

The Nexus between Trade Agreements and the Rule-of-Law in Lao PDR

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In today's world, it is commonly understood that beyond its role as a safeguard against arbitrary governance, the Rule-of-Law, defined by clear, transparent and predictable legislation, is required in order to create a desirable location for conducting business (e.g. encouraging investment, creating jobs and generating income).

In 1986, the Lao PDR initiated a "New Economic Mechanism" that led to the development of the first group of laws to support a market economy with a viable private sector and a role for foreign businesses and trade.

Over the last decade, Lao PDR developed a Legal Sector Master Plan to achieve a full Rule-of-Law State by 2020 and has initiated a "breakthrough strategy" that, among other things, aims to reduce unnecessary burdens on businesses.

Most recently, the National Assembly has embarked on an ambitious agenda of developing 90 laws from 2011 to 2015. To date, the Lao National Assembly has adopted 98 laws, three of which were still pending promulgation in June 2013. The 5-year plan by the National Assembly's 7th legislature for 2011-2015 foresees the adoption of 48 new laws, and the revision of 42 existing laws, what is equivalent to what the National Assembly has adopted or amended through the previous 6 legislatures (1980 to 2011).

THE STRONG LINK BETWEEN TRADE AGREEMENTS AND IMPROVED RULE OF LAW

It is no coincidence that this evolving commitment for a Rule-of-Law State has advanced in parallel with the Lao PDR signing on to a range of important trade agreements, including the U.S.-Lao PDR Bilateral Trade Agreement (BTA) in 2005, the entry

of the Lao PDR as the 158th World Trade Organization (WTO) member in 2013, and the integration of Lao PDR into the dynamic ASEAN Economic Community (AEC) by 2015 (see *T-AB Magazine* Vol. 5, 2012, page 10, for more information).

For Lao PDR to gain the benefits of international and regional economic integration the country has implemented the requirements of trade agreements as guidelines for modernizing their domestic commercial legislation, and as a result the domestic rule-of-law has been strengthened.

Lao PDR joined ASEAN in 1997, the same year it began negotiating the U.S.-Lao BTA and accession to the WTO. The BTA, which came into effect in 2005, normalized economic relations between the Lao PDR and the U.S., with both countries agreeing to apply core WTO requirements to businesses. They agreed to a uniform, impartial and reasonable application of all laws, regulations, rulings and practices and decided that all relevant laws and regulations be published in an official journal.

The BTA also included requirements for effective commercial dispute resolution processes based on UNCITRAL Rules with access to international arbitration and the enforcement of foreign arbitral awards through the 1958 New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards (of which Lao PDR is a party). The Lao PDR modernized its Law on the Resolution of Economic Disputes in 2010 in line with the BTA requirements.

The BTA was designed by both governments as a stepping stone toward WTO accession. The multilateral WTO accession, however, applied to almost all of Lao PDR's trading partners, which in turn

required Lao PDR to more formally modernize their laws and regulations to comply with the WTO agreements. As a result, from 2005 to 2012, a number of laws with supporting regulations were developed to meet WTO requirements.

In practice, these new pieces of legislation not only provided a more systematic and modern legal framework for foreign firms to trade and invest with Lao PDR, but the new "law of the land" will be applied directly to improve the business environment for domestic businesses and investors.

Furthermore, in many areas, these new laws strengthened core foundations for rule-of-law and governance for all Lao citizens and activities.

Key laws with implementing regulations that were passed leading up to the WTO accession included: the Law on Making Legislation, the Law on Intellectual Property, the Law on Customs, the Law on Enterprises, the Law on Investment Promotion, the Law on Lawyers, the Law on Insurance, the Law on Electronic Transactions and the implementing decree for the Law on Standardization.

Contributing directly to core rule-of-laws principles, the Law on Making Legislation that came into effect in January 2013 outlined the legal transparency requirements in the trade agreements and applied to all legislation developed in Lao PDR. It required the establishment of an Official Gazette (expected to be online in June or July this year) and that all legislation of general application at the central and provincial levels be published in the Official Gazette for 15 days before coming into effect.

This was a huge breakthrough in the rule of law, since Lao citizens and foreigners alike can now refer to these laws and regulations as a legal guide. Furthermore,

it established a 60-day public comment period for all draft legislation, including provision of a regulatory and budgetary impact note for the public and policy makers to better understand the full implication of proposed legislation.

Moreover, a strict hierarchy of norms was established. Processes for dealing with inconsistencies among legislation were greatly enhanced – now local regulations must comply with national legislation, national legislation must comply with international treaties to which Lao PDR is a party, and processes have been created for the Ministry of Justice and the National Assembly to resolve discrepancies among legislation.

Lao PDR has made more limited strides toward achieving other core rule-of-law requirements in the WTO – the right to appeal government decisions in a fair and efficient manner, with ultimate appeal to the courts, and the development of independent regulators.

Progress is being made in developing a more advanced appeal process for customs decisions, but in most other areas, any business or citizen with a complaint against a government decision has few formal procedural appeal options. This is an area that will require major new legislations on administrative complaints and appeal processes and the development of an administrative court in the judiciary.

Most importantly, Laos must establish an independent regulator for the telecom sector with competitive safeguards and inter-connectivity to guarantee a competitive environment for foreign and private telecom operators. However, many sectors need to break new ground toward more independent regulators to guarantee openly contested and competitive markets, such as a new decree that is expected to provide an opportunity to establish arms-length regulation in the insurance sector.

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On January 17, 2013, senior members of the Lao Ministry of Finance and members of the Lao Chapter, European Chamber of Commerce in Lao PDR and the Australia New Zealand Business Association, held a seminar on Lao PDR's amended Tax Law.

Meeting WTO requirements provides the foundation for compliance with ASEAN Economic Community requirements, as the AEC aims to harmonize the implementation of WTO-compliant processes throughout the ASEAN country members. It also broadens commitments to a number of important “WTO Plus” areas, including competition policy, consumer protection, and a single window for exports and imports.

LOOKING FORWARD – SOLID MOMENTUM, BUT MANY REMAINING CHALLENGES

Lao PDR is steadily improving the quality of its legal system, adding clarity, consistency and transparency as well as filling gaps in the law to facilitate and appropriately regulate a modern, market-oriented economy. Trade agreements have been used by the Lao PDR to advance many of these improvements. A more robust “letter of the law” is a critical building block for the rule-of-law, but a Rule-of-Law State will not be a reality without the development of stronger political, institutional, technical and human resource capabilities to implement and enforce the improved legislation.

Trade agreements provide less direct guidance for this critical task, and Lao PDR, a small country with limited government resources, faces inherent difficulties in implementing complex international regulatory regimes. Trade agreements introduce the idea of risk-based regulation, which focuses regulatory resources on those activities that pose the greater risk for achieving social and economic policy objectives. Other approaches, such as the new policy to devolve implementation authority to local governments, the use of one-stop shops, and new requirements for registering assets of Government officials are being examined.

Businesses, of course, appreciate good laws, but their positive impact will be fully recognized only when they are implemented effectively and fairly in practice. A great deal has been accomplished to strengthen the rule-of-law, with implementation of the trade agreements, but it is still widely recognized that much work remains to be done for Lao PDR to achieve the ambitious objective of a full Rule-of-Law State by 2020. ■

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