

LAOS

TRADE SUMMARY

The U.S. goods trade surplus with Laos was \$6 million in 2005, an increase of \$3 million from \$3 million in 2004. U.S. goods exports in 2005 were \$10 million, up 66.8 percent from the previous year. Corresponding U.S. imports from Laos were \$4 million, up 24.2 percent. Laos is currently the 193rd largest export market for U.S. goods.

IMPORT POLICIES

Overview

The U.S. – Laos Bilateral Trade Agreement (BTA) entered into force on February 4, 2005. Under the terms of the BTA, the United States granted normal trade relations (NTR) treatment to products of Laos and Laos committed to implement a variety of market access concessions and trade rules, which are discussed in more detail below. Laos is currently in the early stages of WTO accession negotiations. Implementation of the BTA, which is proceeding slowly, will help Laos prepare to undertake the necessary WTO obligations.

Tariffs

Laos has implemented the ASEAN Harmonized Tariff Nomenclature (AHTN), in which about half of the 10,689 lines are four or six digits. The remaining are eight-digit lines. As an ASEAN country and a least-developed economy, Laos participates in the ASEAN Free Trade Agreement (AFTA). The average tariff on ASEAN-origin products is 5 percent. As 80 percent of Laos' external trade is with ASEAN countries, its participation in AFTA is a significant liberalizing step. However, Laos retains 88 items of special concern on which tariffs remain high – the highest number of such special status products in ASEAN.

Under the U.S.–Laos BTA, Laos is obligated to reduce tariffs on a variety of products of U.S. origin. Laos has implemented these tariff reductions, but has done so quite unevenly, as central control of provincial customs operations is very weak. Most trade in Laos still requires authorization from several national and provincial authorities, which can be a time-consuming and opaque process. In Laos, provinces collect customs levies at international border crossings in their respective provinces only a portion of which is rendered to the central government. Customs collection is subject to significant variation.

Non-Tariff Barriers

Import Prohibitions: Lao law prohibits the importation of weapons, illegal drugs, toxic chemicals, hazardous materials, pornographic materials, and agricultural products which are grown domestically in quantities sufficient to meet demand.

FOREIGN TRADE BARRIERS

Import Licensing: Laos requires import licenses. Although somewhat streamlined in recent years, the procedures for obtaining these licenses are still complicated and opaque, and is not always clear what part of the government controls the process.

Applications for import licenses must also be made to the provincial trade authority where the importing enterprise is located and the application procedure varies from province to province. Importers must submit an annual importation plan to the Ministry of Commerce or to relevant provincial authorities, and may only import against the plan throughout the following year.

Customs: Border control is weak throughout the country, and border trade is poorly controlled. Almost every incoming container that enters Laos at a formal border checkpoint is inspected, which has led to allegations of corruption. Although the Lao government has given assurances that transaction value will be the basis for valuation for all products of the United States, the Lao Customs Department retains a reference list of prices and tariff rates based upon previous levies, which it uses routinely. Customs procedures in Laos have improved since the introduction of the ASEAN harmonized tariff system. However, a large number of approvals are still required and informal payments to get those approvals remain common. Laos does not have a system of entry under bond.

Taxes: Laos generally applies a turnover tax and also subjects some goods to excise taxes. Goods which are subjected to high excise taxes include: distilled spirits (50 or 60 percent); soft drink and beverages (30 percent); cigarettes (50 percent); perfume and other cosmetic products (20 percent); and vehicles (10 percent to 104 percent). Eleven goods classified as luxury goods must pay additional excise taxes, which are often higher for imports than for domestic products. Goods falling under this classification include soft drinks, water, fruit juice, alcoholic beverages, cigarettes, motorcycles and vehicles. The United States has made it clear to the Lao government that national treatment is required in the application of excise taxes.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Laos has no specific law on standards for imported or exported goods. Imported goods are allowed to enter based on the certification of the country of export. Laos has no special labeling or marking requirements.

GOVERNMENT PROCUREMENT

Government procurement is opaque in Laos, with no detailed published guidelines and little accountability. The Lao government's published budget and leading prospectus for the following fiscal year can serve as a rough guide to procurement expenditure levels, though procurements by ministry are not clearly given. Nearly all capital goods and equipment, and most commodities, are outright gifts or are purchased with Official Development Assistance (ODA), the donors of which typically require a public bidding process for contractors. The individual line ministries therefore routinely publish calls for bids on development projects.

FOREIGN TRADE BARRIERS

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

IPR protection in Laos is under the purview of the Science, Technology, and Environment Agency (STEA), a three-person unit in the Office of the Prime Minister. The STEA personnel appear to be well-trained in IPR theory, but have little authority. In particular, STEA lacks the power to arrest, and appears to have no coordination with the police.

IPR enforcement in Laos is therefore very weak, and enforcement at the border is almost impossible, due to its all but complete porosity. The national market volume in pirated trademark and copyright materials is low.

Laos became a member of the World Intellectual Property Organization (WIPO) in 1995, the Paris Convention in 1998, and subsequently accepted international assistance in drafting an IPR law. The IPR law has not been completed. Laos has not yet acceded to the Bern Convention. In general, implementing regulations are still lacking. Laos issued a trademark decree in 1995. STEA controls the issuance of trademarks on a first-come, first-registered basis. Applicants do not have to demonstrate prior use. There are currently about 9,300 trademarks registered in Laos.

Laos became a member of the ASEAN Common Filing System on Patents in 2000, but lacks qualified patent examiners. A decree protecting patents, petty patents, and industrial designs was approved in January 2002. No system yet exists to actually issue copyrights. A draft copyright law was developed in 2005.

SERVICES BARRIERS

Banking: The Lao financial sector is dominated by the central Bank of Lao PDR (BOL) and two state-owned commercial banks, which to varying degrees all serve as policy implementation banks. Foreign banks, including six which are actively represented in Laos, offer limited services primarily to foreigners. Foreign banks may only operate in the capital, Vientiane, which severely hampers their competitiveness in providing financial services to the southern part of the country where business is concentrated. Foreign businesses usually arrange financing on international markets.

In general, regulatory supervision of the state-owned commercial banks (SOCBs) is lacking. Enforcement of prudential guidelines is ineffective and standards for credit worthiness are low, often resulting from directed lending to inefficient state-owned enterprises (SOEs). Although the SOCB's were re-capitalized in 1994, a 1997 audit indicated that the institutions were once again insolvent, with non-performing loans accounting for most of their debt portfolio. The situation had improved somewhat by late 2004, and some capital again became available for lending. However, there was a decline in reserves over the first half of 2005, necessitating assistance from international financial institutions.

The need for legal sector reform, with laws and regulations for loan collection and collateral enforcement, is a fundamental obstacle to improvements in the financial sector

FOREIGN TRADE BARRIERS

Legal: Foreign attorneys are not permitted to represent clients in Lao courts. Judgments against foreign business people in the past have been irregular and prejudicial. Many areas of business and finance are not yet covered by viable statutes. Several international organizations are helping the Lao government to develop the legal sector, and new laws are gradually emerging in draft form. Enforcement remains a significant challenge.

Insurance: Foreign insurance companies can operate in Laos; at present, only one does.

Education: Foreign entities are technically forbidden to teach in Laos, but this regulation is routinely ignored. There is a Lao American College in Vientiane, a private sector joint U.S.-Lao venture, and foreigners teach languages in many schools in and around the capital. However, the Ministry of Education maintains a close watch over the ideological content of curricula.

Accounting: Technically, foreign accounting firms may not operate in the field of accounting in Laos. However, one international accounting firm does offer auditing (rather than accounting) services.

Engineering/construction/architectural: Foreign engineering, construction and architectural entities may operate in Laos in support of internationally-funded development (ODA) projects or foreign direct investment (FDI) enterprises deemed to be in the national interest.

Foreign exchange system: There are no restrictions on foreign exchange within Laos, nor are there any legal limits on remitting foreign exchange abroad. There are practical limitations, however, in that the availability of foreign exchange is sometimes limited, which inconveniences large single-sale and large-volume businesses, such as those selling heavy equipment or fuel and petroleum products, both areas in which American businesses currently operate.

Telecommunications: Although it is listed as a sector of strategic and national security interest, in practice, telecommunications is the most open and competitive services sector in Laos, with the field presently divided among Lao, Thai, and Chinese telecommunications entities.

INVESTMENT BARRIERS

Laos has a challenging investment environment due to the lack of the rule of law, opaque regulations, and primitive, inefficient infrastructure and services, particularly in financial services. Laos is one of the most difficult countries in the world in which to set up a business, with licenses routinely taking up to a year to acquire. Foreign direct investment in Laos is not accurately reported by the Lao government (the official figures show approved, not actual, investments), and real investment levels are therefore difficult to estimate. Thailand, France, and Australia appear to constitute most of the foreign direct investment in Laos, though as in trade, the level of Chinese investment is growing. Current U.S. investment is officially (and very unreliably) listed at \$15.2 million between 2001 and 2005, consisting chiefly of small family-level business investments, some agricultural activities, and a part-interest in a mining venture. The real level of U.S. investment is probably well below \$10 million.

FOREIGN TRADE BARRIERS

The Law on the Promotion and Management of Foreign Investment is the basic law governing foreign direct investment in Laos, and divides foreign direct investment into two categories: joint-venture companies and wholly-owned companies. The sole investment advantage that Laos has over its neighbors is that foreign firms may wholly own and operate a business.

Foreign investors and their hired personnel are forbidden to take part in certain commercial activities without special permission. Among these are: forest exploitation, accounting, tourism, heavy vehicle or machinery operation, and rice cultivation. In fact, foreigners are engaged in most of these activities. A provision in the business law gives special, closely controlled status to an additional range of business activities deemed important to national security. These include petroleum, electrical power, water utilities, telecommunications, mines and minerals, the food industry, medicine, chemicals, liquor, and tobacco. While these restrictions are intended to protect state-owned enterprises, foreigners are occasionally active in these business categories, primarily in telecommunications.

Required documentation for foreign businesses remains comparatively large, and effectively separates business activity into foreign and domestic categories. Dispute arbitration and mediation is vaguely defined. The United States has urged Laos to move from a business licensing to a business registration system, chiefly through repeal of the Industrial Processes Law, which requires manufacturers to apply for permission to make even minor changes to their methods of production, and which has never been augmented with clear implementation regulations. Laos still requires a feasibility study for foreign businesses, a requirement better suited to development projects.

The required annual renewal of a Lao business license is contingent upon certification that all taxes have been paid. Due to the lack of clarity in the tax law, foreign investors complain that taxes are often assessed in an inconsistent manner. Lao officials acknowledge ambiguities in the law. The tax code was streamlined and simplified in January 1999, and again in 2002-03, but some investors still report significant difficulties in obtaining tax certifications and clearances in a timely manner.

ELECTRONIC COMMERCE

Internet is available in all the major towns in Laos, though e-commerce is not as yet widely used in the country. There is no body of law governing e-commerce, nor does the Lao government appear to recognize the need for constructing a venue for dispute resolution in Internet/e-commerce transactions.

OTHER BARRIERS

Corruption: Both giving and accepting bribes are criminal acts in Laos, in theory punishable by fine and/or imprisonment. The Prime Minister's Office issued an anti-corruption decree in November 1999, and at least one official has been arrested for corruption since that time, but implementation remains uneven. The Counter-Corruption Committee in the Prime Minister's Office is the Lao government agency responsible for combating corruption.

FOREIGN TRADE BARRIERS

Nonetheless, corruption in Laos continues to be an issue. Bribes to low-level officials to expedite time-sensitive applications, such as business licenses or importation of perishable items, are known to occur and some say could be growing due to increased investment in extractive industries.