TAKING ADVANTAGE OF E-COMMERCE

Legal, Regulatory, and Trade Facilitation Priorities for Lao PDR
Taking Advantage of E-commerce

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Summary and Key Recommendations

The rapid growth of e-commerce globally, including in the Association of Southeast Asian Nations (ASEAN), helps lower the costs of trade for Lao PDR exporters, and reduces prices for consumers. E-commerce can reduce costs for those who often face the greatest challenges in participating in “traditional” trade, including women, small firms, people with physical disabilities, and people in isolated communities. However, constraints in the e-commerce environment, such as limited Internet connectivity, high costs of payments, an incomplete regulatory infrastructure, and high trade facilitation and logistics costs, hold Lao PDR back, resulting in low levels of participation in e-commerce at the present, based on available data. These constraints will need to be addressed in order to foster greater e-commerce participation.

This note sets out some of the key challenges Lao PDR faces in upgrading its competitiveness in e-commerce, based on indicators that compare its performance with other countries. It does not provide an exhaustive coverage of all the constraints faced, but introduces more detailed analysis on two aspects of the e-commerce environment: (1) regulations that have specific relevance for e-commerce, e.g., in protection of personal data, consumer protection and privacy, and; (2) the trade facilitation environment affecting e-commerce.

The legal and regulatory framework contains some elements necessary to support greater participation in e-commerce, but in other areas it needs strengthening. Two important areas for further work are in strengthening the protection of consumers participating in e-commerce; and developing and implementing legislation for the protection of personal data. Taxation of e-commerce is an important policy area, and a focus for many governments in ASEAN, as well as globally. Aspects of the taxation regime require clarification (e.g., the application of a de minimis threshold for low-value goods shipments—see below). Such taxation reforms should be informed by a previous careful assessment of costs and benefits, based on actual flows of services and goods in Lao PDR, before introducing new taxes that might restrict the growth of e-commerce before it has begun.

The earliest area of growth in international e-commerce is likely to be through cross-border trade in goods. The trade facilitation regime needs further reform to avoid imposing undue costs on small firms or entrepreneurs seeking to participate in e-commerce. These groups are the least equipped to manage the costs associated with weak transparency, unpredictable regulations, and delays in clearing shipments. Lao PDR has made progress in addressing some of the most relevant costs for e-commerce facilitation, including improving transparency through the Lao Trade Portal, but much more work is needed. Clarification is required on the regulations in place for low-value goods imports, and a formal framework to streamline the processing of such imports is also necessary.

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Key Recommendations

1. Implement relevant ASEAN approaches addressing regulatory issues specific to e-commerce, especially those associated with the ASEAN Work Programme on E-commerce, with a focus on:
   a. **Consumer protection:** Address any gaps relating to e-commerce in the 2010 Consumer protection law. Build capacity within government to implement consumer protection legislation, as well as awareness by consumers and firms of the rights and responsibilities involved.
   b. **Privacy:** Develop and implement regulation, including on a voluntary basis for the protection of data and privacy, based on the ASEAN Framework on Personal Data Protection (2016).
   c. **Electronic signatures:** Effectively implement the existing electronic signatures legislation (the Law on Electronic Transactions) to ensure electronic signatures are recognized by all public agencies as valid.

2. Lao PDR should take a cautious approach to imposing new taxes on e-commerce activities. There are limited data available on how to determine the impact of new taxes, and there is no international consensus on e-commerce taxation. Lao PDR is encouraged to monitor international discussions on e-commerce taxation to identify areas where consensus may emerge, and understand implementation challenges on e-commerce taxation in other countries. If plans develop for new taxes, these should be based on a cost-benefit analysis, as well as drawing on other countries’ experiences.

3. Establish a transparent and consistently applied procedure for handling low-value cross-border shipments, in line with the World Trade Organization Trade Facilitation Agreement and World Customs Organization Immediate Release Guidelines. This should include a clear *de minimis* threshold, below which taxes and duties are not collected, along with simplified procedures for low-value shipments.

4. Move away from the physical submission of paper documents for trade clearances to the electronic submission of documents. The goal should be to eliminate requirements for physical submission of documents for normal shipments, including low-value shipments typical in e-commerce. Paper-based clearance of cross-border shipments continues, despite the potential for electronic clearance through ASYCUDA World. Reforms that reduce the number of regulatory requirements for traders (e.g., reduction of licenses required to trade) would also be important. Electronic submission of documents not only reduces compliance costs
for traders, but also for the government, due to a reduction in the need for physical inspection of forms.

5. **Intensify efforts to systematically apply risk management principles in processing cross-border shipments.** This is especially important as the volume of individual shipments grows, putting an additional burden on Customs and creating delays if risk-based approaches are not used. Risk-based approaches to cross-border shipments recognize that the majority of shipments are likely to pose minimal revenue, public safety, or other risks. By facilitating the clearance of low-risk shipments, Customs and other agencies can concentrate resources on other aspects of the screening process and on those shipments identified as posing greater risks.

6. **Confirm the leadership role of the Ministry of Industry and Commerce (MOIC) in the coordination of the e-commerce agenda across government, working closely with other ministries, and bringing in the private sector.** The e-commerce agenda is one that cuts across the responsibilities of many different ministries, not just MOIC alone, so it needs to be acknowledged that a coordination role involves bringing a range of different stakeholders together from across government. Examples of ministries involved include finance (on taxation), telecommunications (on connectivity), or education (on skills).