexibility in the WTO rules for LDCs and developing countries during its accession, which may be evaluated as the most important aspect of the Nepal WTO accession for Laos. Such an approach may minimize the impact of WTO-mandated domestic reforms on the Lao national economy and general society. Having regard to the 2002 General Council Decision on accession of LDCs⁴³, paragraph 42 of the Doha Ministerial Declaration⁴⁴, the mandate

Framework Agreement on the Facilitation of Inter-State Transport, the Framework Agreement on Multimodal Transport; under GMS, the Agreement for the Facilitation of the Cross-border Transport of Goods and People. See the details in United Nations ESCAP, Landlocked Developing Countries Series, No. 1: Transit Transport Issues in Landlocked and Transit Developing Countries 55, 56, available at <http://www.unescap.org/publications/detail.asp?id=987> (last visited on 12 September 2007).

⁴¹ Customs Law (2005), Article 33.

⁴² See World Bank, East Asia PREM, Building Export Competitiveness in Laos: Background Report 66, available at http://www.integratedframework.org/files/Lao_PDR_DTIS.pdf (last visited on 7 September 2007).

⁴³ WT/L/508.

in paragraph 18(iii) of the WTO Work Program on LDCs⁴⁵, Nepal's WTO accession was conducted in a more simplified manner. WT/ACC/10/Rev.3 provided Nepal, as an LDC, with longer transition periods. Moreover, thanks to the 1979 Enabling Clause as well as paragraph 42 of the Doha Ministerial Declaration, Nepal enjoys the other WTO Members' proposed commitments on duty-free, quota-free market access for its products.

On the other hand, Nepal also faced difficulties in availing itself of the benefits of S&D treatment provisions during the accession negotiation process. WTO trading partners were rigorous *demandeurs*. They raised harsh requests concerning Nepal's commitments, including a range of WTO-plus issues, such as the ITA, chemical harmonization, textile harmonization and government procurement. This slowed Nepal's WTO accession, which offset the WTO aim of expediting LDC accession procedure.⁴⁶ Nepal chose to delay accession, rather than enter into commitments on such unfavorable new issues and plurilateral agreements. Thus, Nepal finally did not join the ITA. Nor did it sign any informal sectoral agreements. Therefore, Nepal was successful in rebuffing many of the requests of the most strident of the WTO *demandeurs*. However, Nepal has committed to enter into certain favorable negotiations, such as NGTF negotiations on Article V.

As another generally positive aspect of its accession, the Nepal government co-opted private sector involvement through business interactions and institutional mechanisms in preparation for WTO accession, so that a feeling of national ownership concerning WTO accession was generated. Nonetheless, despite a number of measures to improve private participation, the dialogue between the private sector and government still lagged behind its neighboring countries.⁴⁷

Specifically, with regard to institutional arrangements, Nepal gave the highest priority to coordination among government ministries and departments by establishing a high-level committee to prepare for WTO accession. That committee, is chaired by the Secretary of the Ministry of Industry, Commerce and Supplies, and is comprised of the Secretaries or representatives of line agencies. The system apparently worked well during the accession.

⁴⁴ WTO document: WT/MIN(01)/DEC/1

⁴⁵ WTO document: WT/COMTD/LDC/11

⁴⁶ See United Nations, The Doha Development Agenda: Perspectives from the ESCAP Region 272, available at <http://www.unescap.org/tid/publication/t&ipub2278.asp> (last visited 10 September 2007).

⁴⁷ See United Nations, The Doha Development Agenda: Perspectives from the ESCAP Region 256, available at <http://www.unescap.org/tid/publication/t&ipub2278.asp> (last visited 10 September 2007).

As for tariff bindings, Nepal took the strategy of trading off low tariff rates and other benefits with trading partners. Its tariffs have been bound high for imports similar to products of established domestic industries, with lower bindings for products that are similar to potential industries and lower applied rates for non-potential industries. The impact of tariff reductions on government tax revenues has also been given the utmost importance while negotiating tariff bindings.⁴⁸ As a result, Nepal offered 60 percent in the maximum bound rate on manufactured products and the average bound rate is 24 percent, while the average applied rate (in 2002) was 14 percent.⁴⁹

Nepal did not bind its agricultural export subsidies at zero upon WTO accession owing to the S&D treatment on the binding of export subsidies for LDCs agreed upon in the Uruguay Round. Furthermore, because of the 2002 General Council Decision on accession of LDCs, Nepal made commitments in fewer services sectors than did most other new WTO Members. Nepal also negotiated transition periods of three years in the implementation of Customs Valuation Agreement, TBT Agreement and TRIPs, and four years for implementation of the SPS Agreement. As the precondition for acquiring those transition periods, Nepal submitted relevant plans of action to promise its step-by-step domestic integration, including the revision or stipulation of relevant policies, laws and procedures as well as enhancing their enforcement, and the establishment or reorganization of corresponding responsible institutions. However, immediately upon accession, Nepal reformed its domestic policy environment to abolish any measures inconsistent with TRIMs, national treatment, the Agreement on Import Licensing Procedures, and to meet the requirements in those WTO rules.⁵⁰

III. Policy Recommendations

In its bid to overcome the external and internal challenges identified above and integrate effectively into the global economy, Lao PDR should be mindful of the primary solution to such constraints as suggested by Priority 3 of the APA: active participation in

⁴⁸ United Nations, The Doha Development Agenda: Perspectives from the ESCAP Region 257, available at <http://www.unescap.org/tid/publication/t&ipub2278.asp> (last visited 10 September 2007).

⁴⁹ See World Bank, East Asia PREM, Building Export Competitiveness in Laos: Background Report 37, available at http://www.integratedframework.org/files/Lao_PDR_DTIS.pdf (last visited on 13 September 2007)

⁵⁰ See World Bank, East Asia PREM, Building Export Competitiveness in Laos: Background Report 37, 44, available at http://www.integratedframework.org/files/Lao_PDR_DTIS.pdf (last visited on 13 September 2007)

“international conventions and regional, subregional and bilateral agreements”.⁵¹ In other words, multilateral, regional and bilateral trade liberalization are the surest ways forward. Full and effective implementation of such forms of liberalization requires a strong political commitment at the national level, which underlines the linkage of coherent national domestic reform strategies with the process of global integration.

Domestic Aspects

The Lao government itself should adopt measures to improve its trade and domestic policies with a view to achieving WTO-consistency. In terms of institutional arrangements, the Lao government should promptly publish all of its important trade-related policies, laws and other measures of general application – ideally, through an official publication and/or over the official government website. Moreover, Lao PDR should further strengthen the unification and coordination of its trade administrative system – amongst line agencies as well as between central and local government departments, especially as regards customs and accession negotiations. Finally, WTO-consistent remedies to contest trade-related administrative decisions should be established. As Laos’ administrative complaint procedures appear at present to be arguably WTO-consistent, further steps should be taken to provide avenues for impartial, objective and comprehensive administrative appeals, and/or administrative litigation procedures.

As regards tariff bindings and the elimination of NTBs, Lao PDR necessarily needs to negotiate import tariff reductions and non-tariff restrictions with its main WTO trading partners. Specifically, in the area of trade in agricultural products, tariff-rate quotas should replace WTO-inconsistent NTBs; import business registration and the Indicative Plan have to be comprehensively examined, improved or replaced by appropriate measures to achieve consistency with the WTO agreements. In the services trade, the Lao government should actively communicate and negotiate bilaterally to meet the requirements of the WTO rules on market access and national treatment according to levels of recently acceding countries at similar development stages.

With respect to FDI-related issues, Lao PDR investment laws, such as LPFI, LPDI and their Implementing Decrees, should be amended to be consistent with TRIMs as well as the SCM Agreement. Especially, local content requirements should be gradually eliminated as per the requirements of the WTO agreements. As for other relevant economic

⁵¹ A/CONF.202/3, Annex 1, Article 35.

laws, discriminatory provisions in the Labor Law and 2005 Tax Law should be abolished in order to comply with WTO principles and rules on national treatment and market access; whilst the Enterprise Law, Decree on Trade Competition, VAT Law, Customs Law, Law on Commercial Banks, and 2004 Law on Civil Procedure, should be further rectified or improved by more detailed regulations. The Insurance Law should be redrafted: it is out-dated and its WTO-inconsistent provisions should be repealed. As for FDI-related policies, internal constraints should be remedied: whether related to capacity and/or institutional building or to the improvement of infrastructure, financial supporting systems or a more progressive labor market regime. As regards trade facilitation, the Lao government should focus further attention on the implementation of relevant bilateral and multilateral agreements. Implementing regulations to the Customs Law should be introduced as soon as possible, especially with respect to rules of origin, pre-shipment inspection and customs valuation, in order to comply with relevant WTO and regional agreements.

On the other hand, during and after WTO accession, Lao PDR may actively resort to all the available opportunities and favorable regional and multilateral rules which are WTO-inclusive or WTO-consistent. Learning from the lessons and “good practices” of newly acceding LDCs and landlocked countries, such as Nepal, the Lao government may profitably refer to advantageous WTO S&DT provisions to facilitate and expedite its accession process and obtain more favorable terms of accession, such as generous transition periods for the implementation of certain WTO agreements. Lao PDR may consider the option of delaying accession to mitigate the negative effects of harsh requests of WTO *demandeurs* and the assumption of unwelcome obligations. Moreover, whether in the status of an observer during accession or a Member after accession, Lao PDR should actively unite with other landlocked countries and LDCs to advance collectively their special needs and priorities in TF and other areas of mutual concern currently under discussion in WTO forums, rather than passively accepting stipulated WTO rules which insufficiently protect their national interests.

Regional Aspects

Regional cooperation and integration clearly plays an important role in Lao PDR’s integration into the global economy. Lao PDR may address constraints in CB through regional cooperation and integration or networking in order to facilitate WTO accession, the so-called “regional approach”. That approach specifically requires regional

organizations or networks to give priority to information dissemination, human resources development and institutional enhancement to aid Laos' domestic reforms and integration into the global economy. Perhaps most important among these regional organizations are ASEAN and GMS.

Because of its landlockedness and status as an LDC, Lao PDR is one of three countries which have recently acceded to ASEAN in Southeast Asia. The other two countries are Vietnam and Cambodia. However, these two other countries already have successfully acceded to the WTO. So, ASEAN should facilitate Laos' accession through preparing the Lao government in its responses to WPAL requests and questions as well as through offering training on the WTO agreements relevant to the Lao accession. Other ASEAN members may provide Laos' negotiators basic multilateral negotiation skills and relevant information and lay a foundation for policy reforms that are WTO-supportive.⁵²

Moreover, Laos' WTO accession may benefit from Lao PDR's implementation and further negotiation of ASEAN rules itself. In this sense, ASEAN should pro-actively strive towards final establishment of the ASEAN Economic Community outlined in ASEAN Vision 2020, aiming to create ASEAN single market in which there is free flow of goods, services, investment and a freer flow of capital. Specifically, that includes instituting new mechanisms and measures to strengthen the implementation of AFTA, AFAS and AIA; accelerating regional integration in transportation, agricultural products, etc. Under AFTA, Lao PDR should be monitored to implement its tariff reductions in the Inclusion List into the 0-5 percent range not later than 2008. Also, ASEAN should propel simplification and streamlining of Laos' customs procedures and practices in line with the WTO Agreement on Customs Valuation, such as the adoption of the "single window" approach. Moreover, the West-East Corridor of the Mekong Basin should be promoted within the ASEAN Mekong Basin Development Cooperation scheme. In addition, ASEAN may facilitate Laos' transportation development through a series of regional agreements.⁵³ ASEAN should strictly follow the IAI programme as well as its current six-year Work Plan (July 2002 – June 2008) for Lao PDR. Under IAI, ASEAN-6 should observe their obligations to provide assistance to Lao PDR in various forms to reduce the development gap between

⁵² See United Nations, The Doha Development Agenda: Perspectives from the ESCAP Region 252, available at <http://www.unescap.org/tid/publication/t&ipub2278.asp> (last visited 10 September 2007).

⁵³ Such agreements include ASEAN Framework Agreement on the Facilitation of Goods in Transit, Ha Noi, 16 December 1998; ASEAN Transport Action Plan 2005-2010; Protocol 1 - Designation of Transit Transport Routes and Facilities and its Annex of List of Transit Transport Routes, Bangkok, 8 February 2007, available at <http://www.aseansec.org/7365.htm> (last visited on 14 September 2007).

Lao PDR and ASEAN-6. The IAI Work Plan has identified four priority areas, namely infrastructure development, human resource development, information and communication technology and promoting regional economic integration.⁵⁴

Also, Lao PDR is a member of GMS – a program of subregional economic cooperation established with the ADB’s assistance. First of all, GMS countries, including China, may take collective action to support Laos’ WTO accession. Besides, until now, five aspects of initiatives have been launched,⁵⁵ which are more or less intended to promote Laos’ international integration and accession. The focused here is on the Cross-Border Transport Agreement, or CBTA. Implementation of CBTA should actively pursued by GMS, because it includes the following elements which would move Laos’ domestic policy and law formulation in directions which are more consistent with WTO rules on TF before 2007/2008:

- i. single-stop/single-window customs inspection,
- ii. cross-border movement of persons (i.e., visas for persons engaged in transport operations),
- iii. transit traffic regimes, including exemptions from physical customs inspection, bond deposit, escort, and agriculture and veterinary inspection,
- iv. requirements that road vehicles will have to meet to be eligible for cross-border traffic,
- v. exchange of commercial traffic rights and
- vi. infrastructure, including road and bridge design standards, road signs, and signals.⁵⁶

International Aspects

Lao PDR receives various sources of support for its domestic reforms and international integration from international organizations as well as other agencies, among which UNESCAP⁵⁷, which serves as the Secretariat for the Asia-Pacific Trade Agreement

⁵⁴ See the details on AIA and its current Work Plan at <http://www.aseansec.org/14683.htm> (last visited on 14 September 2007).

⁵⁵ Those are Core Environment Program, Cross-Border Transport Agreement, Phnom Penh Plan for Development Management, GMS Energy Strategy, Working Group on Agriculture. See those details at <http://www.adb.org/GMS/> (last visited on 14 September 2007).

⁵⁶ See the details on CBTA at <http://www.adb.org/GMS/Cross-Border/default.asp> (last visited on 14 September 2007).

⁵⁷ UNESCAP, as the regional branch of the United Nations for Asia and the Pacific, has set up a special body on LDCs and landlocked developing countries, and has implemented a number of CB/TA project directly relevant to Laos’ accession and integration. See details available at <http://www.unescap.org/tid/projects.asp> (last visited on 15 September 2007)

(APTA, previously the Bangkok Agreement signed in 1975). APTA is a preferential trade agreement which includes, among others, China, India and Lao PDR. After three rounds of multilateral negotiations, Lao PDR has received many preferential and general tariff concessions from other members. Such concessions have significantly promoted Laos' exports to China.⁵⁸ Lao PDR may therefore continue to take an active part in deepening this unique agreement during future rounds.

Finally, Laos' reform and integration should be mutually supported by broad-based participation of different international organizations and other agencies. Such an organizational approach has been a proven success in the implementation of the APA. In the APA, different UN agencies (such as the General Assembly, Secretary-General, UNCTAD, UNESCAP), World Bank, the regional commissions and other relevant international and regional/subregional organizations have positively cooperated in the implementation process. The APA experience could be replicated with respect to other programmes and measures designed to facilitate Laos' domestic and trade policy reforms. Currently, there are various plans, projects, etc, in TA/CB or in other areas covering Laos' public sector governance, reform of state-owned enterprises and the financial sector, trade reforms, private sector initiatives, etc. These are supported by the ADB, EC, ITC, UNDP, World Bank, Australia, France, Singapore, and the US, among others. Such TA measures should be expanded and coordinated in the future. Moreover, such cooperating agencies and donor governments should pay particular attention to the need to arouse awareness of the private sector and improve communications with the private sector in order to better implement such TA measures and programmes.

⁵⁸ Statistics shows China, as the only country importing one product offered concession in the Second and Third Round of negotiation from Lao PDR, has achieved an increasing share of such importation versus China's worldwide importation. See UNESCAP, Asia Pacific Trade Agreement: Implications of Exchange of Trade Preferences for Member and Prospective Member Countries 11, available at <http://www.unescap.org/tid/apta/tradepref.pdf> (last visited on 15 September 2007).

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