

ບົດສຶກສາການເປີດຂະ
ແຫນງການຈຳໜ່າຍ
ໃນການເຈລະຈາເຂົ້າ
ເປັນສະມາຊິກອົງການ
ການຄ້າໂລກຂອງ ສປປ
ລາວ

**Study on Possible
Impacts of the World
Trade Organization
Accession on
Distribution Services in
Lao PDR**

ຈັດພິມໂດຍ: ກະຊວງອຸດສາຫະກຳ ແລະ ການຄ້າ, ກົມນະໂຍບາຍການຄ້າຕ່າງ
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**Possible Impacts of the World Trade Organization
Accession on Distribution Services in Lao PDR**

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List of Abbreviations

AFAS	ASEAN Framework Agreement on Services
AFTA	ASEAN Free Trade Area
ASEAN	Association of South East Asian Nations
CEPT	Common Effective Preferential Tariff
CPC	Central Product Classification
DDT	Department of Domestic Trade
ENT	Economic Needs Test
FDI	Foreign Direct Investment
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
ITC	International Trade Centre
LDC	Least Developed Country
LECS	Lao Expenditure and Consumption Survey
MAF	Ministry of Agriculture and Forestry
MEM	Ministry of Energy and Mines
MFN	Most Favoured Nation Treatment
MICT	Ministry of Information, Culture and Tourism
MOH	Ministry of Health
MOIC	Ministry of Industry and Commerce
MOST	Ministry of Science and Technology
MPI	Ministry of Planning and Investment
MPTC	Ministry of Posts, Telecommunication and Communication
MPWT	Ministry of Public Work and Transport
SME	Small and Medium Sized Enterprise
SPS	Sanitary and Phyto-Sanitary Standards
TBT	Technical Barriers to Trade
TRIPS	Trade Related Aspects of Intellectual Property Rights
WTO	World Trade Organisation

ຄໍານຳຂອງຄະນະຈັດທຳ

ຈຸດປະສົງສຳຄັນຂອງ ບົດສຶກສາ ການເປີດຂະແໜງການຈຳໜ່າຍ ໃນການເຈລະຈາເຂົ້າເປັນສະມາຊິກອົງການ ການຄ້າໂລກ (ອຄລ) ຂອງ ສປປ ລາວ ນີ້ແມ່ນ ເພື່ອສ້າງຄວາມຮັບຮູ້ ແລະ ຄວາມເຂົ້າໃຈ ພ້ອມທັງ ເປັນການ ເຜີຍແຜ່ຂໍ້ມູນ ກ່ຽວກັບກາລະໂອກາດ ແລະ ສິ່ງທ້າທາຍຂອງການເປີດຂະແໜງການຈຳໜ່າຍ ທີ່ຕິດພັນກັບການ ເຂົ້າເປັນສະມາຊິກ ອຄລ ຂອງ ສປປ ລາວ ໃຫ້ແກ່ພາກສ່ວນກ່ຽວຂ້ອງຮັບຊາບ. ນອກຈາກນີ້, ຍັງຈະໄດ້ ໝູນໃຊ້ ໝາກຜົນ ແລະ ຂໍ້ສະເໜີແນະນຳດ້ານນະໂຍບາຍຂອງບົດສຶກສາ ເພື່ອປະກອບເຂົ້າໃນການພັດທະນາ ລວມທັງການ ບັບປຸງນິຕິກຳທີ່ຕິດພັນກັບຂະແໜງການຈຳໜ່າຍໃຫ້ສອດຄ່ອງກັບລະບຽບການຂອງ ອຄລ ແລະ ເພື່ອນຳໃຊ້ ຂໍ້ມູນບາງສ່ວນເຂົ້າໃນການເຈລະຈາເຂົ້າເປັນສະມາຊິກ ອຄລ ຂອງ ສປປ ລາວ.

ການຈັດທຳ ແລະ ຈັດພິມບົດສຶກສານີ້ແມ່ນ ການຮ່ວມມື ແລະ ປະສານງານລະຫວ່າງ ກົມນະໂຍບາຍ ການ ຄ້າຕ່າງປະເທດ ແລະ ທ່ານ Dr. Sirisena Dahanayake, ຊ່ຽວຊານຕ່າງປະເທດ ພາຍໃຕ້ການຊີ້ນຳຂອງ ຄະນະນຳ ກະຊວງອຸດສາຫະກຳ ແລະ ການຄ້າ.

ການຈັດທຳ ແລະ ຈັດພິມຄັ້ງນີ້ໄດ້ຮັບການສະໜັບສະໜູນ ຈາກໂຄງການກອງທຶນຊ່ວຍ ເຫຼືອລ້າເພື່ອການ ພັດທະນາ ດ້ານການຄ້າ (TDF) ແລະ ອີງຕາມເນື້ອໃນ ທັງຫມົດຂອງບົດສຶກສາດັ່ງກ່າວ

ການທົບທວນ ແລະ ຮຽບຮຽງການຈັດພິມຄັ້ງນີ້ ແມ່ນອີງໃສ່ ຂໍ້ມູນທີ່ມີຢູ່, ປະສົບການ ແລະ ຄວາມຮູ້ຂອງ ບັນດາ ວິຊາການທີ່ເຮັດວຽກຕິດແທດກັບວຽກງານການສະໜັບສະໜູນເຂົ້າເປັນສະມາຊິກອົງການການຄ້າໂລກມາຮອດປະຈຸ ບັນ, ແຕ່ປາສະຈາກບໍ່ໄດ້ຄວາມຜິດພາດ ທັງທາງດ້ານຄວາມບໍ່ຄົບຖ້ວນຂອງເນື້ອໃນ, ຕົວເລກສະຖິຕິຕະຫຼອດ ຮອດ ການຄາດຄະເນເຖິງການປ່ຽນແປງທີ່ອາດຈະເກີດຂຶ້ນໃນເວລາທີ່ກະກຽມຂຽນບົດສຶກສານີ້. ສະນັ້ນ, ຈຶ່ງຖື ໂອກາດນີ້, ຂໍອະໄພ ແລະ ຍິນດີຮັບຄຳຕິຊົມ ເພື່ອນຳໄປພິຈາລະນາ ແລະ ແກ້ໄຂ ໃນໂອກາດຕໍ່ໄປ.

ຂໍຂອບໃຈ

ນະຄອນຫຼວງວຽງຈັນ, ວັນທີ 19 OCT 2011

ລັດຖະມົນຕີຊ່ວຍວ່າການ ກະຊວງອຸດສາຫະກຳ ແລະ ການຄ້າ
ຫົວໜ້າກອງເລຂາການເຂົ້າເປັນສະມາຊິກ ອົງການການຄ້າໂລກ



ນ.ເຂັມມະນີ ພິນເສນາ

ສະຫຼຸບບົດຄົ້ນຄວ້າໂດຍສັງເຂບ

❖ ກອບການສຶກສາ

ຈຸດປະສົງຫຼັກຂອງບົດສຶກສານີ້ແມ່ນເພື່ອເຮັດໃຫ້ລັດຖະບານ ສປປ ລາວ ຮັບຊາບຜົນສໍາເລັດ ການວິໄຈຕໍ່ກັບຂະແໜງຈໍລະຈອນແຈກຢາຍສິນຄ້າ ແລະ ການສະເໜີແນວທາງຍຸດທະສາດການເຈລະຈາຕໍ່ທີມງານເຈລະຈາເພື່ອເຂົ້າເປັນສະມາຊິກອົງການຄ້າໂລກຂອງລາວ. ເນື້ອໃນການວິໄຈກ່ຽວກັບຂະແໜງຈໍລະຈອນແຈກຢາຍສິນຄ້າຂອງລາວແມ່ນໄດ້ຈາກການສຶກສາດ້ວຍການກວດຄົ້ນບັນດາລະບຽບກົດໝາຍຂອງປະເທດ ທີ່ໃຫ້ອໍານາດໃນການຄຸ້ມຄອງຂະແໜງການນີ້ ແລະ ດ້ວຍວິທີການສຶກສາແບບປຽບທຽບເນື້ອໃນຄໍາສັນຍາ ທີ່ກ່ຽວພັນກັບຂະແໜງຈໍລະຈອນແຈກຢາຍສິນຄ້າພາຍໃຕ້ ກອບຂໍ້ຕົກລົງຂອງສະມາຄົມອາຊຽນຕໍ່ກັບການຄ້າການບໍລິການ (AFAS) ແລະ ພາຍໃຕ້ກອບຂໍ້ຕົກລົງທາງດ້ານການຄ້າການບໍລິການ (GATS) ທີ່ບາງປະເທດສະມາຊິກອົງການຄ້າໂລກທີ່ບໍ່ມີທາງອອກສູ່ທະເລ ໄດ້ເຮັດຄໍາສັນຍາໄວ້. ພາກສຸດທ້າຍຂອງບົດສຶກສາ ແມ່ນໄດ້ສະເໜີແນະຍຸດທະສາດການເຈລະຈາ ແລະ ວິທີການປັບປຸງລະບຽບກົດໝາຍ, ພ້ອມທັງນະໂຍບາຍ ໃນປະຈຸບັນ ແລະ ກອບວຽກງານຂອງສະຖາບັນທີ່ກ່ຽວຂ້ອງກັບຂະແໜງຈໍລະຈອນແຈກຢາຍສິນຄ້າ.

❖ ຜົນການສຶກສາ

ຂະແໜງຈໍລະຈອນແຈກຢາຍສິນຄ້າແມ່ນຂະແໜງສໍາຄັນພື້ນຖານທີ່ກະທົບໂດຍກົງຕໍ່ການຄ້າສິນຄ້າພ້ອມນັ້ນມັນຍັງໄດ້ພົວພັນເຖິງຂະແໜງການບໍລິການປົນເອ້ອມອື່ນໆ ເຊັ່ນ: ການລໍາລຽງຂົນສົ່ງ ແລະ ການຄົມມະນາຄົມ. ສໍາລັບຢູ່ ສປປ ລາວ ຂະແໜງຈໍລະຈອນແຈກຢາຍສິນຄ້າແມ່ນຍັງຢູ່ໃນສະພາບທີ່ມີການພັດທະນາຕໍ່າ, ການຄ້າຍ່ອຍແມ່ນມີບົດບາດຫຼາຍທີ່ສຸດ ເຊິ່ງອາດກວມເອົາເກືອບ 98% ຂອງຈໍານວນທຸລະກິດການ ຄ້າຍົກ ແລະ ຍ່ອຍທົ່ວປະເທດ. ຖ້າຄິດໄລ່ເອົາແຕ່ການຄ້າຍົກ ແລະ ຍ່ອຍພຽງແຕ່ຢ່າງດຽວແມ່ນເຫັນໄດ້ວ່າ ຂະແໜງການນີ້ໄດ້ປະກອບສ່ວນເຂົ້າໃນລວມຍອດຜະລິດຕະພັນພາຍໃນປະເທດ (GDP) ປະມານ 15%, ເຂົ້າໃນການຈ້າງງານ 23% ແລະ ກວມເອົາປະມານສອງສ່ວນສາມ ຂອງຫົວໜ່ວຍທຸລະກິດທັງໝົດ ພາຍໃນປະເທດ. ປະມານ 61% ຂອງການຄ້າຍົກ ແລະ ຍ່ອຍແມ່ນດໍາເນີນໄປໃນຮູບແບບການຄ້ານອກລະບົບ. ເກືອບ 99% ຂອງທຸລະກິດປະເພດນີ້ແມ່ນເປັນທຸລະກິດຂະໜາດນ້ອຍ, ມີຄົນລາວເປັນເຈົ້າຂອງ ແບບສ່ວນບຸກຄົນ ແລະ ໄດ້ສ້າງລາຍຮັບບໍ່ເກີນ 30 ລ້ານກີບຕໍ່ເດືອນ.

ໃນຮູບແບບການເຈລະຈາເພື່ອເປີດເສລີໃນຂະແໜງຈໍລະຈອນແຈກຢາຍນີ້, ສປປ ລາວ ແມ່ນຖືກຮຽກຮ້ອງໃຫ້ຕ້ອງເຮັດຄໍາສັນຍາເປີດເສລີຕໍ່ກັບຂະແໜງການຍ່ອຍ ຫຼື ຕໍ່ກັບສິນຄ້າທີ່ນອນຢູ່ໃນຂະແໜງການຈໍລະຈອນແຈກຢາຍສິນຄ້າ ຈຸດປະສົງກໍ່ເພື່ອອໍານວຍຄວາມສະດວກໃຫ້ແກ່ບັນດາຫົວໜ່ວຍທຸລະກິດຕ່າງຊາດເຂົ້າມາດໍາເນີນທຸລະກິດໃນປະເທດ. ເຖິງຢ່າງໃດກໍ່ດີ ມີພຽງແຕ່ສະມາຊິກບາງປະ

ເທດເທົ່ານັ້ນ ທີ່ໄດ້ເຮັດຄໍາສັນຍາເປີດເສລີໃນຂະແໜງການຍ່ອຍຕາມການຮຽກຮ້ອງ. ສ່ວນຫຼາຍປະເທດທີ່ໄດ້ໃຫ້ຄໍາສັນຍາເປີດເສລີໄປ ແລ້ວແມ່ນໄດ້ຈຳກັດຂອບເຂດຂອງການປະຕິບັດ. ປະເທດທີ່ຫາກໍເຂົ້າເປັນສະມາຊິກອົງການຄ້າໂລກໃໝ່ໃນພາກພື້ນນີ້ ກໍໄດ້ເຮັດຄໍາສັນຍາແບບຈຳກັດຄືກັນ. ພ້ອມນັ້ນ ການເຮັດຄໍາສັນຍາແບບຈຳກັດ ກໍຍັງເຫັນໄດ້ໃນກອບຂອງ AFAS ທີ່ຫຼາຍປະເທດສະມາຊິກອາຊຽນ ໄດ້ມີຄວາມລະມັດລະວັງໃນການເປີດເສລີໃນຂະແໜງຈໍລະຈອນແຈກຢາຍ.

ລະບອບລະບຽບການທີ່ເອື້ອອຳນວຍແກ່ຂະແໜງຈໍລະຈອນແຈກຢາຍ ໄດ້ຄ່ອຍຖືກປັບປຸງຂຶ້ນມາເລື້ອຍໆຢູ່ ສປປ ລາວ ໃນຊ່ວງຫຼາຍປີຜ່ານມາ ໂດຍຜ່ານຂອດການປະຕິຮູບພາຍໃຕ້ວຽກງານກະກຽມເພື່ອເຂົ້າເປັນສະມາຊິກອົງການຄ້າໂລກ (WTO). ຂອດການປະຕິຮູບນີ້ ຍັງໄດ້ປັບປຸງລະດັບການເປີດຕະຫຼາດ ຂອງຂະແໜງການນີ້ເຊັ່ນກັນ. ແຕ່ເຖິງຢ່າງໃດກໍດີ ແມ່ນຍັງຂາດບາງລະບຽບກົດໝາຍ, ສະຖາບັນທີ່ຮັບຜິດຊອບ ແລະ ພະນັກງານທີ່ກ່ຽວຂ້ອງ ເພື່ອເຮັດໃຫ້ຂະແໜງດັ່ງກ່າວສາມາດດຳເນີນໄປໄດ້ຢ່າງມີປະສິດທິຜົນ.

❖ ພາກສະເໜີ

1. ຍຸດທະສາດການເຈລະຈາ

(ກ) ຍຸດທະສາດການເຈລະຈາຈະຕ້ອງຢູ່ພາຍໃຕ້:

- ບັນດາເປົ້າໝາຍສູງຂຶ້ນຂອງຊາດທີ່ໄດ້ກຳນົດໄວ້ ໂດຍສະເພາະແມ່ນເປົ້າໝາຍທີ່ພົວພັນເຖິງການພັດທະນາທຸລະກິດຂະໜາດນ້ອຍ ແລະ ກາງ (SMEs), ການຄ້າຂາຍຍ່ອຍ ແລະ ຕະຫຼາດຊົນນະບົດ.
- ຫຼັກການແຫ່ງຄວາມຊື່ສັດ, ຍຸຕິທຳ ແລະ ທຸ່ງທຳ.
- ສິດທິຕ່າງໆທີ່ມີຢູ່ພາຍໃຕ້ກົດລະບຽບຂອງສັນຍາ GATS.
- ການມີສະເຖຍລະພາບ ແລະ ຫຼັກການແບບຄ່ອຍເປີດຕະຫຼາດໃຫ້ນັກທຸລະກິດຕ່າງຊາດເຂົ້າມາໃນຂະແໜງ ການນີ້.
- ສັນຍານສະທ້ອນກັບຂອງການເປີດເສລີ ທີ່ມີຕໍ່ກັບຂະແໜງການຍ່ອຍຂອງຂະແໜງຈໍລະຈອນແຈກຢາຍສິນຄ້າ, ການແຂ່ງຂັນ, ການຈ້າງງານ ແລະ ການພັດທະນາສີມືແຮງງານ.

(ຂ) ຈຳກັດການປະກອບທຶນຂອງຕ່າງຊາດເຂົ້າໃນທຸລະກິດຮ່ວມທຶນໃນທຸກຂະແໜງການຍ່ອຍໃນຂະແໜງຈໍລະຈອນແຈກຢາຍສິນຄ້າ ໂດຍໃຫ້ຢູ່ໃນລະຫວ່າງ 30-49%. ຍົກເວັ້ນໃນກໍລະນີ ທີ່ມີການລົງທຶນຂະໜາດໃຫຍ່ ໃນການເປີດ ຮ້ານສັບພະສິນຄ້າ ແລະ ສູນກາງການຄ້າ ທີ່ມີເນື້ອທີ່ຫຼາຍກວ່າ 2000ມ² ຊຶ່ງຜູ້ຖືຫຸ້ນຕ່າງປະເທດອາດເພີ່ມຂຶ້ນຮອດ 100%.

(ຄ) ໃຫ້ມີການຜູກມັດກັບກົດໝາຍທີ່ພົວພັນກັບການນຳໃຊ້ທີ່ດິນໃນທຸກຂະແໜງການຍ່ອຍຂອງຄົນສັນຊາດອື່ນຕໍ່ຮູບແບບຄໍາສັນຍາທີ 3 (Mode 3) ທີ່ວ່າ ການບໍ່ເລືອກປະຕິບັດຕໍ່ຄົນພາຍໃນຊາດ ຫຼື ຄົນຕ່າງ

ຊາດທີ່ມາດຕະຖານກົດຈະການໃດໜຶ່ງຢູ່ໃນຂອບເຂດອຳນາດອະທິປະໄຕຂອງປະເທດນັ້ນ (National Treatment).

- (ງ) ໃຫ້ມີການຈຳກັດຕໍ່ຮູບແບບຄຳສັນຍາທີ 4 (Mode 4).
- (ຈ) ໃຫ້ຄຳສັນຍາເປີດເສລີຢ່າງສົມບູນຕໍ່ການທຸລະກິດນາຍໜ້າຮູບແບບຕ່າງໆ ທີ່ຢູ່ພາຍໃຕ້ເງື່ອນໄຂໃນຂໍ້ (ຂ) ແລະ (ງ).
- (ສ) ໃຫ້ຄຳສັນຍາເປີດເສລີຢ່າງສົມບູນຕໍ່ທຸລະກິດແຟນຊ້າຍ (Franchise) ທີ່ຢູ່ພາຍໃຕ້ເງື່ອນໄຂໃນຂໍ້ (ຂ) ແລະ (ງ), ແລະ ມີການຈຳກັດພື້ນທີ່ບໍ່ໃຫ້ເກີນ 2.000ມ² ໃນກໍລະນີຮ້ານສັບພະສິນຄ້າ ແລະ ສູນກາງການຄ້າ.
- (ຊ) ໃຫ້ຄຳສັນຍາທີ່ຈະເລືອກເປີດເສລີສິນຄ້າທີ່ຈະຂາຍໂດຍການຄ້າຍົກ ແລະ ຍ່ອຍ ທີ່ຢູ່ພາຍໃຕ້ເງື່ອນໄຂໃນຂໍ້ (ຂ) ແລະ (ງ).

2. ການປັບປຸງດ້ານລະບຽບການ

- ກ. ຮັບຮອງເອົາລະບຽບກົດໝາຍສະບັບສົມບູນ ທີ່ກວມເອົາບັນຫາລວມຕ່າງໆທີ່ພົວພັນກັບທັງໝົດຂະແໜງຈໍ ລະຈອນແຈກຍາຍສິນຄ້າ. ລະບຽບກົດໝາຍດັ່ງກ່າວຄວນມີຂອບເຂດສິດອຳນາດຄວບຄຸມຢ່າງໜ້ອຍຕາມເບົ້າໝາຍ ລຸ່ມນີ້:
ການບໍລິການຂອງທຸລະກິດນາຍໜ້າ, ທຸລະກິດແຟນຊ້າຍ, ກົດຈະການສົ່ງເສີມການຂາຍຕ່າງໆ, ການໂຄສະນາທາງການຄ້າ, ຕະຫຼາດນັດ ແລະ ງານວາງສະແດງສິນຄ້າ, ການບໍລິການຂອງຜູ້ຕ່າງໜ້າການຄ້າ, ການເປີດໃຫ້ປະມູນສິນຄ້າ, ການເຂົ້າໄປປະມູນສິນຄ້າ, ການບໍລິການສິນຄ້າຜ່ານ, ການບໍລິການກວດສອບສິນຄ້າ, ການບໍລິການຂອງເຈົ້າໜ້າທີ່ປະເມີນສິນຄ້າ, ການໃຫ້ເຊົ່າສິນຄ້າ, ການແກ້ໄຂຂໍ້ຜິດພາດ, ການຕະຫຼາດທຸກລະດັບ ແລະ ການຄ້າຜ່ານລະບົບອີເລັກໂຕຣນິກ (e-commerce).
- ຂ. ຈັດຕັ້ງປະຕິບັດກົດໝາຍວ່າດ້ວຍມາດຕະຖານ ແລະ ຮັບປະກັນວ່າກົດໝາຍວ່າດ້ວຍສັບສິນທາງປັນຍາສອດຄ່ອງກັບ ເງື່ອນໄຂສັນຍາຂອງ WTO.
- ຄ. ປັບປຸງຄວາມອາດສາມາດໃນວຽກງານກວດສອບ (ທີ່ພົວພັນກັບຄວາມປອດໄພຂອງອາຫານ, ການຂາຍຜະລິດຕະພັນການແພດ/ຢາ, ນໍ້າໜັກ ແລະ ມາດຕະການຕ່າງໆ) ຂອງບັນດາອົງການທີ່ກ່ຽວຂ້ອງ ເຊັ່ນ: ກະຊວງສາທາລະນະສຸກ, ກະຊວງກະສິກໍາ ແລະ ປ່າໄມ້, ກະຊວງວິທະຍາສາດ ແລະ ເທັກໂນໂລຢີ ໂດຍພະນັກງານທີ່ຜ່ານການຝຶກອົບຮົມ.

3. ການປັບປຸງດ້ານນະໂຍບາຍ

- ກ. ສຳລັບການເສີມສ້າງຄວາມອາດສາມາດ: ປັບປຸງການສຶກສາ ແລະ ການຝຶກອົບຮົມໃນຂະແໜງການຄ້າ ແລະ ການບັນຊີ. ພ້ອມນັ້ນ ກໍ່ຕ້ອງປັບປຸງວຽກງານຂ່າວສານເທັກໂນໂລຢີ ແລະ ສົ່ງເສີມໃຫ້ແມ່ຍິງໄດ້ເຂົ້າມີສ່ວນຮ່ວມໃນບັນຫາທີ່ໄດ້ກ່າວມານີ້.

- ຂ. ສຳລັບການເສີມຂະຫຍາຍການເຊື່ອມຍິງຂອງເສດຖະກິດຊີນນະບົດ: ໃຫ້ບູລິມະສິດໃນການປັບປຸງທະຫົນ ທົນທາງ, ສິ່ງເສີມການບໍລິການຂົນສົ່ງທາງບົກ, ລົບລ້າງບັນດາສິ່ງກົດຂວາງທີ່ຍັງເຫຼືອຢູ່ ແລະ ທີ່ເປັນອຸປະສັກຕໍ່ການຂົນສົ່ງສິນຄ້າຈາກບ່ອນໜຶ່ງໄປຫາອີກບ່ອນໜຶ່ງ (ເວັ້ນເສຍແຕ່ສິ່ງທີ່ມີຜົນກະທົບຕໍ່ສຸຂະອະນາໄມຄົນ, ສັດ ແລະ ພືດ ທີ່ຕ້ອງໄດ້ພິຈາລະນາ) ແລະ ປັບປຸງຄຸນນະພາບການບໍລິການຂອງການລຳລຽງຂົນສົ່ງ (Logistic) ໂດຍຕ້ອງມີລະບຽບການອັນສະເພາະຕໍ່ບັນດາ ຂອດບໍລິການເຫຼົ່ານີ້ ເພື່ອສິ່ງເສີມການອຳນວຍຄວາມສະດວກທາງດ້ານການເຄື່ອນຍ້າຍ ແລະ ຕິດຕາມ.
- ຄ. ສິ່ງເສີມໃຫ້ມີການແບ່ງປັນຜົນປະໂຫຍດຕໍ່ສັງຄົມ, ເສດຖະກິດ ແລະ ການພັດທະນາ ຈາກການຂະຫຍາຍ ຕົວຂອງຂະແໜງການຈໍລະຈອນແຈກຢາຍ (ທີ່ຢູ່ໃນລະບົບ): ຈັດຕັ້ງປະຕິບັດລະບຽບກົດໝາຍວ່າດ້ວຍ ການແຂ່ງຂັນ ແລະ ການຄຸ້ມຄອງຜູ້ບໍລິໂພກ
- ງ. ສິ່ງເສີມໃຫ້ມີຄວາມງ່າຍດາຍໃນການດຳເນີນທຸລະກິດ: ຍົກບັນຫາທີ່ພາກທຸລະກິດພົບພໍ້ ກ່ຽວກັບການຊຳລະພາສີ-ອາກອນ ແລະ ການໄດ້ຮັບສິນເຊື່ອ, ແລະ ການນຳໃຊ້ອັດຕາພາສີທີ່ບໍ່ສັບຊ້ອນຕໍ່ທຸລະກິດຂະໜາດນ້ອຍ.

4. ການປັບປຸງສະຖາບັນການບໍລິຫານ.

- ກ. ອະນຸມັດໃຫ້ໂຄງການຍົກລະດັບຄວາມອາດສາມາດແກ້ໄຂການຄ້າພາຍໃນ ເພື່ອຍົກລະດັບຄວາມຊຳນິຊຳ ນານງານແກ່ພະນັກງານວິຊາການ ແລະ ເພື່ອສາມາດແກ້ໄຂໄດ້ຈຸດອ່ອນຂໍ້ຄົງຄ້າງໃນການສ້າງລະບຽບກົດໝາຍທີ່ເປັນເຄື່ອງມືຮັບໃຊ້ການປະຕິບັດວຽກງານ, ແລະ ເພື່ອຍົກລະດັບວຽກງານທ້ອນໂຮມ ແລະ ເກັບກຳຂໍ້ມູນ ໂດຍສະເພາະແມ່ນຂໍ້ມູນທີ່ກ່ຽວພັນກັບຂະແໜງຈໍລະຈອນແຈກຢາຍ.
- ຂ. ສ້າງຕັ້ງຄະນະກຳມະການອິດສະຫຼະດ້ານການຄ້າທີ່ເປັນທຳ (Independent Fair Trade Commission) ເພື່ອຈັດຕັ້ງປະຕິບັດລະບຽບກົດໝາຍວ່າດ້ວຍການແຂ່ງຂັນ ແລະ ການຄຸ້ມຄອງຜູ້ບໍລິໂພກ.

❖ ຜົນກະທົບ

- ຕໍ່ກັບຂະແໜງການຍ່ອຍ:
ໃຫ້ຄວາມສຳຄັນກັບທຸກຂະແໜງການຍ່ອຍ
- ຕໍ່ກັບເສດຖະກິດ:
ຕົວເລກລວມຍອດຜະລິດຕະພັນພາຍໃນ (GDP), ການຈ້າງງານ ແລະ ສະວັດດີການຂອງຜູ້ຊົມໃຊ້ຈະເປັນບວກ. ບັນລຸເປົ້າໝາຍສູງຂົນຂອງຊາດ ສຳຫຼັບ SMEs, ວິສາຫະກິດຊີນນະບົດ ແລະ ການພັດທະນາການຄ້າດ້ານການຂາຍຍົກ ແລະ ຂາຍຍ່ອຍ.

Executive Summary

Study Coverage

The purpose of this study is to provide the Lao Government with a comprehensive analysis of the country's Distribution Services sector, and a negotiating strategy for the guidance of the its team negotiating for accession to WTO. It makes a detailed analysis of the country's Distribution Services sector, reviews the legislative regime governing it, and makes a comparative examination of the commitments on distribution services sector by the ASEAN member states under AFAS and GATS, a few land-locked LDCs. Finally, it makes recommendations for a negotiating strategy, and for improving the current, regulatory, policy, and institutional framework relating to the sector.

Findings

The Distribution Services Sector is an essential infrastructure that, together with its links with other services such as logistics, transport, and communication, impacts immensely on goods trade. In the Lao PDR, distribution services sector is under-developed and is dominated by retail trade, which accounts for about 98 per cent of the total wholesale and retail trade businesses. Counting wholesale and retail trade only, the sector contributes about 15 per cent of GDP, 23 per cent of employment, and comprises nearly two-thirds of total enterprises in the country. About 61 per cent of wholesale and retail sale businesses are in the informal sector. Nearly 99 per cent of enterprises are small sized, single Laotian owned, and earning less than K30 million per month.

In negotiating modalities for liberalising the sector, Laos is required to make specific commitments for opening sub-sectors and/or products as it deems appropriate for foreign businesses to enter. However, only some member countries have made any commitments in this particular sector. Those who made commitments have done so only to a limited extent. Newly acceded countries in the region too have made limited commitments; and so have the ASEAN countries under AFAS, indicating how cautiously they have proceeded on liberalising this sector.

The regulatory regime applicable to distribution services has improved considerably over the past several years in the course of reforms undertaken in preparation for the WTO accession. This has improved the level of openness for market access in the sector. However, there are some legislative, institutional and staffing inadequacies that have to be dealt with in order for the sector to function efficiently.

Recommendations

1. Negotiating Strategy

(a) the negotiating strategy should be guided by -

- ☐ the relevant ***national goals***, particularly those relating to development of SMEs, retail trade, and rural markets;
- ☐ principles of ***honesty, fairness*** and ***justice***;
- ☐ rights available under GATS rules;

- the need for sustainability, and gradual approach to opening the sector for foreign entry; and
 - identified implications of liberalisation for the subsectors, competition, employment, and skills development.
- (b) limit foreign equity in joint-ventures in all subsectors to 30-49 per cent, except in the case of large scale foreign investments in supermarkets and department stores with a floor space of more than 2000 m², where foreign equity may be extended to 100 per cent;
 - (c) provide commitment in Mode 3 under *national treatment* for all sub-sectors, subject to land-use laws applicable to non-nationals;
 - (d) provide limited commitment in Mode 4;
 - (e) provide full commitment for *commission agents*, subject to (b)-(d);
 - (f) provide full commitment for *franchising*, subject to (b)-(d) and floor space limitation of not less than 2000 m² in case of supermarkets and department stores; and
 - (g) provide commitment for selected goods for *wholesale* and *retail sale services*, subject to (b)-(d).

2. Regulatory Improvements

- (a) Enact a comprehensive legislation covering the general issues relating to the entire distributions services sector. It should deal with at least the following subject areas:

commission agents' services, franchising, sales promotion activities, commercial advertising, trade fairs and exhibitions, trade representatives services, goods auctions, bidding for goods, goods transit services, good assessment services, goods assessors' services, leasing of goods, commercial dispute settlement, and multilevel marketing, and e-commerce.

- (b) Implement the Law on Standards, and ensure the Law on Intellectual Property Rights meets WTO requirements.
- (c) Improve inspection capacity (relating to food safety, the sale of medical products, weights and measures) of agencies such as MOH, MAF, MOST with more trained staff.

3. Policy Improvements

- (a) *For enhancing capacity*: improve education and training in commerce, accounting, and information technology; and provide for increased female participation in them;
- (b) *For strengthening linkages with local economy*: prioritize rural road improvements, and promote road transport services; remove any remaining barriers and obstacles to transport of goods from one area to another (other than those on human, animal, and plant health considerations); and improve the quality of logistic services through regulatory requirements for these services to enhance tracking and tracing facilities.

- (c) *For enhancing social, economic and developmental benefits from possible further growth of the (formal) distribution services sector:* implement competition and consumer protection legislations.
- (d) *For improving ease of doing business:* address problems faced by business sector relating to payment of taxes, and obtaining finance; and provide simplified tax rates for small businesses.

4. Institutional Improvements

- (a) Provide more capacity building programmes to the Department of Domestic Trade with a view to upgrading its staff skills and overcoming its existing weaknesses in formulating legislative instruments, and data collection and collation, particularly relating to the distribution services sector.
- (b) Establish an independent Fair Trading Commission, to implement legislations on competition and consumer protection.

Impact

- ☐ On the sub-sectors:
Favourable on all sub-sectors.
- ☐ On the economy:
Positive on GDP, employment, and consumer welfare; and

Positive on achieving National Goals for SMEs, rural enterprises, and wholesale and retail trade development.

Possible Impacts of the World Trade Organization Accession on Distribution Services in Lao PDR*

1. Introduction

1.1 Objective of the study

The World Trade Organization (WTO) is the only international organization dealing with legally binding rules of trade between nations. It promotes competition and liberalization of international trade of goods and services, provides a level playing field in trade to all its member countries, and mediates trade disputes among them. The Lao Government considers membership in WTO is necessary for furthering its intentions for development through international economic integration, and therefore is committed to gaining membership in the WTO as soon as possible. In the course of accession negotiations, several member countries have shown strong interests in Laos opening up its services sectors including the distribution services to greater international competition. The Lao authorities, therefore, wish to have a thorough understanding of the implications of any liberalization of the Distribution Services Sector¹ on the Lao economy. The aim of this study is to make a comprehensive study of the Distribution Services Sector of Lao PDR² and to propose an appropriate negotiating position for the guidance of the Lao authorities in making offers for liberalizing the sector.

The study is divided into 8 Sections. Section 2 briefly reviews the objectives of WTO, compliance requirements under GATS, and the special considerations available to Laos as a LDC under GATS rules. Next Section reviews the characteristics of the distribution services sector as classified by the WTO, and goes on to examine in detail the distribution services sub-sectors in the Lao PDR, and their contributions to the national economy. A detailed review of the regulatory and policy framework governing the distribution services in Laos is given in Section 4. It also examines the effectiveness of the current regulatory and policy regime in facilitating the growth of the sector and safeguards for consumer welfare. Section 5 makes a comparative examination of specific commitments on distribution services by ASEAN countries under AFAS and GATS, and also the GATS commitments made by a few landlocked LDCs. Section 6 provides detailed recommendations. An impact analysis of the recommendations is made in Section 7. Summary of the study findings and summary of recommendations are given in Section 8. The recommendations cover proposals for the negotiating strategy, and proposals for legislative, policy, and institutional improvements that are necessary for distribution services sector to function efficiently in a liberal trading environment. Both for consultation as well as for collecting information, officials in relevant stakeholder agencies were interviewed, and their list is given in Annex 7.

* Author is grateful to Mr Viengsavang Thipphavong and Ms Onida Vinavong for assisting with data and information needed for this study; to Economic Research Institute for Trade (ERIT), its Director General, Mr Santisouk Vilaychreun, and Director of Economic and Trade Policy Research Division, Mr Xaysomphet Norasingh for providing office space and facilities during his stay in Laos; and to all those who made valuable comments on an earlier draft.

¹ Distribution Services is a sub-sector of the Services Sector. However, in this report we refer to the Distribution services as Distribution Services Sector and its components as sub-sectors.

² In this report the official name, *Lao PDR*, as well as *Laos* is used interchangeably.

1.2 Government's strategic direction relevant to Distribution Services Sector

In Laos, there is growing awareness both among the policy makers and the private sector, that trade is an essential vehicle to promote economic growth, by overcoming the impediments foisted on it by being a land-locked small economy. In order to overcome this geographical constraint, beginning with the adoption of New Economic Mechanism in 1986, the Lao government has placed high priority to trade development as a principal means to socio-economic development and poverty reduction, and taken several steps to promote and liberalise trade. These include:

- Acceleration of the WTO accession process;
- Implementation of AFTA-CEPT Scheme under which over 71 percent of the inclusive list of products imported from ASEAN countries have been brought down to zero tariff, and the process on the remainder is to be completed by 2015;
- Initiatives taken under the Integrated Framework to mainstream trade into national development strategies, and to address barriers to trade integration; and
- Steps taken towards trade liberalisation through a number of measures: relaxation of import/export licensing and business registration procedures; simplification of the tariff schedules³; and the adoption of a Trade Facilitation Strategy and Action Plan.

With regard to WTO accession, Lao PDR has undertaken several economic and legal reforms to make its trading regime consistent with WTO requirements. It has already held seven Working Party meetings, concluded bilateral agreements with seven WTO members with only three remaining to be concluded. At the 7th Working Party meeting held in June 2011, the Lao Minister of Industry and Commerce, Dr Nam Viyaketh, reported on a number of reforms completed to facilitate the accession process. These included reforms on trading rights, foreign exchange regime, investment policies, pricing policies, import licensing, customs, and SPS and TBT regulations.

At the conclusion of the 7th Working Party meeting, the delegations negotiating the membership bid had agreed to move to a first draft of its report, which is said to be central to the final deal.⁴ The distribution services sector, which consists mainly of wholesale and retail trade services, makes a substantial contribution of about 15% of Lao PDR's GDP, and 23% of its employment. Therefore it is quite understandable that this sector would play an important part in the WTO negotiation process. Hence a detailed study of the sector and of the likely implications of WTO accession for the sector would be an essential material for the negotiation strategy.

The government has set its strategic direction for socio-economic development in the next 5 years in its 7th National Socio-Economic Development Plan 2011-2015⁵. The Plan does not specifically provide direction for the distribution services sector as such. However, for the

³ The current tariff schedule has six tariff rates: 5, 10, 15, 20, 30 and 40 per cent, with non-weighted average MFN tariff of 11.3 per cent.

⁴ WTO News, available at: http://www.wto.org/english/news_e/news11_e/acc_lao_29jun11_e.htm

⁵ Ministry of Planning & Investment (2011).

Services Sector, the Plan aims to achieve an annual growth rate of 6.5%, and for it to increase its share of GDP to 38%, which implies that as a major component of the Services Sector, the distribution services would be expected to play a key role in achieving that objective. The Plan also reiterates government's interest in joining the WTO, and raising competitiveness at regional and international levels with focus on domestic and foreign investment. Other key areas of focus in the Plan relevant to trade and development are:

- ☐ achieving at least an annual growth rate of 8% for GDP;
- ☐ graduating the country from the LDC status by 2020;
- ☐ achieving the Millennium Development Goals by 2015;
- ☐ making dynamic changes towards rural development and poverty eradication;
- ☐ promoting SMEs, and the use of new technologies in order to raise productivity and efficiency;
- ☐ continuing to emphasise gender equality;
- ☐ realising a greater market participation of SMEs so they can provide employment to more than 85% of non-farm workforce;
- ☐ expanding retail markets to cover 80% of Kumbans (village groups); and
- ☐ establishing rural enterprise units in at least 30% of the villages

The government's vision for the sector is more clearly focussed in MOIC's *Manufacturing and Trade Development Strategy - 2011 to 2020*⁶, where it aims at:

- ☐ promoting wholesale, retail, supermarket, and cooperative trade establishments to distribute goods in the whole country;
- ☐ increasing village markets by 70% by 2015, and 95% by 2020;
- ☐ increasing wholesale trade by 9 to 10% per year from 2011-2015, and by 8 to 9% per year from 2016-2020; and
- ☐ increasing retail trade by 10-11% per year from 2011-2015, and by 11-12 % per year from 2016-2020.

2. GATS Compliance Obligations⁷

The purpose of GATS is to facilitate liberalization of trade in services. Two types of obligations exist under GATS: (i) general obligations that apply to all members and all

⁶ MOIC, *Manufacturing and Trade Development Strategy - 2011 to 2020*. Available at: <http://www.moic.gov.la/lao/main.asp?detail=docsN&org=01>

⁷ Some parts of this Section are reproduced from *ITC Regulation Toolkit*: available at: <http://www.ictregulationtoolkit.org/en/Section.1651.html>

service sectors covered under GATS regardless of whether or not specific commitments have been made; and (ii) sector-specific commitments regarding *market access* and *national treatment* for sectors and activities that members agree to open to international trade.

Under the general obligations, there are two main principles: (i) WTO member countries must afford each other most favoured nation (MFN) treatment (*i.e.*, prohibition on discrimination that requires countries to afford “treatment no less favourable than that accorded to like services and service suppliers of any other country”); and (ii) countries must ensure transparency of local regulations (*e.g.*, countries should publish measures of general application, and allow a period of public comment prior to their issuance)⁸.

Sector-specific commitments are made regarding *market access*, *national treatment* and *additional commitments*. Members make commitments on *market access* and *national treatment* with respect to four modes of supply: (i) cross border supply (supply of a service from one country to another where no movement of the supplier to the recipient country is involved (*e.g.* a person in country A buying a product from country B through an e-commerce means such as eBay); (ii) consumption abroad (*e.g.* a national of country A travelling to country B and consuming services in country B as in the case of a tourist or a person shopping overseas); (iii) commercial presence (*i.e.* supplier of a service from country A travelling to or setting up a physical presence in country B in order to provide the service in country B as in the case of a foreign supermarket chain such as Big C setting up a branch in country B); and (iv) presence of natural persons (*i.e.* supplier of a service from, say country A to country B, having an individual or an employee in country B who is not a national of country B in order to supply the service such as a foreign shopkeeper operating in country B). These commitments are made in a schedule, referred to as the Schedule of Specific Commitments⁹, and “...where such commitments are undertaken, each Schedule shall specify:

- (a) terms, limitations on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments;
- (d) where appropriate the timeframe for implementation of such commitments; and
- (e) the date of entry into force of such commitments.”¹⁰

Any measures inconsistent with *market access* and/or *national treatment* shall also be stated under *market access* column. These schedules form part of the WTO legal documents.

⁸ In compliance with this requirement, Laos has already established the GATS Enquiry Point at FTPD of MOIC in pursuance of the Decree on the Notification and Enquiry of Trade Related Information No.373/PM of 2010; and Decision on GATS Enquiry Point, No 0349 MOIC.FTPD of Feb 2011.

⁹ The format of this schedule consists of 4 columns, the first one designated as *sector or subsector*, next as *limitation on market access*, third as *limitation on national treatment*, and the last as *additional commitments*. In the first column, member would list the sectors or subsectors in which it wishes to make commitments, in the next three columns indicate the commitments in each of the 4 *modes* under *national treatment*, and *market access*, and any *additional commitments* respectively with respect to the indicated sector or subsector. These commitments are indicated either as *none* (meaning no limitation), or *unbound* (meaning no commitment), or *unbound** (meaning technically not feasible to liberalise), and or with an explanation if otherwise.

¹⁰ WTO, *General Agreement on Trade in Services*, Article XX.

2.1 Special treatment available to Laos as a Least Developed Country (LDC)¹¹

As a LDC, Laos is eligible to receive special treatment under GATS in negotiating for specific commitments. GATS Article IV, paragraph 3 states:

Special priority shall be given to the least-developed country Members in the implementation of paragraphs 1 and 2. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.

Paragraphs 1 and 2 referred to are the first two paragraphs of the same Article:

(1) The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments...relating to: (a) the strengthening of their domestic services capacity and its efficiency and competitiveness, inter alia through access to technology on a commercial basis; (b) the improvement of their access to distribution channels and information networks; and (c) the liberalization of market access in sectors and modes of supply of export interest to them.

(2) Developed country Members, and to the extent possible other Members, shall establish contact points within two years from the date of entry into force of the WTO Agreement to facilitate the access of developing country Members' service suppliers to information, related to their respective markets, concerning: (a) commercial and technical aspects of the supply of services; (b) registration, recognition and obtaining of professional qualifications; and (c) the availability of services technology.

The WTO General Council Decision on Accession of LDCs provides following guidelines¹²:

- (a) automatic recourse to "special and differential" rules in the WTO Agreements;
- (b) restraint by Members in seeking goods and services market access commitments;
- (c) account taken of the commitments of existing WTO LDC Members;
- (d) recourse to transitional arrangements foreseen in WTO Agreements from the date of accession accompanied by action plans for compliance supported by technical assistance and capacity building measures; and
- (e) optional participation in plurilateral agreements.

Furthermore, GATS Article XIX provides for the process of negotiation of specific commitments to proceed with “...due respect for national policy objectives and the level of

¹¹ This topic has been already explained in a similar study published by MOIC: Montague Lord, *Implications of WTO Accession for Insurance Sector of Laos*, Foreign Trade Department, Ministry of Industry and Commerce, 2010, pp. 25-26, and is reproduced here with some modifications.

¹² WTO, Guidelines for Accession of Least Developed Countries, Annex 4, Document No. WT/L/508,20 January 2003. Available at: www.wto.org/english/thewto_e/acc_e/cbt_course_e/annex4_e.doc

development of individual Members..”, and “appropriate flexibility for developing country Members for opening fewer sectors..”.

Under these guidelines, therefore, WTO Members are obliged to take into account the serious difficulties of Laos in undertaking negotiated commitments in view of its special economic situation and its development, trade and financial needs.¹³

Laos, on its part, in making liberalisation commitments:

- ☐ can be flexible;
- ☐ need not offer full national treatment to foreign service providers, which means, if necessary, nationals can be treated differently (by inscribing it in the schedule of commitments); and
- ☐ can offer to open up fewer sectors or part of a sector, and on a suitable timeframe (e.g. can offer to open up at a future date).

GATS rules (Articles XIV and XIV bis) also provide for the adoption of such domestic regulations as may be necessary for proper functioning of the trade sector, such as those relating to protection of human or plant health, and culture and security interests etc.¹⁴

Thus, Laos could use the flexibilities available under these guidelines for accession process as a tool for economic development by drawing out an action plan for progressive implementation of WTO rules.

3. Distribution Services Sector

3.1 General Characteristics

In today’s trading environment, it is very rare for goods to be sold direct from the producer to the consumer. Most of the goods are sold through the mediation of countless intermediaries. This is essentially the role of the distribution services. The sector forms a key service infrastructure and provides an essential link between producers and consumers within and across borders. It also impacts immensely on goods trade with its links with other services such as logistics, transport, and communication. It delivers its services in diverse forms: e.g. fixed location stores, electronic commerce, door-to-door sales, supermarkets, department stores, convenience stores, small shops, and traditional informal open markets. It also interacts upstream with producers, including across borders, and with various other economic actors such as providers of payment systems, commercial property managers, and advertising agencies. An efficient distribution services sector is thus vital to healthy growth of the economy through the provision of a wide variety of consumer goods to the consumer, as well

¹³ Despite this just requirement, judging by the commitments made by recently acceded LDCs - Nepal, Cambodia and Cape Verde - it seems LDCs are still enticed to make difficult sacrifices, compared to several incumbent LDCs and even some ASEAN members who have yet to make commitments, particularly in Distributions Services.

¹⁴ Though these are general exceptions available to Member countries, acceding countries could take account of them in designing their commitments.

as intermediate and even capital goods to the producers. Its efficiency and development ensure adequate choice and availability of goods in the market at competitive prices.

For the majority of WTO members, distribution sector's contribution to GDP is said to range between 10 and 20 per cent. In most countries, the sector contributes 15-30 % of employment and comprises up to 40% of the total number of enterprises.¹⁵ In many of them, this sector is only second to manufacturing in its economic weight, and ahead of such other sectors as agriculture, mining, financial services or transportation. Due to its relatively higher labour intensity, the sector also has the potential to provide employment to a large proportion of the workforce in any country.

In contrast to its importance, however, it is one of the services sectors where WTO Members have fewest commitments (57 schedules). Of them 25 offered commitments as part of their accession negotiations.¹⁶ Only 39 developing country Members have commitments in this sector as of 2006.¹⁷ Also, of those making commitments, many member countries, both the developed and developing, exclude many products from their commitments¹⁸. The exclusions include mostly agricultural products (products relevant to plant health, food security etc), pharmaceuticals, tobacco and tobacco products, firearms and other products related to security, newspapers and magazines etc. For instance, Australia excludes agricultural product from wholesale, and pharmaceutical from retail; Cambodia excludes all products except musical and sound equipment from wholesale, and pharmaceuticals from retail; China excludes salt and tobacco from wholesale and tobacco from retail; U.S.A. excludes alcohol from wholesale and firearms from both wholesale and retail; and Vietnam excludes tobacco products,, books, newspapers and magazines, video records, precious metals and stones, pharmaceuticals, explosives, processed oil and crude oil, rice, cane and beet sugar from all sub sectors.

The growth and efficiency of a number of complementary sectors such as transport, communication and logistics are crucial to the efficient functioning of the distribution activities. Running large inventories being very costly and risky, distributors have resorted to advanced cost cutting measures such as information and communication technologies and new management and organizational systems to improve inventory control and better manage relations with suppliers. Worldwide, with advanced technologies, modernization of the distribution sector has reduced the market share of the traditional small family shops. This process is said to have been the case more recently in developing countries, which, for the most part, have experienced the rapid spread of supermarkets and other forms of 'modern' retailing such as electronic commerce and bulk-selling. The sector is very dynamic and changing rapidly. Electronic commerce, driven by increasing use of the Internet, has complemented traditional modes of marketing both within and across borders.

According to the GATS, the distribution services sector consists of the sale of goods to final consumers or other re-sellers, and is divided into four sub-sectors: (1) commission agents, (2) wholesale trade, (3) retail trade, and (4) franchising. Each sub-sector has a cross reference to certain categories in the CPC Provisional list– see Table 1.

¹⁵ Arkell, Julian (2010), p.141

¹⁶ WTO Secretariat (2010), p. 6

¹⁷ Martin Roy, et.al (2006), p.35.

¹⁸ WTO Secretariat (2010), p.9

Table 1: Distribution Services Classification List (W/120)

A.	<u>Commission agents' services</u>	621
B.	<u>Wholesale trade services</u>	622
C.	<u>Retailing services</u>	631+632
		6111+6113+6121
D.	<u>Franchising</u>	8929
E.	<u>Other</u>	

Source: WTO Secretariat, *Distribution Services – Background Note*, 29 October, 2010.

Commission agents are those who trade on behalf of others (e.g. trading agents, commodity brokers, and auctioneers). They often trade as wholesalers by supplying to retailers and other wholesalers on behalf of producers for a commission.

Wholesale trade includes warehousing, cold storage, bonded sites and associated transport and trucking facilities. They sell merchandise to retailers, to industrial, commercial, institutional or other professional business users, or to other wholesalers.

Retail traders, on the other hand sell goods for personal or household consumption. They comprise the multitude of sales outlets ranging from small family stores to large size supermarkets and hypermarkets. Both wholesale and retail services are characterized as reselling of merchandise, accompanied by a variety of related activities such as maintaining inventories of goods, physically assembling, sorting and grading goods, breaking bulk and redistribution in smaller lots, delivery services, refrigeration services, sales promotion services, and warehousing.

Franchising involves the use of someone else's successful business model to sell goods under the same trademark. Franchisers sell, for a fee or a royalty, specific rights and privileges, for instance, the right to use a particular retail format or a trademark, to franchisees (franchising service suppliers) whose business is to trade goods under the privilege so purchased. The contract between the franchisor and franchisee covers the product, the service, and the trademark, as well as the entire business format. China in its GATS Schedule of Specific Commitments on the sector has been quite specific by providing the following definition for franchising:

*"Franchising services consist of the sale of the use of a product, trade name or particular business format system in exchange for fees or royalties. Product and trade name franchising involves the use of a trade name in exchange for fees or royalties and may include an obligation for exclusive sale of trade name products. Business format franchising involves the use of an entire business concept in exchange for fees and royalties, and may include the use of a trade name, business plan, and training materials and related subordinated services."*¹⁹

Franchising has been used by international retailers as a convenient mode of entry into other countries as it allows the firm to expand without necessarily investing own capital and, thus, with less risk. It has grown not only in developed countries but also in recent years in developing countries. Both the franchiser and the franchisee benefit from a number of advantages: the benefits of a well-established trademark such as public recognition, access to

¹⁹ GATS/SC/135, Annex 2).

standardized formats, products and services, assistance with marketing, training, customer relations, accounting, retaining ownership and a degree of management and control over the establishment. Franchising has facilitated globalizing of retail trade through the spread of established supermarket chains (such as Wal-Mart, Tesco or Woolworths), and department stores (such as David Jones, Marks and Spencer or Harrods).

These developments internationally in the distribution services sector, as well as in other service sectors, could have far reaching implications for a least developed economy like Laos which has embarked on trade liberalization, and regional and global integration as a means to fostering economic growth, employment generation and poverty reduction. How well the international dynamics of the sector will interact with the domestic economy of Laos and impact on its growth would depend on the manner in which Laos will develop its trade relation strategies with the rest of the world.

3.2 Distribution services sector in the Lao PDR

The analysis of distribution services sector is based to a large extent on the data available from LECS 3, LECS 4²⁰, and Economic Census of 2006²¹. Data obtained from the unpublished database at the Lao Department of Statistics of the MPI, and DDT of the Ministry of Industry and Commerce, are used. However, statistical data on *commission agents* and *franchising*, two of the four sub-sectors that constitute the distribution services sector are not available, as the agencies responsible do not yet compile statistics separately on them. Nevertheless, wholesale and retail sale sub-sectors, on which data are available, are presumed to dominate the country's distribution services sector.

Lao PDR's distribution services sector, like its economy, is still under-developed. Due to unavailability of data, the sector's contribution to GDP cannot be ascertained accurately. However, taking only the wholesale and retail trade into account, the sector's contribution to the economy has grown slightly over the years – see Table 2²². Currently it contributes approximately 15 % of GDP, 23% of employment, and comprises 58% of total enterprises in the country. The contributions of both the services sector as a whole and that of wholesale and retail sale to GDP has shown substantial increases over the years (Table 2). Relatively higher proportion of enterprises (58%) than the average of 40% for many WTO member countries is apparently a reflection of the large number of small retail enterprises in the country.

As noted earlier, contribution of commission agents and franchising services to the economy cannot be assessed accurately due to unavailability of statistics on them. Hence the statistical analysis covers mainly the wholesale and retail sale services sub-sectors.

²⁰ Lao Department of Statistics, LECS 3 & LECS 4.

²¹ Lao Department of Statistics, (2007).

²² Until 2006, in the national statistics compiled by the Lao Department of Statistics, wholesale and retail sale as a group was included in the GDP statistics, but after 2006 another item, "repair", has been grouped with wholesale and retail sale, and as a result the data prior to and after 2006 are not comparable. In order to overcome the problem, we have estimated the wholesale and retail services contribution to GDP for the years after 2006 by disaggregating 'repair' item from the group by using 'wholesale and retail sale's average share in the group.

Table 2. Principal sectors' share of GDP (%)

	2003	2006	2008	2009
Agriculture	48.1	33.8	30.1	30.5
Industry	25.7	26.1	25.9	24.5
Services	25.3	35.5	37.4	38.7
- of which, wholesale and retail	10.2	14.4	15.2	15.4

Source: Department of Statistics, Lao PDR

Wholesale and Retail trade.

According to 2006 Economic Census²³, there are 74,177 primary economic units²⁴ in the country engaged in wholesale and retail trade business²⁵: of them 98.3 per cent are in retail trade. Approximately 61 per cent of them are in the informal sector (meaning not registered as a business); 98.8 per cent of them are small sized enterprises²⁶ earning less than K30 million per month (Table 3); and 89 per cent of them earn less than Kip 5 million per month (Annex 3). About 99% of them supply the domestic market while only less 1.0 per cent supply the overseas markets. Only 1.4 per cent of wholesale and retail businesses use a computer, and 1.9 per cent use the Internet for their operations. In terms of regional distribution, majority of wholesale and retail trade units, approximately 54 per cent per cent, operate in the central region (including the Vientiane Capital) – see Figure 1. Registered number of wholesale and retail enterprises in each Province, and the details of legal organization are given in Annex 1 and Annex 2.

In the wholesale and retail trade in the country, out of total enterprises, there are about 33 domestic-foreign joint ventures, and 30 state-foreign joint ventures²⁷. These account for about 25 per cent of total joint venture enterprises in the country.

²³ Lao Department of Statistics (2007)

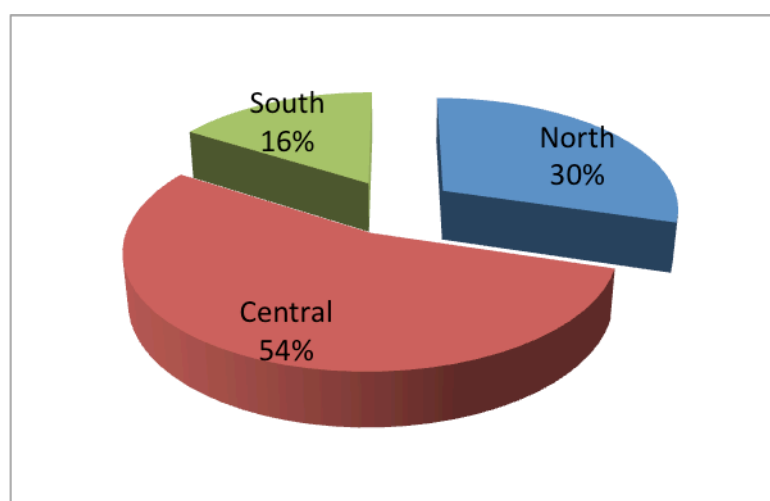
²⁴ Primary economic unit is defined as profit making enterprise.

²⁵ Detailed breakdowns of wholesale and retail sale businesses were obtained from the 2006 Economic Census data base at Lao Department of Statistics (formerly known as National Statistics Centre).

²⁶ PM's Decree on Promotion and Development of Small and Medium Sized Enterprises of 2006 defines Small Enterprises as those with < 19 annual employed persons or total assets of Kip 250mn or annual turnover Kip 400mn; and Medium Sized Enterprises as those with < 99 annual employed persons or assets <Kip 1,200mn or annual turnover Kip 1000mn.

²⁷ Lao Department of Statistics (2007).

Figure 1: Regional Distribution of wholesale and retail businesses



Source: Lao Department of Statistics (2007)

However, great majority (98%) of wholesale and retail businesses are single Laotian proprietorships. Only a total of 21 enterprises (less than 0.01%) are private joint ventures between Lao and foreign partners, and 26 are state and foreign joint ventures. Employment in the wholesale and retail trade amounts to about 23% of total employed in all economic units in the country.

Table 3: Number employed and economic units by income size

Activities	No. employed	Small enterprises < 30kip/month	Medium to large size enterprises > 30kip/ month	No. of formal enterprises	No. of informal enterprises
Wholesale	8,267	1425	201	1,881	973
Retail	70,774	71,890	661	27,131	44,192
Total	79,041	73,315	862	29,012	45,165
Country total	345,723	124,259	2,654	51,315	75,598

Source: Department of Statistics, *Economic Census of 2006*, Lao PDR

The numbers given in Table 3 work out to an average of about 13,036 wholesale and retail units per million of population in Lao PDR (as of 2006). Low population density, less developed transport, communication and IT, could be the reason for this relatively large numbers of small retail outlets in the country²⁸. It is said that as the economies develop, the number of retail outlets would tend to be less with the opening of larger hypermarkets and

²⁸ E.g. the number of grocery retail outlets per million habitants varies greatly among WTO Members, from 16,427 in Thailand, 14,163 in Egypt, 10,858 in Indonesia, and 10,211 in India, to 963 in the United States (WTO Secretariat (2010), *Ibid.*)

supermarkets which could also benefit from economies of scale and thus be able to supply goods at relatively cheaper prices.

Gender wise, there does not seem to be a noticeable difference between the occupancy of men and women in this sector, although women seem to outnumber men marginally (Table 5.2, LECS 4). In some markets, however, such as the informal vegetable, fish and meat markets, female workers predominate which could be counter balanced by more male workers in the formal markets. In terms of ownership, a recent World Bank study²⁹ suggests that only around 31 per cent of all formal enterprises with more than five employees in Lao PDR are female owned; and that they are more likely to operate in the services sector. Female entrepreneurs also tend to have a lower level of education compared to male entrepreneurs, and are more likely to suffer from an access to finance constraint. This suggests policy intervention that target improved access to education and finance, and simplified tax rates for small businesses are likely to have highly positive gender outcomes.

It is also important to note the link between the retail trade and rural producers. Data available from the Economic Census of 2006, and the LECS 3 of 2002/3 and LECS 4 of 2007/8, suggest a significant dependency of the rural population on the markets comprised largely of small businesses, and their economic activities on the rural infrastructure improvements. Between LECS 3 and LECS 4, the share of villages with access to electricity has increased from 33 per cent; villages with access to road in dry season have increased from 84 per cent to 100 per cent, and in rainy season from 65 per cent to 80 per cent. In the same period, rural entrepreneurial annual income from agricultural activities have increased from Kip 6,310,000 to K13,051,000 per household - an increase of 15.6 per cent per annum; the proportion of rural produce sold in the market also increased from 36 per cent to 47 per cent – an increase of 5 per cent per annum.

According to information from the interviews, it is clear that there are only a few large sized wholesalers in the country, which include import and export companies and those enterprises who stock and supply to retailers goods such as building materials, electrical goods, motor spares, clothing, rice etc. Almost all wholesalers also engage in retail sale business, e.g. liquor wholesalers and even import & export companies. Retail sale enterprises, as already mentioned, form the bulk of the distribution sector. These include the multitude of small retail shops in cities and those scattered throughout the country, most of them specializing in groceries, clothing, electrical and electronic goods, furniture, stationery, pharmaceuticals etc. Also included are gas stations (petroleum products retailers) which have increased in number from 77 in 2008 to 449 in 2010; and most of them operate in the main cities and Vientiane district³⁰.

Laos still does not have large supermarkets or department stores. However, their mini versions (minimarts) have appeared all over urban centers in the recent past. Also, over the last few years, a few medium sized supermarkets as well as a few shopping centres or malls have been established in the main cities, and there has been an increasing presence of franchise retailers in the Vientiane Capital (e.g. M-Point Mart). According to media reports large shopping-malls are being planned to be set up in the near future by investors with foreign collaboration (e.g. Big C from Thailand and a few others from Singapore and Chinese Taipei). Enquiries made reveal that on average about 80% of the goods sold in most retail

²⁹ The World Bank, "Gender and Entrepreneurship", *Trade Development Briefing Note*, Issue 6, Sep., 2011, Vientiane.

³⁰ Source: Department of Domestic Trade, Ministry of Industry and Commerce.

shops, particularly in urban areas, are imported. There are also a few retail shops that specialize in only imported goods from a particular country e.g. shops that sell only Vietnamese, Chinese, or Thai clothes, Chinese or Thai furniture, and similarly with motor vehicles and spare parts retailers. Some Vietnamese and Thai shops are also staffed almost entirely by their respective nationals.

As common in developing countries, Laos has a large informal retail trading sector which consists largely of small businesses engaged in retail sale of all types of food and non-food goods. Many of them operate in traditional open markets selling fresh produce - vegetables, fish and meat, as well as groceries and clothing. There are over 600 markets all over the country both in the rural and urban areas (see Annex 4). Each market consists of a multitude of small businesses run mostly by women. Goods sold in these markets are mostly locally and rurally produced, thus providing an important link between these markets and the rural economy.

Together, the informal and formal small retail outlets provide employment to a large number of relatively less skilled workers requiring relatively less capital and less sophisticated technology and operating in rural conditions. They make their livelihood, by supplying goods, mostly agricultural products, to the distribution networks in the market. As of 2007/8, about 41 per cent population have had less than primary education, 20 per cent of villages lose road access during the rainy season, and nearly 98% of wholesale and retail businesses have no computer or internet facilities

Commission Agents. This subsector, as explained earlier, consists of those that arrange the sale of someone else's products for a commission or a fee. In Laos the sector is small, each operating mostly as a small scale business. Key players are *business agents* or *trading agents* who mediate and arrange deals between sellers and buyers; and *import & export agents* - those among import and export companies - who arrange the export or import of someone else's goods for a fee. According to Lao Yellow Pages, there are about 23 business or trading agents, and 74 import & export companies some of whom may be operating as commission agents. Still this sector is small though its contribution to growth of trade could be substantial. As the Lao economy grows and trading activities gather momentum, this sub-sector will have the potential to expand. Developments in the communication sector such as facilities for electronic commerce and mobile phones would be a boost to this sub-sector as well as to other trading services.

Franchising. The lack of statistics limits analysis of this sub-sector as well. It too is quite small in terms of numbers, but could be substantial in terms of turnover. The businesses falling into this category include only a few foreign brand name users such as petroleum products distributors - Caltex, Petro Viet Oil; Pepsi Cola; Koncept (a Thai furniture brand); and electronic retailers (Panasonic, Samsung, and Nokia). As the Lao economy gets more integrated regionally and globally, and depending on the extent and the pace of market access permitted, franchising could play an important role in the distribution sector, particularly in advent of supermarkets and department stores in the country.

Competitiveness. Competitiveness in the distribution services is essential to ensure supply of quality consumer goods in the market at reasonable prices. It depends on a number of factors such as the absence of undue restrictions on starting a business, prices, and imports; the availability of efficient transport, communication and storage facilities etc. Unfortunately, data indicate that Laos' international overall ranking in the *ease of doing business* has

worsened over the last three years from 167 in 2009 to 171 in 2011³¹. However, a number of measures taken by the government recently are expected to improve this situation as well as competitiveness (see below).

Approximately 91 per cent of the businesses in the distribution sector are owned by the private sector³². Starting a business, particularly as an informal small-scale one, is relatively easy except for the sale of items of security and health concerns. Formalities for starting a formal business have been made less onerous in recent years with reforms to business legislation. Several important steps have recently been taken by the government to simplify business entry, such as elimination of the minimum capital requirement for starting a business, introduction of a simplified business registration system in major provinces as part of the Enterprise Law implementation³³. A recently adopted Trade Facilitation Strategy and Action Plan which aim to streamline customs procedures and improve cooperation among border agencies in dealing with import and export clearing, and the elimination of price control policy³⁴ are also major reforms that will contribute to further improvement of competitiveness in the market. However, some constraints that undermine competitiveness still do seem to exist. These include difficulties relating to access to finance and skilled labour, and tax payment formalities³⁵.

Modernisation. The fact that nearly 99 per cent of wholesale and retail trade in the Laos is small scale operations is indicative of the low level of development. As the markets modernise together with the spread of supermarkets, the size of operations tend to be larger and their numbers tend to be less. Infrastructure development, particularly the availability of electricity and roads in rural areas, advanced land transport and information technologies, skills development through better education and training facilities are essential ingredients for modernisation of markets. Other requirements include regulatory, judicial and administrative improvements. For a least developed country, modernisation of markets is bound to take time, and should happen only at a sustainable pace – a pace consistent with the country’s development and integration with the world economy. Too rapid modernisation characterised by influx of too many large supermarkets could displace “mom-and pop” shops and lead to concerns among those dependent on small businesses, as happened in Thailand.³⁶

Logistics services. Logistics involve the integration of a range of services relating to flow of goods and services from producers through the supply chain to consumers. This includes transportation, packaging, warehousing, inventory, information, insurance, and security. A well-functioning logistics system, particularly what can be referred to as third party logistics (3PLs) providers who handle transit of products between suppliers, wholesalers and retailers, is crucial to the growth of the distribution services. A multi-country study suggests that a

³¹ International Finance Corporation, Doing Business database. Available: <http://www.doingbusiness.org>.

³² Department of Statistics (2007).

³³ The World Bank Lao PDR, *Economic Monitor*, May 2011.

³⁴ Decree on Administration of Prices of Goods and Fees of Services, No. 474/PM, Nov (2010).

³⁵ International Finance Corporation, *ibid*.

³⁶ Displacement of many “mom and pop” shops in Thailand in the early 2000s by US European companies is said to have led to some political tension (WTO. “Communication from Thailand: Assessment of Trade in Services.” Document TN/S/W/4 (July 22), Special Session, Council for Trade in Services, WTO, 2002. Geneva.

transit delay of one day could reduce trade by 1 per cent.³⁷ Lao PDR's land-lockedness and substantial distance to the nearest ports in Thailand and/or Vietnam make costs of transport of its imports and exports, in terms of the time taken to deliver the goods to or from the nearest port, relatively more expensive than those of a country that has ready access to seaports. An efficient logistics service would contribute to minimising these costs, which will not only improve Lao PDR's competitiveness in international trade but also contribute to the efficiency of the distribution trade services within the country.

A World Bank Study³⁸ reveals that the overall logistics performance of the Lao PDR, as measured by the 2009 Logistics Performance Index (LPI)³⁹, has seen only a modest improvement from 2007 to 2009. The overall performance indicator has improved from 2.25 to 2.45, on a scale of 1 to 5. However, while there have been improvements in some component areas such as customs clearance and timeliness, the performance in terms of improving the quality of trade and transport-related infrastructure and the perceptions of the competence and quality of logistics services have declined over the same period. Compared with regional countries, Laos (2.46 overall on the LPI) is well behind Thailand (3.29) and Vietnam (2.96) but performing slightly better than Cambodia (2.37). Lao PDR also compares favourably with the average for landlocked low-income countries. Compared to this grouping, the Lao PDR is better than average on the measures of the efficiency of customs, international shipments and timeliness, but below average on measures of infrastructure, logistics competence and tracking and tracing.

Lao PDR's road density is low – about 172 meters of road per square kilometre of land.⁴⁰ Of the road network, nearly half is earthen, and only 14 per cent is sealed. About 1/5 of the rural roads are not motorable during the rainy season.⁴¹ These factors contribute to relatively high transport costs which can act like a non-tariff barrier to trade. Such costs seep through to wholesale and retail trade impacting on the consumer prices. The sector that suffers most from poorly developed logistics is rural agriculture. Poor road conditions and inadequate information facilities make more costly for rural agricultural products to reach markets. Well-developed logistic services would contribute to cost reductions by minimising transport time, and would be beneficial to both Laos' internal as well as external trade. It would certainly be an essential element for a well-functioning distributions services sector. However, low population density, low volumes of goods traffic, and remoteness of many rural areas would limit the scope for rapid development of logistic services on a cost-benefit basis. At present there are about 60 companies in the Laos that provide logistic services: about 2/3 them in Vientiane, and the others in the provincial centres. Most of them have worldwide links, and provide a variety of services: road transport, air transport, river transport, and shipping, warehousing, and customised logistic solutions.

³⁷ Djankov, S., Freund, C. & Pham, C. (2010), "Trading on Time", *The Review of Economics and Statistics*, 92(1), 166.173: Reported in Alberto Biha et.al. *Export and International Logistics*, Policy Research Paper 5691, World Bank, June 2011. p. 9.

³⁸ World Bank (2010).

³⁹ LPI is a measure compiled for comparing the overall logistics environment across countries. It is constructed from assessments of performance of a number of logistics related items such as efficiency of customs, quality of trade related infrastructure etc.

⁴⁰ Source: Department of Statistics (2010).

⁴¹ Source: LECS 4.

4. Review of Regulatory and Policy Framework

4.1 General

Legislative measures often reflect the policies of the government. As in other sectors, the Lao government has carried out many trade reforms, some of them relevant to the distribution services sector. These include privatization, reforms on price administration, import/export administration, investment approval procedures and so forth. In the distribution sector, well worked out regulatory framework is necessary to safeguard the interests of the distributors as well as to enhance consumer welfare. However, sometimes too many regulations, or ill-designed regulations, or the absence of essential regulations can act as barriers to trade on the one hand and on the other adversely affect consumer welfare. In the course of preparation for WTO accession, Laos has undertaken many legislative reforms including those to improve the legislative framework applicable to the sector. While some regulatory reforms in this area have been completed, some are still in the process of being drafted, and some remain to be undertaken. This section reviews the legislative instruments that are being currently applied and the agencies responsible for them. It will also indicate any deficiencies in the regulatory system, and suggest improvements where necessary.

Several government agencies are responsible for implementing various laws and regulations applicable to distribution services. The list of regulatory documents currently applied and agencies responsible is given in Annex 5. The Department of Domestic Trade (DDT) of the Ministry of Industry and Commerce (MOIC) has the primary responsibility over the sector while other agencies co-regulate for certain products and practices that come within their purview. This sub-section reviews legislations generally applicable to the distribution services.

*Decree on Goods Trading Business of 2001*⁴², is the only piece of legislation that can be considered as one covering the distribution sector as a whole. Coming under the responsibility of DDT, its objectives are to promote production of consumer goods, ensure the availability of “sufficient” goods in the market, ensure price stability, and improve living standard of the people. Although it covers both wholesale and retail businesses, it does not provide a clear distinction of the two. This legislative instrument is very basic, archaic, lacks coverage of many essential elements (such as commission agents services, franchising, e-commerce etc.), and therefore needs to be replaced with a more comprehensive one.

*The Enterprise Law*⁴³, a significant legal instrument relevant to the distribution sector, provides procedures and measures for the “incorporation, operation and management of enterprises”, and thus applies to all enterprises in general including those in the distribution services. It makes several significant improvements to streamline requirements for business registration: reduces the time for registration approval to 10 days, except in the case of certain businesses where technical review process is required⁴⁴; provides for non-

⁴² Government of the Lao PDR, Decree on Goods Trading Business No. 206/PM (2001).

⁴³ Government of the Lao PDR, Enterprise Law No. 205/PM (2005).

⁴⁴ Enterprise Law, Article 14 states: Upon receipt of a notification for enterprise registration, the enterprise registration authority shall examine the nature of the business. If the business is not in the controlled list, the authority shall consider issuing registration within ten working days from the date of receipt of the notice. In the event the business falls within the list of controlled businesses, the authority shall immediately forward the application to the concerned authority. Such authority shall consider the application within ten working days (except in the case of certain businesses that require a longer technical review process) and issue enterprise

discriminatory treatment between domestic and foreign businesses; and simplifies business entry by eliminating minimum capital requirement for starting a business, introducing a simple business registration system in major provinces, and providing for a ‘negative list’ of sensitive businesses, thus making it clearer for the prospective investors than was the case previously.

The Decree on Approval of the List of Controlled Businesses⁴⁵, following the requirement of the Enterprise Law, provides a “*negative list*” of activities that includes only sensitive activities requiring line agency scrutiny before registration. In addition, it mandates line authorities to abolish any legislations, procedures or approval requirements for the registration of business activities that are not in the negative list.

The Decree on Import-Export of Goods⁴⁶ is a recent reform in terms of meeting GATS requirements. It introduces the concept of *national treatment* by providing for non-discrimination between nationals and foreigners, and simplifies procedures for import and export licensing by allowing for automatic licensing for some goods. The list of products subject to automatic and non-automatic licensing also has been substantially reduced and brought to be in compliant with WTO requirements. The import of goods subjected to SPS and TBT measures no longer require an import license, and will only require an SPS or TBT certificate from the respective authorities. This Decree also separates the right to import-export goods from the right to distribute. Therefore, many import-export companies that previously engaged in distribution services now have to either include the distribution activity in enterprise registration certificate to have the right to distribute those goods, or to give up the right to distribute.

The Decree on Price Administration⁴⁷, also a recent reform measure, reflects a major change in pricing policy. Previously, the focus was on applying price controls as a means of price stabilisation. This decree recognises the role of the market in price determination and that the State’s role is only to “apply price administration measures in case of necessity and on the basis of non-discrimination and transparency”.

The Investment Promotion Law of 2009⁴⁸, another major reform, together with its implementing Decree (2011)⁴⁹, replaces previous domestic and foreign investment laws and eliminates the need for new investors to obtain an investment license. It abolishes lengthy and cumbersome licensing approval procedures for general investment activities, and creates a level-playing field for both domestic and foreign investors. Under this law, foreign investors in general business only need registration under the Enterprise Law, and they come under the purview of MOIC, while the Ministry of Planning and Investment (MPI) retains responsibility only for the administration of investments that qualify for special concessions (such as tax holidays).

registration certificate no later than three working days. In the event that the enterprise registration certificate is not issued, a written response with reasons shall be given to the applicant for enterprise registration.

⁴⁵ Government of the Lao PDR, Decree on Approval of the List of Controlled Business No. 68/PM (2008)

⁴⁶ Government of the Lao PDR, Decree on Import-Export of Goods, No. 144/GoL (2011)

⁴⁷ Government of the Lao PDR, Decree on Administration of Prices of Goods and Fees of Services, No. 474/PM, Nov (2010).

⁴⁸ Government of the Lao PDR, Law on Investment Promotion No. 02/NA (2009),

⁴⁹ Government of the Lao PDR, Decree on the Implementation of the Investment Promotion Law No.119/PM (2011)

*The Law on Consumer Protection*⁵⁰ is also a new initiative that has significant relevance to distribution services. Currently, different government agencies are responsible for implementing different aspects of consumer protection, a system that lacks coordination. MOH is responsible for matters relating to quality control and safety of food and food products, drugs and pharmaceuticals, MAF for quarantine of plants and livestock, while MOST is also responsible for quality control of food products and for regulation of chemical products, trade-marks, weights, standards, and quality control of goods and services. MOIC is responsible mainly for price surveillance to ensure adequate supply of goods at fair prices to the consumer. In addition, the Division of Economic Police assist other authorities in dealing with the offending traders and businesses and investigate any complaints relevant to economic activities brought to them by any person.

However, the weaknesses and inadequacies in their implementation and institutional arrangements (such as the lack of coordination with other relevant agencies, inadequate trained staff) have made these laws and regulations ineffective, and as a result many improper trading practices (such as the absence of price marking and expiry dates where relevant, improper documentation etc.) that impact adversely on the consumer exist in the market. Legislation to bring all different jurisdictions relating to consumer protection measures under one co-ordinated administration had been under consideration since 2004, but has been finally enacted only recently in 2010, apparently pressured by an ASEAN initiative. DDT is currently making preparations to implement this new law by about early 2012.

*Decree on Trade Competition*⁵¹, promulgated as early as in 2004, still remains to be implemented. Legislative arrangements for adequate competition in the market is another requirement for ensuring consumer welfare and quite relevant to distributions services. Measures to prevent predatory behavior by dominant traders are essential to ensure fair competition and consumer sovereignty and welfare. DDT, the agency responsible for this subject, has no plans as yet to establish an institutional arrangement for regulation of competition requirements in the market.

In addition to the regulations mentioned above, which are of a more general nature, there are several other regulations and implementing authorities relevant to the distribution of certain specific products.

4.2 Sectoral

Drugs and Medical Products

Distribution businesses of medical products in Lao PDR, apart from having to register under the Enterprise Law, are regulated under the *Law on Drugs and Medical Equipment*⁵² administered by MOH. This law aims to ensure safety and quality of drugs and medical products sold. In this regard, criteria for the production and distribution of drugs and medical

⁵⁰ Government of the Lao PDR, Law on Consumer Protection No. 02/NA (2010)

⁵¹ Government of the Lao PDR, Decree on Trade Competition, No. 15/PMO (2004).

⁵² Government of the Lao PDR, Law on Drugs and Medical Equipment No. 01/NA (2000), Article 1: This law defines principles, rules and measures relating to the management of growing, preservation, exploitation, production, export, import, distribution, possession and use of drugs and medical products with the aim to ensure the supply of drugs and medical products that are of good quality, safe and appropriately priced, in order to prevent disease and provide treatment, and to ensure the good health of the population.

products have been laid down. The wholesale distribution of drugs and medical products can be carried out only by the permitted businesses such as drugs and medical products factories, factory agencies and import-export companies and their branches.

In addition, only drug stores (or pharmacies) are authorized the retail sale of medical products.⁵³ Regulation on Small Pharmacy⁵⁴ governs the distribution of drugs and medical products, and medical equipment. It sets out conditions to be met by drugs stores on residency requirements, medical related qualifications and experience, location, stores sign, related documents to be placed in store and equipment used in the store. Meeting these conditions is necessary for registration as an enterprise⁵⁵. The operation times and staff qualification requirements for drugs and medical equipment retail stores are given in the Instruction on drugs retail sale.⁵⁶ The Food and Drug Administration Committee⁵⁷ is responsible for making decisions on important issues at the national level regarding the control of quality and safety of food and drug production, their import, export and distribution.

Food Products

National Food Safety Policy⁵⁸ plays an important role in food distribution services including transportation, and import-export. The WTO requirements of Sanitary and Phyto-sanitary (SPS) and Technical Barriers to Trade (TBT) create obligations on safety of food traded internationally. The Food and Drug Administration Committee, referred to earlier, is responsible for overseeing the National Food Safety Policy and formulating laws, regulations and standards necessary for meeting these obligations.

The Food Law⁵⁹ aims to control the quality and standard, in particular the safety, of food and to regulate on the administration and inspection of activities relating to production and distribution of food. Distribution of food within the country comprises the wholesale, retail sale, storage and transport of food, and require compliance with specified laws and regulations concerning the safety and quality (hygiene and nutrients) of food.

Tobacco and Alcohol

There is no specific law governing the distribution of alcohol. However, there is the **Law on Tobacco Control**⁶⁰ which provides the principles and regulations for distribution of tobacco in order to protect people's health from negative impacts of cigarette smoking. The law

⁵³ Law on Drugs and Medical Equipment No. 01/NA (2000), Article 27: Conditions for Conducting Wholesale Business Relating to Drugs and Medical Products: (a) be or have a pharmacist; (b) have no criminal record relating to drugs and narcotic drugs; (c) have medical and business ethics; (d) have good health. At the same time, the business must have the facilities necessary to ensure the quality of drugs and medical products such as: standardized warehouses. Article 28. Conditions for Conducting Retail Sale Business Relating to Drugs and Medical Products: (a) be or have a pharmacist, have a diploma of pharmacy, or be a physician authorised by the Ministry of Health; (b) be a Lao national, or, if a foreign individual or eupatrid must have permanently resided in the Lao PDR for not less than five years; (c) have medical and business ethics; (d) have no criminal record relating to drugs and narcotic drugs; (e) have good health, and no mental or communicable disease.

⁵⁴ Government of the Lao PDR, Regulation on Small Pharmacy No. 482/MOH Regarding (2002)

⁵⁵ Government of the Lao PDR, Regulation of MOH No. 482/MOH Regarding Small Pharmacy (2002)

⁵⁶ Government of the Lao PDR, Instruction on drugs retail No. 1624/03.DFD (2003)

⁵⁷ Established under National Food Safety Policy No. 020/MOH (2009), Part IV.1

⁵⁸ Government of the Lao PDR, National Food Safety Policy No. 020/MOH (2009)

⁵⁹ Government of the Lao PDR, The Food Law No. 04/NA (2004)

⁶⁰ Government of the Lao PDR, Law on Tobacco Control No. 07/NA (2009)

provides for taxation, restrictions on smoking areas and distribution points, monitoring and inspection of production, distribution, and buying-selling of tobacco products. The retail sale of tobacco products requires prior approval, and their sale to persons under 18 years of age is prohibited. Specific packaging and inclusion of warnings about the negative impact of tobacco on the cigarette pack are mandated. MOH is the main authority who approves the distribution of tobacco in cooperation with other line ministries in controlling the negative effects of tobacco consumption.

Agricultural Products and Equipment

MAF is the principal authority that administers laws and regulations relating to protection of plant and animal health, and therefore the distribution of animal and agricultural products, and related equipment. Three regulative instruments⁶¹ provide the legal basis. Business activities relating to livestock production and meat distribution and processing require prior approval from MAF. Import and export of both agricultural and animal products are subject to approval from MAF in addition to that from MOIC. MAF also impose geographical limitations on the transport of imported animal products; an importer or distributor is restricted from transporting the imported animal products to another province. In addition, the veterinary services are required in order to prevent and control epidemic diseases of animals.

Communication Equipment

Under the *Law on Telecommunications*⁶², MPTC regulates the distribution of communication equipment, and also administers their registration and use within the country, for monitoring for security and social order purposes. It also approves their technical standards and quality to ensure compliance with international standards and agreements... In view of the growing importance of IT services the Telecom Law is being revised, and a new Decree on Internet Services is being promulgated in order for the authorities to be able to better regulate and monitor the sector activities.

Technical Standards and Intellectual Property Rights

*The Law on Standards*⁶³, administered by MOST, regulates the standards of certain goods to ensure the safety of consumers and the environment, and conformity with international requirements. However, this law is not yet fully implemented, and its implementing Decree is being prepared. Bottled beverages are regulated under Regulation on Bottled Drinking Water (2006)⁶⁴ which specifies the standards and requirements for bottled drinking water. Food safety standards are administered under the Regulation on Safe Food⁶⁵ which specifies requirements for distribution, packaging, storage of food products. Food standards in Lao

⁶¹ Government of the Lao PDR, Law on Livestock Production and Veterinary Matters No. 03/NA (2008); Decree on Animal Disease Control No. 206/PM (2007) MAF; Decree on Animal Inspection, Animal Products and Goods related to Animal imported and transit Lao PDR No. 207/PM (2007)

⁶² Government of the Lao PDR, Law on Telecommunications 02/NA (2001)

⁶³ Government of the Lao PDR, Law on Standard No. 13/NA (2007)

⁶⁴ Government of the Lao PDR, Bottled beverages are regulated under Regulation on Bottled Drinking Water No. 585/MOH (2006)

⁶⁵ Government of the Lao PDR, Regulation on the Control on Production, Exported-Imported Safe Food No. 586/MOH (2006)

PDR are based on the Codex Alimentarius standards, guidelines and recommendations. In addition, Regulation on Labelling of Pre-packaged Food⁶⁶ elaborates food law and food strategies by being a tool for controlling and monitoring the production, importation and distribution of food in Lao PDR and ensuring compliance with the requirements for standards and labelling. Food labels require to have the name of food, list of ingredients, net contents and drained weight, name and address of the manufacturer or packer or distributor, date markings and storage instructions for storage and use.

Intellectual Property Law⁶⁷, also administered by MOST, is considered inadequate to meet the WTO requirements under TRIPS Agreement, and is being revised. At least, the law does not seem to be adequately implemented as many faked products such as cheap copies of wrist watches, mobile phones etc. are being sold openly in the market.

Protection of Public Morale and Public Order

Products such as books, magazines, newspapers, audio-visual goods which can impact on public morale and public order are listed under the “*negative list*” referred to earlier, where the approval from MICT is mandated in order to establish an enterprise to engage in import, production or distribution of those products. According to the Law on Printing No. 05/NA (2008), prior approval is required from MICT for the distribution of books and other printed material. The Printing Management Authority has the authority to prohibit the sale of books or printed matter that it deems necessary for protection of public morale and public safety.⁶⁸

Logistic Services

The regulations applicable to logistics services come under the **Land Transport Law**⁶⁹ administered by MPWT. This law determines, among other things, the regime for the administration, organization, and operation of the domestic, international and cross-border transport of goods. An enterprise providing logistics services is required to meet several requirements such as technical capacity, professional competence, financial capacity, honesty and integrity, roadworthiness of vehicles, and insurance. The law also provides for compensation to customers for loss of or damage to goods carried by a transport provider.

In conclusion, the regulatory framework has improved considerably in recent years largely due to the government’s reform efforts to bring it WTO consistent. As for those relevant to distribution services, legislations relating to trading rights, prices, import licensing, business registration, investment, and trade facilitation are compliant with WTO-GATS requirements. Government is making a genuine effort to bring regulations in other key areas such as TBT, SPS, and TRIPS (Trade Related Aspects of Intellectual Property Rights) into compliance with WTO requirements, but is likely to take time as the work, which is ongoing, would require substantial technical input. The legislative reforms hitherto completed have improved substantially the level of Lao PDR’s openness in general. The new Investment Promotion Law of 2009 and its implementing Decree of 2011 which brought about this high level of openness will take time to have their effect, particularly in the distribution services sector. As detailed in Section 6.3, there are some more inadequacies that need to be dealt with in order for the sector to fully benefit from that openness.

⁶⁶ Government of the Lao PDR, Regulation on Labelling of Pre-packaged Food No. 519/MOH (2009), Article 2

⁶⁷ Law on Intellectual Property Law, No.08/NA, Dec., 2007.

⁶⁸ Government of the Lao PDR, Law on Printing No. 05/NA (2008), Article 62

⁶⁹ Government of the Lao PDR, Law on Land Transport No. 13-97/NA (1997)

5. Distribution Services Sector Commitments of Selected Countries

This section examines the commitments made for the Distribution Services Sector by fellow ASEAN member countries both under ASEAN Framework Agreement on Services (AFAS) and GATS, and those by selected land-locked least developed member countries under GATS. In order to devise its negotiating strategy, it is important for Laos to understand how other ASEAN countries have made commitments both under AFAS as well as under GATS. Particular attention is focused on Cambodia (acceded in 2004) and Vietnam (acceded in 2007) who acceded to WTO in recent years and went through the same accession negotiation process that Laos is going through presently. The sub-sectors and the products they have opened up, what products they treated as sensitive and what timeframes and conditions they have applied could throw much light on how Laos could design its own strategy. Similarly, it would be relevant to look at the GATS commitments made by a few land-locked LDCs to see what considerations, if any, have been taken into account of their being in that category. A summary of Schedules of Specific Commitments of ASEAN member countries under AFAS, and of selected countries under GATS is given in Annex 6. A tabular summary of these commitments is provided in Table 4 below.

Table 4a: Summary of Distribution Services Sector Specific Commitments by ASEAN Countries under AFAS and GATS

Member	AFAS					GATS				
	4.a	4.b	4.c	4.d	4.e	4.a	4.b	4.c	4.d	4.e
Brunei										
Cambodia	x	x	x	x	x	x	x	x	x	x
Indonesia		x								
Laos	x	x		x						
Malaysia	x	x	x	x						
Myanmar	x	x	x							
Philippines	x		x		x					
Singapore	x	x	x	x						
Thailand	x	x		x	x	x				
Vietnam	x	x	x	x		x	x	x	x	

Note: 4.a. Commission Agents' Services; 4.b. Wholesale Trade Services; 4.c Retailing Services; 4.d. Franchising; 4.e. Other.

Table 4b: Summary of GATS Distribution Services Sector Specific Commitments by Nepal & Lesotho

GATS				
Member	4.a	4.b	4.c	4.d
Nepal	x	x		x
Lesotho		x	x	x

5.1 Comparison

AFAS Commitments. Of the ASEAN countries, Brunei has not made any commitments either under AFAS or GATS. In terms of making commitments, Malaysia and Myanmar have been relatively more open than others. Cambodia, Malaysia, Singapore and Vietnam have made commitments in all the four main sub-sectors. Indonesia has made commitments in wholesale trade only, while Philippines is the only country that made no commitments in wholesale trade. Singapore has opened wholesale trade services without restrictions except for pharmaceuticals and medical products. However, it is noteworthy that Singapore which has a relatively more liberal trade regime than other countries has opened its retail trade only for motor vehicles and spare parts.

Laos and Thailand have not made any commitments in retail trade. Products opened by most countries include clothing and footwear; motor vehicles, motor cycles and spare parts; and petroleum products. Foreign participation in supermarket retail business is open in Cambodia, Malaysia and Myanmar. Only Myanmar and Malaysia allow wholesale or retail sale services in pharmaceuticals and medical products, while retail sale of food and non-food groceries is open in Cambodia (supermarkets only), Malaysia, Myanmar and Vietnam.

GATS Commitments: Thailand's commitments both under AFAS and GATS have been very limited, and under the latter more limited. GATS commitments of Cambodia and Vietnam in the distribution services are basically the same as those made under AFAS. However, what is important to note is that both countries made their commitments as required under their WTO accession negotiations. In that respect their GATS commitments are important for Laos to take note of. Also it is important to note that these two countries did not offer to open more than what they had done for ASEAN.

There are 8 LDCs which are also LLDCs and WTO members. Of these, only two countries, Nepal and Lesotho, have made Distribution services sector commitments. Lesotho, one of the original members of WTO, has opened for a wide range of goods for both wholesale and retail trade, but not made any commitments for commission agents' services. Nepal, on the other hand, has been more restrictive. Except for radio and television equipment, musical instruments, and music records, tapes etc. Nepal has reserved the right to delay opening up of other products, practically until such time that it is ready to do so. It opens for radio and television equipment etc., in both wholesale and retail sale in Modes 1 and 2, and in Mode 3 *market access* foreign equity is allowed up to 80 per cent.

Mode 4 is unbound in most countries examined, for all subsectors. In some, it is unbound except as provided for under horizontal commitments. Malaysia opens it for certain positions in wholesale and retail sale services under *market access*; and Philippines opens it for commission agents in respect of certain types of investments under *market access*.

No exemptions from *national treatment* are found in the recently acceded countries considered, except Vietnam's requirement under *franchising* for the chief of a foreign owned or JV business to be a resident of Vietnam.

Joint-venture requirements. Table 5 summarises foreign equity limits imposed by countries under their respective commitments in both AFAS and GATS. Five countries have specified maximum limits: Indonesia 49 per cent for supermarkets; Laos 49 per cent (clothing and footwear); and Malaysia 30 per cent, where out of the 70 per cent local equity, 30 per cent is reserved for *bhumiputras*. Myanmar specifies minimum limit of 30 per cent while Philippines specifies different limits for different levels and different types of foreign investment.

Table 5: Foreign equity limits for Joint ventures under AFAS & GATS commitments

Country	Sector	Foreign equity limit for joint ventures under AFAS	Foreign equity limit for joint ventures under GATS
Cambodia	All sectors	Existing laws	Existing laws
Indonesia	wholesale	49%	
Laos	wholesale	49%	
Malaysia	wholesale & retail	30%	
Myanmar	wholesale	Not less than 30%	
Philippines	Commission agents	40-100%	
	Retail sales	49%	
Thailand	All sectors	49%	
	Commission agents		49%
Vietnam		100%	100%
Nepal	Commission agents		80%

Source: Respective schedules of commitments

6. Recommendations

6.1 Negotiating Strategy

The strategy should be guided by the **national goals**, **principles** and **considerations** given below:

Guiding National Goals

As noted earlier, the government's strategic goals relevant to the sub-sector are -

- ☐ achieving at least an annual growth rate of 8 per cent for GDP;
- ☐ achieving growth rate of 6.5 per cent for the Services sector, and increasing its contribution to GDP to 38 per cent;
- ☐ graduating the country from the LDC status by 2020;
- ☐ making dynamic changes towards rural development and poverty eradication;

- promoting SMEs, and the use of new technologies in order to raise productivity and efficiency;
- continuing to emphasise gender equality;
- realising a greater market participation of SMEs so they can provide employment to more than 85% of non-farm workforce;
- expanding retail markets to cover 80 per cent of village groups; and
- establishing rural enterprise units in at least 30 per cent of the villages

Guiding Principles

In opening the sector for foreign entry, the government should be guided by the three principles: ***honesty, fairness, and justice***. These principles are necessary to give confidence to the prospective investors in the distribution businesses. Honesty will make investors confident that there will be predictability of any major policy changes affecting them. Fairness means that the government, in making commitments, will be fair to all parties affected, the foreign and national businesses, domestic producers and the consumers. Principle of justice is meant that the government will provide a reliable impartial legislative and judicial system within which the distribution sector can function efficiently.

Guiding Considerations

Rights available under WTO rules. As an accession negotiating country, Laos is entitled to impose, in its offer of commitments, any or all of six types of *market access* limitations allowed under Article XVI, which include limitations on the number of service suppliers, on the natural persons to be employed, equity participation etc. GATS rules (Articles XIV and XIV bis) also provide for the adoption of such domestic regulations⁷⁰ as may be necessary for proper functioning of the trade sector, such as those relating to protection of human or plant health, culture etc., and security interests. As a LDC, Laos is entitled to be flexible and to seek from negotiating Working Party members, special treatment provided for in GATS Articles IV and XIX in order to safeguard its interests and concerns. Where such interests and concerns are identified, Laos should not hesitate to ask for special treatment.

Legislative and institutional capacity. As indicated in Section 4, a more comprehensive legislative framework, and institutional and staffing improvements will need to be in place in order for the authorities to properly manage and administer an extensively liberalized distributions services sector. Hence a transition period may be needed for a fuller opening of the sector.

Sustainability. Liberalization should be sustainable; meaning that opening of markets for foreign participation should be bearable to the domestic participants (producers, traders and employees). Excessive displacements in the form of business closures and job losses could create social problems in the absence of social security arrangements. The country's fiscal resources are inadequate to provide for social security measures. Therefore, selected products

⁷⁰ Though these are general exceptions available to Member countries, acceding countries could take account of them in designing their commitments.

for liberalization should be those that are likely to have only a minimal adverse impact on the domestic economy.

Gradual Approach. Trade liberalization, though desirable, can cause adjustment problems in the short term. These could include, as explained earlier, closure of some businesses, job losses, and loss of income. Particularly, small retail businesses as well as rural suppliers to retail sector could be vulnerable to sudden overseas competition. Given the country's economic conditions, gradual approach would give time for domestic firms to adjust to new levels and forms of competition; and as they develop capacity to withstand more competition, more areas could be opened up.

Sector Interests. Distribution services sector is not fully developed. A large segment of the rural population, most of them unskilled⁷¹, depends for their livelihood on the sector, particularly the large informal sector. Most of the operations are small enterprises using relatively little capital and technology. Thus, there is a need to be concerned about those dependent on the sector. At the same time the sector needs to be developed so that it could realize its full potential and contribute more to socio-economic development of the country. For that to happen, the sector needs to be more productive and efficient through the injection of more capital, better skills and technology. The strategy, therefore, may need to strike a balance between these two considerations.

Competitiveness. As discussed earlier in Section 3, competitiveness in the distribution services is essential to ensure productivity not only in the distribution services themselves but also the other economic sectors that are linked to them through the supply chains. The effect of opening to foreign firms could have both beneficial and adverse effects on competitiveness of local distributors. The entry of foreign firms, particularly the large ones, could be a threat to some smaller and less efficient businesses. Although this could be seen as an unfavorable outcome, in the longer term it could be a beneficial effect, as those unable to survive competitively would deploy their resources elsewhere where they could operate successfully, thus enabling a more efficient allocation of resources in the economy. Given the low level of development in terms of skills and know-how, such firms may need time to adjust to new competitive environment and build up capacity to be more efficient.

Employment and skills development. Foreign firms entering will have more capital, be larger in size, and benefit from economies of scale, and thus would tend to drive out smaller firms causing loss of employment. However, distribution services, particularly retail trade, being relatively more labour intensive, entry of new firms could open up new job opportunities for local labour. Generation of such new job opportunities could outweigh any possible loss of employment resulting from closures of some businesses. Also such job losses could be short-term until such time the affected workers find alternative employment. In order to ease or remedy the situation, facilities for skills training may need to be improved to assist the affected. New firms themselves do sometimes train local workers to make them more productive. Limitations on employment of foreign workers could encourage such firms to train local employees.

Joint ventures. This business model provides opportunities for local entrepreneurs to open up businesses within the country in partnership with a foreign investor. The local partner benefits from the capital contribution as well as from transfers of technology, knowhow and

⁷¹ Only about 39% of adult population in urban areas have had any secondary education, and the number is much less for the rural sector (LECS4).

marketing techniques. The model is often used particularly by developing countries as a means of attracting much needed foreign capital and at the same time promoting business development involving the local entrepreneurs. It also provides opportunities for the local entrepreneurs to gain experience in managerial roles in running businesses. Exposure to foreign participation could also contribute to efficient growth of SMEs, enabling transfer of skills and technologies, and improving access to overseas markets. At present, in Laos, over 90% of primary economic units are small enterprises. With greater exposure to new technologies, better marketing techniques, the number of medium sized enterprises would tend to increase.

In distribution services, joint ventures may be encouraged in order to promote SMEs as well as to enable the sector to gain from benefits of foreign participation mentioned above. In opening up distribution services, joint ventures may be encouraged and given preference over 100% foreign ownership. Under its investment promotion law, Laos provides for foreign equity participation between 10-100% per cent⁷². However, Laos is free to specify, in its specific commitments, any foreign equity requirement different to what is provided for either in its foreign investment promotion laws or its horizontal commitments. Consideration may be given to limiting foreign equity to 30-49 per cent in specific activities in order to provide local partners a controlling interest so that they could have better opportunities for learning and at the same time gaining managerial experience, except in the case of large scale foreign investments such as supermarkets and department stores.

Presence of natural persons. The Labour Law⁷³ permits enterprises to employ foreign workers up to 10 per cent of ordinary labour, and 20 per cent of skilled labour of an enterprise, subject to approval by relevant authorities. However, in the distribution services sector, the need for technical expertise is said to be relatively less, and there appears to be no difficulty in obtaining general employment requirements locally. As such, in this sector, the presence of foreign personnel may be restricted to managerial level, and not more than three in each large establishment, and two in each smaller firm. Any request for additional foreign employees may be considered on a case by case basis. Acceptable qualifications, preferably at tertiary level, in relevant fields, may be required for such personnel.

Geographical Restrictions. Existing laws do not restrict opening of branches of a locally registered joint-venture. However, as in Vietnam⁷⁴, consideration may be given to the need for prior approval for branching subject to an Economic Needs Test⁷⁵. The requirement of ENT for branching is to enable authorities to evaluate whether the market needs the proposed branching and ensure that local enterprises are inadequate for efficient supply of the product/s concerned in order to prevent unnecessary competition from foreign owned distributors.

⁷² Government of Lao PDR, *Law on Investment Promotion*, Article 10, No.02/NA, June., 2009.

⁷³ Labour Law (Amended) No. 06/NA, 27 Dec 2006, Article 25.

⁷⁴ Under Vietnam's commitments, applications to establish more than one outlet are subject to pre-established publicly available procedures, and approval is to be based on objective criteria; and the main criteria for the ENT include the number of existing service suppliers in a particular area, the stability of market and geographic scale.

⁷⁵ ENTs are used for determining the need for commitments in other Ares as well. For example, a number of EU Member States have ENTs in retailing, sometimes in relation to large stores, and Korea has ENTs for different types of wholesale trade services.

6.2 Making Commitments

Even though the recent legislative reforms provide a liberal level of openness in general for foreign participation, in view of the considerations given above, extensive opening of the distribution services may be inadvisable. In particular, the sector's characteristics, the national goals relevant to it, and the need for dealing with the legislative, institutional and staffing inadequacies have to be taken into account. On this basis it is recommended to commit to a limited opening at the beginning, as detailed below, and to extend the coverage after five years of accession if the socio-economic impact of the initial round of opening is favorable. It is also recommended to apply the following to all sub-sectors:

- ☐ for the products opened, full commitment in Modes 1 and 2, under *Market Access* and *National Treatment* (accompanied by proper regulations, particularly on e-commerce);
- ☐ commitment in Mode 3 under *National Treatment* subject to laws relating to land use by non-nationals;
- ☐ Joint Ventures with 30-49% foreign equity, except in the case of large scale foreign investments in supermarkets and department stores with a floor space of more than 2000 m², where foreign equity may be extended to 100 per cent;
- ☐ laws and regulations of Lao PDR especially those relating to foreign investment, business registration, taxation, land use, immigration, except those applicable to concession projects; and
- ☐ limited commitment in Mode 4 under both *Market Access* and *National Treatment*:
 - not more than three foreign persons at managerial level in each larger firm;
 - not more than two foreign persons at managerial level in each smaller firm;
 - not more than two foreign technical staff (accountants and engineers) in each firm; and all foreign personnel to have acceptable experience and relevant academic qualifications at tertiary level.
 - Any requests for additional foreign personnel may be considered on a case by case basis.

6.2.1 Sub-sectors

(a) *Commission agents' services.*

Provide full commitment. Being relatively less developed, this sub-sector has the potential to grow as markets grow with more foreign participation. It is also a complementary service for the growth of wholesale and retail trade, and can be supplied even through *Mode 1*. Hence full commitment will be beneficial and bearable to domestic wholesale and retail traders.

(b) *Wholesale services:*

Provide limited commitment. Products suggested for opening:
motor vehicles, motor cycles and spare parts;
bicycles and bicycle parts; and
building materials and hardware.

Wholesale businesses so opened should not be allowed to operate as retailers at the same time, the objective being to promote local retail businesses. The wholesalers should sell to retailers and other wholesalers only.

(c) *Retail sale services:*

Provide full commitment for supermarkets and department stores with a floor space of more than 2000 m², for food and non-food products except pharmaceuticals.

Provide limited commitment for other retailing. Products suggested for opening:
textiles, clothing & footwear;
household appliances (kitchenware and electrical appliances);
radio, television, musical instruments and products; and
petroleum products

(d) *Franchising:* Provide full commitment subject to floor area restriction of not less than 2000 m² for supermarkets and department stores.

Franchising will be a significant mode of access for international retailers because it would enable local entrepreneurs to build shopping malls that include supermarkets with a range of outlets for well-known franchise consumer brands and can thus be an alternative to foreign-owned retail outlets. Floor space restriction will leave room for local entrepreneurs to open smaller franchisee supermarkets.

6.2.2 Rationale for wholesale services commitments

- ☐ Quality vehicles are essential for transport sector development, a necessity for both rural and urban transportation.
- ☐ As for bicycles, there seems to be a need to promote their use as an affordable and energy saving mode of personal transport, as is the case in most other countries.
- ☐ Building materials and hardware are essential for the construction industry particularly for construction of quality buildings. It is observed that many hardware items currently used in both commercial and residential buildings are of low quality resulting in constant breakdowns.
- ☐ Opening only to wholesale is to reserve their retail trade to local entrepreneurs.

Furthermore these products are proposed to be available at wholesale outlets for local retailers to buy. It would be cheaper for retailers, particularly those in outstations, to purchase from a local wholesaler who will be able to supply at competitive prices due to economies of scale, rather than to import by themselves. Of course there are a host of other products which

can fall into similar category such as furniture. We consider that local retail trade in those products is fairly well developed and they obtain their supplies partly from local producers and partly from importers.

6.2.3 Rationale for retail sale services commitments

The proposed consumer durables are essential for improving quality of life. As household incomes rise, the demand for these products with better quality will increase. Increased supply of these goods will ensure improvements in quality, choice and prices to the consumer. It will also crowd out many low quality goods (especially electrical and kitchen appliances, television sets) currently sold in the market which breakdown too often.

As noted earlier, this sector consists largely of small businesses, about half of them informal operators, and most source their supplies from local and rural producers. The sector thus provides employment and livelihood to a large section of the adult population, with a good proportion of it being unskilled, female, and relatively less educated. Excessive opening of the retail trade to foreign participation could crowd out the mom-and-pop stores operated by families with adverse social impact, resulting in loss of employment livelihood to many. Limited opening will provide the needed exposure to competition which will improve efficiency and better services to the consumer.

There are a few additional important reasons as to why these particular products are proposed. Firstly, almost all of them are currently not produced locally and their distribution more competitively would be beneficial to the consumer both in terms of quality and price. Secondly, these are the products that most other countries that we studied have chosen for market access opening, particularly under AFAS, and Cambodia and Vietnam under GATS. Thirdly, the other consumer products such as food and non-food groceries are proposed to be opened up only for large supermarkets, thus reserving their small scale distribution to local enterprises.

Motor fuel and other petroleum products normally sold in petrol service centres is proposed to be opened for foreign participation under both *retail sale* and *franchising*, as is the case in most countries examined.

6.2.4 Achieving National Goals

The recommended strategy is aimed at:

- ☐ limited opening of the distribution services but at the same time providing for some competition and knowhow from overseas investors;
- ☐ minimising the pains of adjustment of the domestic businesses and employees;
- ☐ increasing the participation of local entrepreneurs and thus promoting SMEs;
- ☐ providing more opportunities for upstream suppliers at the rural and village level; and
- ☐ promoting wholesale and retail sale businesses owned and managed by nationals.

That way it is designed to help achieving national goals, especially those relating to poverty eradication; SME development; promoting rural enterprises, wholesale, retail sale, and supermarkets trade; and socio-economic development.

6.3 Regulatory, Policy, and Institutional Reforms

Regulatory Reforms

Regulatory measures that need to be introduced. The Decree on Goods Trading Business is inadequate to properly regulate a modern distribution services sector, and therefore needs to be replaced with a more comprehensive legislation. There are many subject areas relevant to the sector that it, or any other law in Lao PDR, does not cover, or does not cover adequately. For instance, currently the only legal redress available for commission agents and franchises is under the provisions of the Law on Contract and Tort⁷⁶, which is inadequate. The list of subject areas that need to be covered in new legislations include the following:

franchising, commission agents, sales promotion activities, commercial advertising, trade fairs and exhibitions, trade representatives services, goods auctions, bidding for goods, goods transit services, good assessment services, good assessors' services, leasing of goods, commercial dispute settlement, and multilevel marketing, and e-commerce.

Among the neighbouring countries, Vietnam has a fairly comprehensive legislation - Commercial Law⁷⁷ that covers almost all general subjects relevant to the distribution services. Lao authorities could use this law as a basis for drafting a comprehensive legislation for LAO PDR's distribution sector.

The Department of Domestic Trade (DDT) of MOIC, being the agency responsible for the distribution services sector, should initiate drafting of legislation covering above mentioned subject areas. Instead of having all subjects covered in one large volume as in Vietnam, it would be better to have separate relatively smaller legal instruments for each major subject like commission agents, franchising, and one or two instruments covering other subjects.

DDT also should undertake a thorough study of the current legislative provisions relevant to the distribution sector, including those administered by line agencies, with a view to identifying any omissions relevant to the sector, and incorporating them either in its own legislation or recommending to line agencies to do the same. For instance, Food and Drug Department expressed concern about print and electronic advertising whereby sellers using food and drug import certificates to authenticate the claims made for their products, and said that a food or drug import certificate cannot be used as a supporting reference document to advertise the product, and consumers need to be protected from substandard products sold through such means⁷⁸. MOST is said to be drafting a law on e-commerce, and DDT would need to coordinate with that agency to ensure that all necessary aspects, especially those relevant to distribution sector, are covered in the new legislation.

Legislative measures that remain to be implemented. Legislations that have been enacted but yet to be implemented include the Decree on Competition, the Law on Consumer Protection, and the Law on Standards. Implementation of these instruments, as soon as

⁷⁶ Government of Lao PDR, Law on Contract and Tort No. 01/NA (2008).

⁷⁷ Democratic Republic of Vietnam, Commercial Law (Revised), 2005.

⁷⁸ Vientiane Times, 1 July 2011.

possible, would also be important for a well-functioning distribution services sector. Relating to standards, Lao is also obliged to fulfil its duty as an ASEAN member to follow the ASEAN Harmonization of Standards which aims to remove trade barriers that may exist because of divergent standards, testing, certification and regulatory practices among the ASEAN member countries.⁷⁹ Competition law is necessary to ensure a proper competitive environment, particularly after possible liberalization of the sector, in order to protect smaller firms from uncompetitive behaviour by more powerful firms. Similarly, consumer protection law is important to protect the consumer from improper practices by traders. Furthermore, as recently indicated by the Head of Food and Drugs Department, two laws - one on Drugs and the other on Food, need to be revised in line with the changes in the international environment, especially to be consistent with the requirements of WTO (as well as laws of ASEAN countries)⁸⁰.

Lao PDR's regulatory reforms in distribution services will also be its contribution as an ASEAN member in that ASEAN aims to enhance cooperation in services amongst Member States in order to improve the efficiency and competitiveness, diversify production capacity, and distribution of services of their service suppliers within and outside ASEAN.⁸¹ The efficiency of the sector is crucial to ensuring that consumers have access to a wide variety of goods at competitive prices. Failure of the distribution sector to perform well – which can arise if government policies restrict competition – can lead to a significant misallocation of resources and economic costs. Moreover, Lao PDR should prepare its legal framework to facilitate ASEAN vision in improving the integration and efficiency of transport and logistics services in the region.⁸²

Implementation weaknesses that need to be addressed. Although some good legislative measures exist, there seem to be weaknesses in implementation in some agencies largely due to staffing and training inadequacies. Casual visits to trading establishments reveal that regulations relating to, for instance, food safety, the sale of medical products, weights and measures are not fully adhered to. This is said to be largely due to the lack of adequate inspection staff. Also, it was revealed that agencies such MOH, MAF, MOST require more trained staff to be able to effectively carry out responsibilities under their respective legislations.

Policy improvements

Further policy improvements are necessary in order to support the future growth of the distribution services. These relate largely to prioritising some of the activities that are under way in one form or another:

⁷⁹ Harmonisation of Standards in ASEAN, List of that can be passed through ASEAN with The International Electrotechnical Commission (IEC) Standard, <http://www.aseansec.org/7185.htm>

⁸⁰ Vientiane Times, 2 July 2011.

⁸¹ ASEAN Website.

⁸² Kris Bayos, *ASEAN to harmonize transportation system*, April 26 2011, accessed 30 July 2011, <http://www.mb.com.ph/node/315721/a>: the ASEAN Framework Agreement on the Facilitation of Goods in Transit meant to simplify transport, trade and customs regulation; the Framework Agreement on Facilitation of Inter-State Transport aimed at integrating regional economies and facilitate inter-state transport of goods; and the Framework Agreement on Multi-Modal Transport designed to stimulate efficient multi-modal transport services adequate to the requirements of the international trade.

- (a) improving education and training facilities in commerce, accounting, and information technology by providing for more technical colleges, in order to enhance capacity building; and enhancing opportunities for female participation in them;
- (b) facilitating improvements to rural roads, and road transport services; and removing any remaining barriers and obstacles to transport of goods from one area to another (other than those on human, animal, and plant health considerations), with a view to strengthening linkages with local economy;
- (c) implementing competition and consumer protection legislations in order to enhance socio-economic developmental benefits from possible further growth of the (formal) distribution services sector;
- (d) addressing problems faced by business sector relating to payment of taxes, and obtaining finance;
- (e) simplifying tax rates for small businesses as a promotional measure; and
- (f) improving the quality of logistic services with revised regulatory requirements for tracking and tracing facilities.

Institutional Improvements

Currently DDT seems to be lacking in adequately trained staff to effectively carry out its responsibilities relating to the sector. It needs to be able understand and initiate the legislative reforms required to properly regulate the sector. Furthermore, currently its data collation, and possibly data collection, procedures are inadequate. It should arrange to collect time series data on a range of items (number of firms and their geographical distribution, investment, turnover, employment etc.) separately for each of the subsectors (wholesale, retail sale, commission agents, and franchises). Currently, the data it collects are inadequate for future policy analysis relating to the sector. The department, therefore, needs to undertake a capacity building programmes in these respects.

DDT also needs to make institutional arrangements to implement legislations on competition and consumer protection. Its current plan is only to set up the Commission for Consumer Protection. Ideally, the functions of the proposed Commission should be expanded to include the implementation of the competition law as well, and name it as Fair Trading Commission. The Commission should be made independent enough to carry out its functions without fear or favour.

7 Impact Analysis

Recommended liberalisation is limited to a few products and leaves out many, as many other countries do. Trade in these products in the Lao PDR, is already liberal to a large extent. The main effect of liberalisation will be to open up more joint ventures with foreign investors, and to improve the supply of better quality products in the market. However, it is not possible to estimate, beforehand, the exact extent of that effect. As such, a proper *ex ante* statistical analysis of the impact of the proposed liberalisation is not possible, and what is provided is largely a descriptive analysis.

Looking at the international experience, studies have found that, because of its strong linkages with the rest of the economy, even a limited liberalisation of the distribution sector,

despite short-term adjustment costs, has generally resulted in significant benefits. These include: efficiency improvements resulting from increased competition; better prices, quality and choice to the consumer; productivity improvements due to advanced skills, and exposure to better production methods and technology; and marketing improvements.⁸³

The recommended strategy being limited commitments, its impact would not be extensive, However, we could expect that partial liberalisation, together with improvements in regulatory and investment environment, will result in the medium to longer term, in some significant impacts on the economy, investment, employment, and consumer welfare, which would on the whole be sustainable and bearable.

7.1 Impact on sub-sectors

With respect to all sub-sectors, the implication of the recommended liberalisation package is that foreign entrepreneurs will be able to set up operations within the country as joint ventures with local partners. Local entrepreneurs will have increased opportunities to form joint ventures with foreign partners, gain from their experience, know-how and technologies.

Commission Agents services.

Hitherto this sub-sector has been relatively less developed, and proposed opening can be expected to promote its growth. Local businesses will have more opportunities to form joint ventures with participation of foreign agents. Local partners will gain experience and knowhow from foreign participants. As commission agents often trade as wholesalers by supplying to retailers and other wholesalers on behalf of producers, an increase in their services, relating to products opened, would be complementary to the growth of wholesale and retail trade in the country. Their services will increase marketing links between producers and sellers leading to efficiency improvements, and reduction in transaction costs.

Wholesale trade. Wholesalers who also act as retailers already exist in the Lao market. Liberalisation is not likely to result in a substantial increase in the volume of new investments and the sales in the short-term, for two reasons: one, imports in these products are already liberalised and many firms are in business, and the other, vehicles and building materials require high capital outlay. In the medium to long-term, the significant impact though would be opportunities for local businesses to form joint ventures with foreign investors and thus be able to gain better experience. There will also be the supply of better quality products which will be available to local retailers. Markets for motorcycles and bicycles will extend even to rural areas as retailers would be able to obtain supplies from local wholesalers. The increased availability of better quality bicycles at competitive prices can be expected to make the use of bicycles more popular as an energy saving, cheaper and more environmentally friendly mode of transport.

Retail trade. The proposed opening in this sub-sector also will increase opportunities for local entrepreneurs to form joint-ventures with foreign partners, and to have a controlling

⁸³ More information of research findings on the impact of distribution sector liberalisation, see WTO (2010).

interest in them, and to gain from aforementioned benefits. It is also expected to contribute to building up of an experienced local entrepreneurial class; and a more efficient and productive retail trade sector.

Retail sale of goods by overseas retailers also could increase under Mode 1 through e-commerce where delivery will occur by courier or post (both surface and air) to individual consumers. This mode of sale could rise as the use of Internet increases particularly through the spread of Internet cafes which has increased substantially in the city centres, and provide more choice to the consumer.

Service stations for retail distribution of gasoline, with greater foreign participation under both franchising and individual foreign investors will improve efficiency and quality of services. They will also tend to open up convenience stores within their premises and thus be of better service to the customers.

Minimum floor space limit imposed for supermarkets and department stores is likely to result in opening of a few such stores, such as branches of large regional supermarket giants like Tesco and Big-C, in major towns. Currently hundreds of Lao residents daily cross over to Thai side of the border for shopping at supermarkets contributing millions of Kip including sales taxes to the Thai economy⁸⁴. The availability of similar marketing facilities within will minimize the need for such trips, increase the volume of retail trade within the country, and increase domestic tax revenue, which together will impact favourably on the domestic economy.

The impact of opening of larger size stores would be to reduce the number of smaller stores. At present in the Vientiane Capital, for instance, there are about 16822 (as of 2006) wholesale and retail sale shops, majority of which are small shops. This works out to about a shop for every 41 persons⁸⁵. After opening of supermarkets and department stores, the number of small and medium size shops will tend to reduce and the population per shop to increase.

Franchising. As with commission agents, this subsector is proposed to be open for foreign participation with relatively less restrictions. Investors, both local and foreign, will utilise this format to use established foreign trademarks, brand names, and even supermarket chains, to set up a few supermarkets and department stores in the major cities, as well as gasoline stations.⁸⁶ In this format, the franchisees will stand to benefit with assistance from franchisors in areas such as marketing, training, customer relations, accounting, retaining ownership and a degree of management and control over the establishment. As such, the quality of their products as well as the services will improve. The number of franchises in the country will tend to increase, and there will be a need for the authorities to make regulatory and administrative arrangements for proper functioning of the sub-sector.

⁸⁴ It is reported that Lao shoppers in Nongkhai and Udonthani spend about 1 billion Baht a year and pay 7% as VAT (Vientiane Times, 4 August, 2011).

⁸⁵ Lao Department of Statistics (2007).

⁸⁶ For example, in Vientiane already one such store has been established (M-point Mart), and arrangements are reportedly under way for another (Big C).

7.2 Impact on the economy

On Gross Domestic Product (GDP)

Impact on the GDP can be looked at, with the usual *ceteris paribus* assumption, from the value added by distribution sector and by other sectors with which it interacts. It can also be examined, similarly, from the expenditure side, particularly the consumption and investment expenditures. With liberalisation, the value added in the sector will increase, most likely more than proportionately with other sectors. Thus its contribution to GDP, both absolutely and as a proportion, would increase. Currently, wholesale and retail sale services together contribute about 15.4 per cent of GDP. Proposed opening will lead to increased volumes of sales of those products as well as those distributed by supermarkets; and with increased efficiency and productivity from exposure to competition and better technology, the overall value added in the distribution sector will increase. At the same time the sector's interaction with other sectors - agriculture, industry and other services - (through both forward and backward linkages) will cause these sectors' value added also to rise, thereby making a positive impact on the GDP. Looking at it from the expenditure side too, it can be expected that liberalisation will cause consumption and investment expenditures to rise: liberalisation is likely to increase investment in the sector as well as in the other sectors with which it interacts, and similarly will increase employment in the sector and other sectors. Either way, through increased expenditures or increased value added, the increase in GDP will be the same, but can be expected to be significant.

On Investment

In Laos, foreign direct investment (FDI) flows have been erratic, substantially high in some years and very low in other years. In order to smooth out we converted the annual data to 3-year annual averages for the periods 2003-2005 and 2007-2009 – see Table 6.

Table 6: Foreign Direct Investment: Annual Average US\$ '000

Sector	2003-2005	2007-2009
Trade sector	8,500	12,793
All sectors	701,506	1,866,509

Source: Department of Statistics, Lao PDR

In the trade sector, FDI has increased over the years, but at a much less rate than for all sectors. From 2003-2005 to 2007-2009 it has increased by an annual average of 10.8 per cent compared to the 27.7 per cent for all sectors. Trade sector's share of total FDI has declined from 1.2 per cent to 0.7 per cent between the two periods. This may be mainly a result of the bulk of FDI going into larger capital intensive projects like mining and energy sectors, increasingly in recent years. Also, in comparison, for instance, with Vietnam the share of FDI in the trade sector is relatively low. In Vietnam, which also partially liberalised its

distribution sector on accession, trade sector's share of FDI increased gradually from about 0.5 per cent in earlier years to 1.1 per cent in 2009⁸⁷. Such a trend could be expected in Laos as a result of the distribution sector's liberalisation. After accession, based on Vietnam's experience, Laos could expect its FDI in the trade sector to reach close to 1.0 per cent of country's total, in which case, based on Table 6, FDI flows to the sector could increase from the present annual average growth rate of 10.8 per cent to 21.7 per cent.

On employment and income

Employment is a function of, among others, investment, economic activities, and the degree of capital intensity in those economic activities. Being a relatively labour intensive industry, distribution services sector can be expected to generate additional employment as a result of increased investment and the growth of the sector after liberalisation. Available data indicate that current employment in the wholesale and retail sale sector amount to about 23 per cent of the total employed in all economic activities in the country.⁸⁸ This is about 60 per cent higher than the sector's share in the GDP. As the sector's share in the GDP increases as expected, its contribution to employment generation will rise further.

Income is largely a function of productivity. With increased exposure to competition and better technology, and opportunities for skills development after liberalisation, labour productivity can be expected to improve and with that employee incomes.

On competition and consumer welfare

Increased foreign participation in the distribution networks, particularly the opening of larger retail outlets can be expected to pose stiff competition to the local retail shops. This may crowd out some small and inefficient businesses, and as a result some less skilled may lose employment. Government may have to arrange for skills and business training programmes to enable such persons to improve their employment prospects. However, judging by international evidence, the long-term impact of such competition would be to bring about an overall improvement in the sector. As mentioned earlier, competition will improve efficiency and productivity which together will result in better prices, quality and choice, all of which will improve consumer welfare. The proposed regulatory and institutional improvements in consumer protection and competition will ensure a healthy growth of the sector, and maximum benefits to the consumer.

On infrastructure and environment

As with other sectors, growth of the distribution services sector will also have some impact on the infrastructure and environment. It will increase the demand for better logistics, better roads, more utility services (electricity, gas, water, sewerage, and garbage disposal). Regulations may need to be in place to ensure firms take appropriate measures for garbage disposal and vehicle parking where necessary.

⁸⁷ General Statistics Office of Vietnam.

⁸⁸ Department of Statistics, unpublished database of Economic Census, 2006.

8. Summary

8.1 Summary of Findings

The distribution services sector is an essential infrastructure that, together with its links with other services such as logistics, transport, and communication, impacts immensely on goods trade. For most countries, the sector makes a significant contribution to the economy. In the Lao PDR, the sector is under-developed and is dominated by retail trade accounting for about 98 per cent of the total wholesale and retail trade together. Counting wholesale and retail trade only, the sector contributes about 15 per cent of GDP, 23 per cent of employment, and comprises nearly two-thirds of total enterprises in the country. About 61 per cent of wholesale and retail sale businesses are in the informal sector. Nearly 99 per cent of enterprises in the sector are small sized, single Laotian owned, earning less than K30 million per month.

In contrast to its importance, or may be because of that importance, it is one of the services sectors where WTO members have made fewest commitments. Also, many member countries, both the developed and developing, have excluded from their commitments, many products, which include mostly agricultural, health and security related products. So, it is not surprising that many member countries have made limited commitments both under AFAS and GATS. Older ASEAN-WTO members, except Thailand, have not made any commitments in the sector. Only the new members, as required under accession negotiations, have made some commitments.

However, studies have found that, because of its strong linkages with the rest of the economy, even a limited liberalisation of the distribution sector, despite short-term adjustment costs, can result in significant benefits in terms of efficiency improvements; better prices, quality and choice to the consumer; productivity improvements due to advanced skills, better production methods and technology; and marketing improvements.

The regulatory regime applicable to distribution services has improved considerably over the past several years in the course of reforms undertaken in preparation for the WTO accession. This has improved the level of openness for market access. However, there are some legislative, institutional and staffing inadequacies that have to be dealt with in order for the sector to function efficiently.

8.2 Summary of Recommendations

(i) Negotiating Strategy

Detailed recommendations are given in Section 6. Briefly:

- (a) the negotiating strategy should be guided by:
 - ☐ the relevant ***national goals***, particularly those relating to development of SMEs, retail trade, and rural markets;
 - ☐ principles of ***honesty, fairness*** and ***justice***;
 - ☐ rights available under GATS rules;

- the need for sustainability, gradual approach to opening the sector for foreign entry; and
 - identified implications of liberalisation for the subsectors, competition, employment, and skills development.
- (b) limit foreign equity in joint-ventures in all subsectors to 30-49 per cent, except in the case of large scale foreign investments in supermarkets and department stores with a floor space of more than 2000 m², where foreign equity may be extended to 100 per cent;
- (c) provide commitment in Mode 3 under *National Treatment* for all sub-sectors, subject to land-use laws applicable to non-nationals;
- (d) provide limited commitment in Mode 4 as detailed in Section 6.
- (e) provide full commitment for *commission agents*, subject to (b)-(d);
- (f) provide full commitment for *franchising*, subject to (b)-(d) and floor space limitation of not less than 2000 m² in case of supermarkets and department stores; and
- (g) provide commitment for selected goods for *wholesale* and *retail sale services*, subject to (b)-(d).

(ii) Regulatory Improvements

Legislative measures that need to be introduced:

DDT should introduce legislation for a well-functioning distribution services sector. Such legislation may be based on Vietnam's Commercial Law of 2005, and should cover at least the following subject areas:

commission agents' services, franchising, sales promotion activities, commercial advertising, trade fairs and exhibitions, trade representatives services, goods auctions, bidding for goods, goods transit services, good assessment services, good assessors' services, leasing of goods, commercial dispute settlement, and multilevel marketing, and e-commerce.

DDT in coordination with MPWT should review and revise existing legislation governing logistics services with a view to improving the quality of logistics services.

Legislative measures that remain to be implemented:

DDT should implement legislations on Competition and Consumer Protection; and

MOST should implement the Law on Standards and ensure the Law on Intellectual Property Rights meets WTO requirements.

Implementation weaknesses that need to be addressed:

Agencies such as MOH, MAF, and MOST should improve their inspection capacity (relating to food safety, the sale of medical products, weights and measures) with more trained staff.

(iii) Policy Improvements

For enhancing capacity: improve education and training in commerce, accounting, and information technology; and provide for increased female participation in them.

For strengthening linkages with local economy: prioritize rural road improvement, and promote road transport services; remove any remaining barriers and obstacles to transport of goods from one area to another (other than those on human, animal, and plant health considerations); and improve the quality of logistic services through regulatory requirements for these services to enhance tracking and tracing facilities.

For enhancing social, economic and developmental benefits from possible further growth of the (formal) distribution services sector: implement competition and consumer protection legislations.

For improving ease of doing business: address problems faced by business sector relating to payment of taxes, and obtaining finance; and provide simplified tax rates for small businesses.

(iv) Institutional Improvements

Upgrade capacity of DDT through skills development programmes in order to overcome its existing weaknesses in formulating legislative instruments, and data collection and collation, particularly relating to the distribution services sector.

Set up an independent Fair Trading Commission to implement legislations on competition policy and consumer protection.

8.3 Impact

- ☐ On the sub-sectors:

Favourable on all sub-sectors.

- ☐ On the economy:

Positive on GDP, employment, and consumer welfare; and

Positive on achieving National Goals for SMEs, rural enterprises, wholesale and retail trade development.

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Annex 1: Regional distribution of wholesale and retail enterprises

Cod	Name of	Wholesal	Retai	Tota	All
1	Vientiane	459	16,363	16,822	28,784
2	Phongsal	11	1,371	1,382	1,824
3	Luangnamth	20	1,806	1,826	2,391
4	Oudomxa	37	2,397	2,434	4,484
5	Boke	30	1,637	1,667	3,049
6	Luangpraban	61	4,949	5,010	9,604
7	Houaphan	47	2,522	2,569	3,762
8	Xayabour	57	4,214	4,271	8,722
9	Xiengkhouan	62	2,783	2,845	4,181
10	Vientian	114	7,127	7,241	12,696
11	Borikhamxa	53	3,274	3,327	6,285
12	Khammouan	53	3,986	4,039	7,148
13	Savannakhe	133	8,713	8,846	14,422
14	Saravan	36	2,760	2,796	4,575
15	Sekong	4	838	842	1,282
16	Champasac	67	6,911	6,978	11,588
17	Attape	17	1,265	1,282	2,116
	Tota	1,261	72,916	74,177	126,913

Source : Economic Census 2006 , Department of , Lao PDR

Annex 2: Number and share of wholesale and retail enterprises by legal organization

Activities	Domestic (laotian)sigle Proprietorship	ForeignSingle Proprietorship	Private Domestic Pratnership	Prvivate Foreign Praprietorship	Private Domestic and Foreign Pratnership	State and Domestic Private Pratnership	Cooperation	State and Foeign Pratnership	Stae Owned Enterprives	Total
Wholesale	1,500	57	25	6	2	3	1	8	24	1,626
Retail	71,293	1,039	92	27	19	25	2	18	36	72,551
total	72,793	1,096	117	33	21	28	3	26	60	74,177
Total economic units	122,988	2,059	459	155	154	101	253	102	642	126,913
Share of the number of economic units by economic activities and legalorganization										
Wholesale	1.22	2.77	5.45	3.87	1.30	2.97	0.98	3.16	3.74	25.46
Retail	57.97	50.46	20.04	17.42	12.34	24.75	1.96	7.11	5.61	197.66
Total	59.19	53.23	25.49	21.29	13.64	27.72	2.94	10.28	9.35	223.12

Annex 3: Number of employees in wholesale and retail enterprises by monthly income size

Activities	No. employed	Small enterprises< 30kip/month	Medium to large size enterprises > 30kip/ month	No. of formal enterprises	No. of informal enterprises
Wholesale	8,267	1425	201	1,881	973
Retail	70,774	71,890	661	27,131	44,192
Total	79,041	73,315	862	29,012	45,165
Country total	345,723	124,259	2,654	51,315	75,598

Source: Economic Census of 2006, Department of Statistics, Lao PDR

Annex 4: Distribution of Traditional open markets in Laos (2009-2010)

No.	Provinces	Total No.	No. of big markets	No. of medium markets	No. of small markets	No. of trade faire	Rural markets
1	Phongsaly	10	1	3	3	3	0
2	Luangnamtha	13	2	1	10	0	0
3	Oudomxay	52	2	13	7	30	0
4	Bokeo	34	1	2	27	4	0
5	Luangprabang	76	5	5	13	53	0
6	Huaphanh	21	1	2	18	0	0
7	Xayabury	39	7	9	16	7	0
8	Vientiane C.	82	13	14	55	0	0
9	Xiengkhuang	43	3	0	20	2	18
10	Vientiane	43	11	16	15	1	0
11	Borikhamxay	25	2	5	18	0	0
12	Khammuane	34	10	8	16	0	0
13	Savannakhet	64	14	8	31	11	0
14	Saravane	18	3	6	9	0	0
15	Sekong	8	2	3	3	0	0
16	Champasack	39	7	8	24	0	0
17	Attapeu	14	1	5	3	5	0
Total		615	85	108	288	116	18

Source: Departmet of Domestic Trade, Ministry of Industry and Commerce, Lao PDR.

Annex 5: Regulatory Documents Governing the Distribution Services Sector

Subject	Agency Responsible	Regulatory Instrument/s	Status
Overall purview	MOIC: Dept of Domestic Trade -do- -do-	- Decree on Goods Trading Business No. 206/PM (2001) - Enterprise Law No. 205/PM (2005) - Decree on Approval of the List of Controlled Business (2008)	Being implemented -do- -do-
Imports & exports	MOIC: Dept of Import-Export	- The Decree on Import-Export of Goods (2011)	-do-
Investment	MPI	- Law on Investment Promotion No. 02/NA (2009)	-do-
Pricing	MOIC: Dept of Domestic Trade	Decree on Price Control No. 474/PM (2010)	Being implemented
Competition	MOIC: Dept of Domestic Trade	Decree on Trade Competition No. 15/PMO (2004)	Not implemented
Consumer protection	MOIC: Dept of Domestic Trade	Law on consumer Protection No. 02/NA (2010)	Not implemented; Planning to implement by 2012
Health: Food safety	Ministry of Health	- National Food Safety Policy No. 020/MOH (2009) - The Food Law No. 04/NA (2004) - Ministerial Regulation on the Basic Principles in the Application of Sanitary and Technical Measures for the Food Safety Management No. 518/MOH (2009) - Regulation on Labelling of Pre-packaged Food No. 519/MOH (2009) - Regulation on the Control on Production, Exported-Imported Safe Food No. 586/MOH (2006) - Regulation on Bottled Drinking Water No. 585/MOH (2006)	Being implemented -do- -do- -do- -do- -do- -do-
Pharmaceuticals		- Law on Medicine and Medical Products No. 01/NA (2000) - Regulation on Small Pharmacy No. 482/MOH. (2002) - Instruction on drugs retail No. 1624/03.DFD (2003)	-do- -do- -do-

Tobacco		- Law on Tobacco Control No. 07/NA (2009)	-do-
SPS	MAF	<ul style="list-style-type: none"> - Law on Livestock Production and Veterinary Matters No. 03/NA (2008) - Decree on Animal Disease Control No. 206/PM (2007) MAF <ul style="list-style-type: none"> - Decree on Animal Inspection, Animal Products and Goods related to Animal imported and transit Lao PDR No. 207/PM (2007) 	Being implemented Revised Decree is being drafted Revised Decree is being drafted
Culture	Ministry of Information, Culture and Tourism	Law on Printing No. 05/NA (2008)	Being implemented
Standards	Ministry of Science and Technology: National Standards Council, the Central Technical Committee and Local Technical Committees, Standard Inspection Unit	- Law on Standard No. 13/NA (2007)	Not Implemented; revised implementing Decree is being drafted
TRIPS	- MOH: Food and Drug Authority	Law on Intellectual Property, No. 08/NA (2007) - Bottled Drinking Water No. 585/MOH (2006) - Regulation on the Control on Production, Exported-Imported Safe Food No. 586/MOH (2006)	Being revised Being implemented -do-
Transport	Ministry of Public Work and Transport	- Law on Land Transport No. 13-97/NA (1997)	Being implemented
Communication	Ministry of Post, Telecommunication and Communication	- Law on Telecommunications 02/NA (2001) -Law on Advertising	Being implemented Being drafted

Annex 6: Summary of Selected Commitments on Distribution Services Sector

Summary of Commitments under AFAS

Brunei. No commitments

Cambodia.

Commission agents. No restrictions on the type of goods; no limitations on foreign capital participation; no mention of the need for joint ventures.

Wholesale. Open mainly for motor vehicles, motor cycles, their spare parts, musical instruments, and musical products such as tapes and records.

Retail trade. Same as for wholesale, *plus* supermarket and department store retail sale services, only with floor space of more than 2000 m², and for food and non-food retailing (except pharmaceutical, medical and orthopaedic goods).

Franchising. Same as for Commission agents.

For all sub-sectors, mode 4 is unbound, except as provided for under horizontal commitments.

Indonesia.

Commission agents. No commitments.

Wholesale. Open for food, beverages, tobacco, clothing and footwear in premises over 5000 m²; and commercial presence is subject to a limit of 49 per cent foreign equity.

Retail trade. No commitments.

Franchising. No commitments.

For all sub-sectors, mode 4 is unbound, except as provided for under horizontal commitments.

Laos PDR.

Commission agents. Open for clothing and footwear; foreign equity limited to 49 per cent.

Wholesale. Same as for Commission agents

Retail trade. No commitments.

Franchising. Same as for Commission agents.

For all sub-sectors, mode 4 is unbound

Malaysia.

Commission agents. Open for clothing and footwear subject to foreign equity limit of 49 per cent.

Wholesale. Open for a range of products including motor vehicles and parts, clothing & footwear, agricultural raw materials, food and nonfood groceries subject to local incorporation, foreign equity limit of 30 per cent, and 30 per cent of local equity to be reserved to *Bumiputras* (sons of the land). Minimum capital investment requirements and conditions for presence of natural persons also have been specified.

Retail trade. Same as for wholesale, and in addition open for petroleum products.

Franchising. Open for CPC 8929; foreign equity limited to 49 per cent in market access.

For all sub-sectors, mode 4 is unbound except as provided for under horizontal commitments.

Myanmar.

Commission agents. Open

Wholesale. Open with specifications on legal entity, land holding, and foreign capital participation with a minimum of 30 per cent.

Retail. Same as for wholesale

Franchising. No commitments.

For all sub-sectors, mode 4 is unbound.

Philippines.

Commission agents. Open except for rice and subject to varying conditions for foreign equity: 100% per cent foreign equity allowed for higher amounts of capital employing greater numbers of employees, or exporting more than 60 per cent of production; otherwise limited to 40 per cent; and varying conditions for presence of natural persons.

Wholesale. Open only for snowmobiles and related parts. Foreign equity limited to 49 per cent with different requirements of total foreign capital for the main outlet and branches.

Retail trade. Same as for *wholesale*.

Franchising. No commitments.

Other. Open for petroleum products retailing.

Mode 4 unbound for all sub-sectors, except for Board membership depending on foreign capital participation.

Singapore:

Commission agents: Open CPC 621 (excluding pharmaceuticals, medical goods and cosmetics).

Wholesale. Open CPC 622 (excluding pharmaceutical and medical goods, and surgical and orthopedic instruments); and motor vehicles.

Retail trade. Open motor vehicles and spare parts; motor cycles, snowmobiles and spare parts;

Franchising. Open CPC 8929.

Note: For all the sub-sectors and goods categories specified, fully open for Modes 1, 2, & 3 in both *market access* and *national treatment*. Mode 4 unbound for *national treatment*; and for *market access*, unbound except as indicated in horizontal commitments.

Thailand.

Commission agents. Open for agricultural raw materials and other goods.

Wholesale. Open for sports goods and bicycles

Retail sale. No commitments.

Franchising. Open CPC 8929

Other. Open for retail sales of motor fuel and fuel oil.

For all sub-sectors, Mode 4 is unbound.

Vietnam.

Specifically excluded for all sub-sectors: cigarettes and cigars, books, newspapers and magazines, video records on whatever medium, precious metals and stones, pharmaceutical products and drugs, explosives, processed oil and crude oil, rice, cane and beet sugar..

Commission agents. Open for motor vehicles, motor cycles and their spare parts, subject to certain conditions (see Note below).

Wholesale. Open for food and non-food, motor vehicles, motor cycles and their spare parts subject to certain conditions (see Note below).

Retail. Same as for wholesale

Franchising. Open CPC 8929.

For all sub-sectors, Mode 4 is unbound, except as provided for under horizontal commitments

Note: For opened items, some restrictions were applied in two stages for commercial presence under *market access*. Since 11 January 2007: foreign companies were allowed to engage in distribution services in all legally imported and domestically produced products **except** for: cement and cement clinkers, tyres (excluding tyres of airplanes), papers; tractors; motor vehicles; cars and motorcycles; iron and steel; audiovisual devices; wines and spirits; and fertilizers. As of 1 January 2009, tractors; motor vehicles; cars and motorcycles were allowed. And since 11 January 2010, all legally imported and domestically produced products were allowed. The establishment of outlets for retail services (beyond the first one) were subject to an Economic Needs Test.

Summary of Commitments under GATS

Cambodia. Cambodia's commitments under GATS are basically the same as those made under AFAS, except that for the former, a 4-year delay was imposed for commission agents and franchising under *market access*.

Thailand. Thailand has made commitments only for Commission Agents' services in agricultural raw materials.

Vietnam. Vietnam's GATS commitments too are as same as those made for AFAS except that originally a joint venture with a limit of 49% foreign equity was imposed but removed about a year later. As with AFAS, certain restrictions placed on certain products were lifted within 3 years after accession, and Commission Agents, Wholesale and Retail sale businesses were allowed to deal in all legally domestically produced and imported goods (except those which were generally prohibited). For Franchising, in Mode 3 under *national treatment*, the chief of the branch has to be a resident in Viet Nam.

Summary of GATS Commitments of Land-locked LDCs

There are 8 LDCs which are also LLDCs and WTO members. Of these, only two countries, Nepal and Lesotho, have made Distribution services sector commitments.

Nepal. Acceded in April 2004.

Commission agents (CPC 621).

Under *market access*, open for Mode 1 and 2; in Mode 3 open subject to incorporation in Nepal and foreign equity limited to 51 per cent, but increased to 80 per cent 5 years after accession.

Under *national treatment*, open for Modes 1, 2 and 3.

Wholesale Services. Open for radio and television equipment, musical instruments, and records, music scores and tapes (CPC 62244) in Modes 1 and 2 and under both *market access* and *national treatment*. For Mode 3, open under *market access* subject to incorporation in Nepal with maximum foreign equity of 80 per cent: open under *national treatment*.

For all other products, no commitments under both *market access* and *national treatment* for Modes 1, 2 and 3, until such time Nepal grants such rights to any WTO Member in any subsector, or until Nepal determines the types of foreign entities which may provide these services, except

Retail. exactly the same as for *wholesale*.

Franchising (CPC 8929). Open Modes 1 & 2 for both *market access* and *national treatment*; open Mode 3 under *national treatment*; and open under *market access* subject to incorporation in Nepal and maximum foreign equity capital of 51 per cent.

In all subsectors, Mode 4 is unbound except as indicated in Horizontal Commitments.

Lesotho. Acceded in May 1995

Commission agents. No commitment

Wholesale. Open with no product specifications.

Retail sale. Open food and non-food, motor vehicles, motor cycles and their spare parts.

Franchising. Open CPC 8929

In all subsectors, Mode 4 unbound except as indicated in Horizontal Commitments.

Annex 7: Persons interviewed

Agenc	Name/	E-	Phon
Ministry of Industry Commerce	Dr. Somphouang Phinphinit, Director- Domestic Trade		020 54440234
	Mr. Bounthiene Heosipha, Deputy Directorf Trade	bounthien 58@yaho .co	020 99704617
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	Mrs. Nisith Khammounheuang, Deputy Standards & Quality Division, National Authority Science and	khammounheuang.nast gmail.co	021 243405
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Minstry of &	Mr. Thonglith Syamphone, Director, Division Distribution of Printed	sthonglith@yahoo.co	021 223129
Unilever Vientiane	Mr. Vilaphanh Khammanivong, Branch Unilever N.V., Lao Representative	vilaphanh.khammanivong unilever.co	020 78119081

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