

Assessment of Non-Tariff Measures (NTMs) and their Impacts on International Trade and Competitiveness of Thailand and Lao PDR

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Abstract

Non-tariff measures (NTMs) have increasingly become an essential tool for countries to regulate trade in the global marketplace. According to recent data, the use of NTMs worldwide has risen sharply in the past decade, there are more than 2.5 million product NTMs in the world and more than 78% of world trade is subject to at least one NTM. Over the 537 NTMs of Lao PDR imposed from 1996 to 2018, 532 NTMs affect Thailand, and 9 NTMs exclusively affect Thailand. Thailand imposes 66 NTMs exclusively on Lao PDR. This paper aims to assess NTMs and their impact on the international trade and competitiveness of Thailand and Lao PDR. The Lao PDR's NTMs imposed exclusively on Thailand consist only of technical measures for import and export. On the other hand, Thailand's NTMs have been affecting Laos' exports to Thailand, which is its largest trading partner in the ASEAN region. Thailand's NTMs include TBTs and SPS measures, among others, which are affecting the trade relations between the two countries. NTMs such as SPS and TBT measures are remaining challenges for Lao exporters due to their internal capacity. To enhance the oversight and implementation of SPS and TBT measures in Lao PDR, international development organizations should be requested to provide short-term technical assistance and funding for various activities.

Keywords: *Non-Tariff Measures, Lao PDR, Thailand.*

1. Introduction

Non-tariff measures (NTMs) have increasingly become an essential tool for countries to regulate trade in the global marketplace. According to recent data, the use of NTMs worldwide has risen sharply in the past decade, there are more than 2.5 million product NTMs in the world and more than 78% of world trade is subject to at least one NTM (SENSE PARTNERS, 2022).

In The Association of Southeast Asian Nations (ASEAN), the overall number of NTMs has increased from 1,634 measurements to almost 6,000 measurements over the past 20 years. On the one hand, this development demonstrates how ASEAN Member States respond to diverse policy demands, such as boosting consumer protection and competitiveness through higher product

standards. A nation requires more and better trade rules as it integrates more fully into the global economy. Having a small number of NTMs may indicate under-regulation and gaps in consumer and environmental protection. However, the growth of NTMs in the context of lower tariffs implies that NTMs are occasionally employed as a supplemental strategy to safeguard local producers. In 2019, the ASEAN countries had 5,886 Non-Tariff Measures (NTMs) that were established through official regulations. These NTMs were categorized into various types, including 132 Contingent Trade Protective Measures, 759 Export-related Measures, 150 Pre-Shipment Inspection measures, 32 Other Measures, 194 Price-Control Measures, 157 Quantity Control Measures, 1,938 Sanitary and Phytosanitary (SPS) measures, and 2,524 Technical Barriers to Trade (TBT) measures (The ASEAN Secretariat, 2019).

The majority of NTMs in ASEAN roughly one-third of all NTMs are found in Thailand. Over 30% of NTMs in Thailand are Sanitary and phytosanitary (SPS) measures, where they are mostly implemented (Devadason, 2019). In Lao PDR, the proportion of SPS measures is substantially lower than that of TBT. However, in the Lao PDR, where these NTMs make up around 40% of all NTMs, strict measures on pricing and quantity limitations as well as export-related regulations are frequently utilized. About 60% of NTMs in the Lao PDR fall into these categories. The frequent use of these policies emphasizes the demand for efficient execution (Sitthideth, 2019).

With a significant decline in Lao's tariffs over the past few decades, the overall proportion of non-tariff measures (NTMs) in Lao PDR's imports also decreased after the nation joined the WTO, suggesting that the country's commitment to international agreements had a modest impact on trade flows (World Bank, 2016; Somsamone et al, 2019). From 1996 to 2018, the total accumulation of NTMs has been 537 measurements. There was just one NTM in 1996 before it sharply increased to 25 NTMs in 2003. The NTMs sharply increased to 20 measurements and 36 measurements in 2006 and 2009, respectively. In 2012, the data showed that Lao PDR had highest NTMs which were 140 measurements which mostly because an increasing of chapter F-Price control measures, including additional taxes and charges, and chapter P- Export-related measures. This may be fact that Lao PDR will become WTO's member in 2013. After becoming a member of the WTO, there were 20 measurements, 17 measurements, 7 measurements, and 65 measurements between 2013 and 2016. The NTMs were suddenly increased again to 115 measurements in 2017, which mostly came from a sudden increase in chapter B-TBT(UNCTAD, 2023). This is due to the fact that the country's efforts to comply with the WTO's Agreement on Technical Barriers to Trade Similarly, the increase in NTMs in 2017 was driven by the country's commitment to the ASEAN Single Window, which aims to streamline customs procedures and improve trade facilitation among member countries.

Considering NTMs by chapter, the majority of NTMs in Lao PDR are mostly related

to import measurements. Both technical and non-technical measures combined account for 67.42% and technical measures alone account for 41.9% of all NTMs in Lao PDR. Most of the technical measures are Chapter B-TBT (27.56%) and Chapter A-SPS (10.99%). Sanitary and phytosanitary measures are often used in Lao PDR in accordance with international standards and are mostly centered on the animal, vegetable, and food sectors since the control of such goods is crucial for maintaining consumer welfare and environmental protection (World Bank, 2016).

During 1996–2018, although NTMs fluctuated by an average of 8 NTMs per year over this period, the numbers of NTMs in chapter B sharply rose to 21 NTMs and 51 NTMs in 2016 and 2017, respectively (UNCTAD, 2023). The intuitions behind the measures might come from several factors, including the government's efforts to promote import substitution and protect domestic industries as well as the lack of technical capacity and resources to implement and enforce the measures effectively.

Non-technical measures are mostly found in Chapter E (Non-automatic Licensing), Quotas, Prohibitions, and Quantity Control Measures Other Than for SPS or TBT Reasons (14.53%), and Chapter F (Price Control Measures), including Additional Taxes and Charges (10.43%). Over the past 20 years, on average, the numbers in chapter E are higher than those in chapter F, which are 3.9 NTMs compared to 2.8 NTMs, respectively, during this period. However, chapter F sharply increased to 47 NTMs compared to 23 NTMs increasing of chapter E in the year 2012. This was driven by the fact that the country's preparations were for its accession to the WTO in 2013, which required it to implement new regulations to comply with international trade rules. With WTO membership, there was a significant fall in quantity restrictions across all economic sectors in Lao PDR, which led to a decrease in the use of non-technical measures. Nevertheless, this decrease was largely offset by a higher percentage of goods that were subject to price control measures (para-tariffs), which mostly affected autos, optical and medical devices, processed food and drinks, fats and oils, and wood products (UNCTAD, 2012, 2013; World Bank, 2016).

For chapter P-Export-Related Measures, this chapter covers 32.59% of all NTMs in Lao PDR. The numbers of NTMs in this category have been continuously raised from 1996 to 2018, with an average of 8.75 NTMs. This chapter P sharply increased to 36 NTMs in 2012 and 43 NTMs in 2017. These sudden increases were caused by the country's efforts to align its regulations with international standards and improve its food safety and animal health measures. This resulted in the introduction of new technical regulations, such as those related to labeling, certification, and testing, which led to an increase in the number of NTMs in this chapter.

During 1939 and 2021, Thailand has a total accumulation of 3,278 NTMs in place. These NTMs are categorized into different chapters, with varying percentages of share for each chapter. The two most significant chapters are Chapter B, which pertains to TBT, accounting for 48.20% of the total NTMs, and Chapter A, which relates to SPS measures, accounting for 26.27% of the total NTMs. Other chapters such as pre-shipment inspection and other formalities (Chapter C), export-related measures (Chapter P), and non-automatic licensing, quotas, prohibitions, and quantity control measures (Chapter E) also have notable shares in the total NTMs (UNCTAD, 2023).

Over the years, there have been changes in the distribution of reported NTMs by category. In the early years (1939-1979), category B and category C cases were relatively low compared to category A cases. However, starting from the 1980s, there was a significant increase in category B cases, peaking in the early 2000s, and then gradually declining. Category C cases also showed an increasing trend over the years, with some fluctuations. Category A cases remained the highest throughout the years, although there were some variations in the numbers. The notable increase in tariffs observed in Chapter A and Chapter B in 2001 may potentially be attributed to the trade negotiations that took place during the World Trade Organization (WTO) Doha Round.

It can be concluded that Chapters D, H, and J consistently showed no occurrences of NTMs, indicating a relatively stable regulatory environment with no significant non-tariff barriers to trade. This suggests that Thailand has

maintained a relatively open trade policy in these categories, which may have facilitated trade and investment activities. On the other hand, Chapters E and F showed varying occurrences of NTMs over the years, with occasional peaks in certain years but relatively low counts in recent years. This indicates that there have been fluctuations in the regulatory landscape for these Chapters, which may have impacted trade flows and business operations. Further analysis and monitoring of NTMs in Thailand in these categories may be required to understand the reasons for such fluctuations and their potential impact on trade.

Over the 537 NTMs of Lao PDR imposed from 1996 to 2018, 532 NTMs affect Thailand, and 9 NTMs exclusively affect Thailand. The Lao PDR's NTMs imposed exclusively on Thailand consist only of technical measures for import and export. On technical measures, there are 2 NTMs, 2 NTMs, and 1 NTM in chapters A, B, and C, respectively.

In chapter A, the import of animals, animal products, and animal commodities into Lao PDR shall be accompanied by the following: an import permit issued by the Livestock and Veterinary Management Authority of Lao PDR; a Health Certificate or Zoo-Sanitary certificate issued by a concerned organization or public authority of the country of origin in compliance with the import requirements of Lao PDR; and an import permit issued by the Livestock and Veterinary Management Authority of Lao PDR. For chapter B, the imported pesticides require: 1. packaging. 2. Labelling. 3. safety based on the safety requirement, 4. import through the specific checkpoint, and 5. need to be inspected. In the case of Chapter C, for being permitted to import piglets, pigs, pork (fresh and frozen), and other animal products, the import shall be only through the international border check points where a veterinary authority is situated.

For the export of fresh fruits under Chapter P, plants that are intended to be exported from Laos to Thailand or brought in transit through Thailand to a third country shall be inspected and certified by plant protection officials who are authorized. In addition, they shall comply with the phytosanitary requirements of Thailand. In the case of exporting corn, the corn must be located in some place in Lao PDR and

transported to Thailand by land or water. Moreover, an original Phytosanitary Certificate should be certified by the elected authorities from the organization of phytosanitary protection (Ministry of Agriculture and Forestry) and attached to goods each time they are exported to Thailand. On the other hand, Thailand's NTMs have been affecting Laos' exports to Thailand, which is its largest trading partner in the ASEAN region. Thailand's NTMs include TBTs and SPS measures, among others, which are affecting the trade relations between the two countries. Thailand imposes 66 NTMs exclusively on Lao PDR. Most of Thailand's imposing NTMs on Lao PDR are in Chapter A, which is 48 NTMs. There are only 1 NTM, 8 NTMs, and 9 NTMs in chapters B, C, and F, respectively.

This paper aims to assess NTMs and their impact on the international trade and competitiveness of Thailand and Lao PDR. The subsequent sections will cover materials and methods, results and discussion, and the conclusion.

2. Materials and Methods

This paper employs a combination of primary and secondary data for its analysis. The secondary data is derived from TRAINS Online, an interactive web portal offering public access to global trade-related regulations and Non-Tariff Measures (NTMs) data. This platform facilitates efficient search queries, data compilation, retrieval, and the download of customized search results. Provided by UNCTAD, TRAINS Online features comprehensive and comparable trade regulations and NTM data for 109 countries, encompassing over 65,000 measures.

In addition to the secondary data, primary data is gathered through semi-structured interviews conducted with the Department of Export Promotion of the Ministry of Industry and Commerce. These interviews specifically focus on coffee and maize exporters.

The analytical approach encompasses desk review and descriptive analysis, drawing on both primary and secondary data. The perspectives of Lao importers and exporters regarding NTMs are explored, shedding light on the intricacies of non-tariff measures in the context of Lao PDR. Furthermore, the analysis delves into the

processes involved in the implementation of NTMs in the country.

3. Results

3.1 Perspectives of importers and exporters in Lao PDR towards the non-tariff measures stated above.

In general, importers and exporters in Lao PDR view NTMs as a necessary measure to protect the country's domestic industries and ensure public safety. In a survey conducted by the Lao National Chamber of Commerce and Industry, 55% of respondents agreed that NTMs were necessary to protect domestic industries, while 38% believed that NTMs were necessary to ensure public safety. However, importers in Lao PDR face significant challenges in meeting the country's NTMs. The importers face challenges in complying with customs procedures, import licensing, and technical regulations. NTMs raise the price of compliance for the private sector. For instance, a sophisticated system of non-technical procedures as well as conventional technical regulations that are meant to protect Lao PDR customers are now in place for imports of processed goods. These challenges lead to additional costs and time delays, which affect the competitiveness of Lao PDR's imports. Moreover, from the study on the impact assessment of non-tariff trade measures for imported food and drugs for the department of food and drugs in the Ministry of Health, NTM regimes for food and drugs are considered ineffective through risk analysis. At the time when such measures are being used, there still appears to be the entry of unauthorized products, and the NTMs regime requires high costs. In particular, the strict inspection at the border crossing is not appropriate; the inspection should be carried out according to the random risk management method. Officials can determine with a statistical confidence of about 95% that 2.5% of products do not meet the standard by taking a sample of incoming goods (out of 12,000 incoming goods, there are about 1,400 that need to be tested). According to international regulations, only 1% of low-risk products and 5% of high-risk products are tested (EMC, 2018a). For other impact assessments of non-tariff trade measures for imported plant varieties, pesticides, and fertilizers, and another impact assessment of imported oil, there were similar

findings that the NTM measurements were considered ineffective (EMC, 2018b and 2018c).

Non-tariff measures (NTMs) can act as barriers to trade and negatively affect trade flows. Lao exporters face a wide range of requirements, including technical regulations, product standards, and customs procedures, which may sometimes act as protectionist measures. Compliance with these measures is challenging due to procedural obstacles, such as delays in testing or getting certification, a lack of transparency, and the availability of information on given regulations. Lao exporters of bananas, rice, rubber, wood, and white charcoal have to comply with NTMs when exporting to China, Malaysia, Thailand, Vietnam, the European Union, Japan, and the Republic of Korea. The exports face particular difficulties with agricultural (SPS) and manufacturing (TBT) firms. Labeling requirements and inspection requirements are identified as common TBT measures applied by the trade partners of the Lao PDR (ESCAP, 2017). From the paper on the perceptions of Lao exporters on NTMs such as standards, including their willingness and ability to adapt products to regulations in the destination country, including Thailand, their sources of NTMs, and the impact of conforming to foreign regulations on sales in the domestic market, such as the Thai market, the paper found that most Lao exporters expect the ease of meeting standards to increase in the coming years, which would increase Lao's exports but also increase imports. Additionally, the paper also revealed that exporters in Lao PDR are generally aware of international standards for their products, but some lack knowledge in specific areas such as cassava, rubber, or coffee (EDC, 2016).

Based on the findings from a focus group discussion with exporters in Lao PDR, it was revealed that exporters perceive Thailand's NTMs as challenging and burdensome, posing significant obstacles to trade. These NTMs, including technical regulations, product standards, customs procedures, and inspection requirements, are perceived as protectionist measures that act as barriers to trade, hindering Lao exporters' ability to access the Thai market and comply with foreign regulations. The compliance process with Thailand's NTMs was reported to be challenging, with exporters facing

delays in testing or certification, lack of transparency in the requirements, and limited availability of information on the given regulations. These procedural obstacles add to the compliance costs for Lao exporters, impacting the competitiveness of Lao exports to Thailand and other markets. Despite the challenges, exporters in Lao PDR expressed expectations that the ease of meeting standards would increase in the future, which could potentially boost Lao's exports to Thailand and other markets.

3.2 The procedures/process involve NTMs.

The majority of laws, including NTMs, are enacted at the ministerial level (National Assembly, 2012). However, ministry-level legislation is not easily accessible or available, in contrast to the nation's standard laws. Even within the ministry, the departments that issue laws maintain the legislation's inventory rather than a single location. As a result, some authorities publish new regulations without taking into account the ones that already exist, which leads to some repetition of regulations. This method of stock-keeping laws also impedes future efforts to gather extensive NTM data. The legislation of NTMs consists of (1) laws; (2) resolutions of the National Assembly; (3) resolutions of the Standing Committee of the National Assembly; (4) ordinances of the President; (5) decrees of the government; (6) resolutions of the government; (7) orders and decisions of the Prime Minister; (8) orders, decisions, and instructions of the minister, minister-equivalent, and head of a government authority; (9) orders, decisions, and instructions of the provincial governors and capital governors; (10) orders and decisions of the district and municipality chiefs; and (11) village regulations

All NTMs issued by the National Assembly are law-related NTMs, which cover 13.78% of all NTMs. Ordinances of the President related to NTMs are issued by the president's office, which cover 9.5% of all NTMs. Regarding the decree on NTMs being issued by the government, its offices cover 17.13% of all NTMs. For orders, decisions, instructions, provision, and notification are mostly issued by line of ministries related to NTMs (UNCTAD, 2023).

Other line ministries were also active in NTMs in addition to the Ministry of Industry and Commerce. Among all measures, the Ministry of Industry and Commerce is responsible for 15.83% of all NTMs. 12.29 percent of NTMs are produced by the Ministry of Agriculture and Forestry. The Ministry of Health controls around 11.17% of all NTMs. 10.43% of the measures are ones that the Ministry of Science and Technology has issued. Less than 1.86 percent of the total number of NTMs belongs to other line ministries.

Lao PDR's government has implemented various procedures to notify the new NTMs implemented in the country. The Department of Foreign Trade Policy, Ministry of Industry and Commerce is responsible for summarizing and classifying NTMs measures of related sectors and line ministries according to the UNCTAD manual and publishing them on the LTP website (www.laotrateportal.gov.la). In the framework of ASEAN and the World Trade Organization, Lao PDR has the obligation to notify NTMs, which work will also be done by the Department of Foreign Trade Policy, Ministry of Industry and Commerce, based on the information provided by the Department of Import and Export. Moreover, Lao PDR also has NTMs Coordination Mechanism such The National Trade Facilitation Committee (NTFC) established according to the Prime Minister's Order no 48/PM, dated 26 July 2018. The committee consists of two levels. The first level is The Leading Committee on Trade Facilitation in Central level (LCTFC) chaired by Deputy Prime Minister; and the second level is The Trade Facilitation Committee in Provincial Level (TFCP) chaired by Deputy Governor of Provinces. In addition, the secretariat of LCTFC was also established according to the Decision of the Head of LCTFC no.001/ LCTFC dated 26, December 2018. In addition, Legal basis for NTMs Streamlining such as PM's Order on Improvement of Regulations and Coordination Mechanism for Doing Business in Lao PDR no.02/PM dated 01 February 2019; and the PM's Order on facilitating import export, temporary import, transit, and transfer goods in Lao PDR no.12/PM dated 16 October 2019. The orders aim: To improve the trading across border indicator of the Ease of Doing Business report by minimizing time and procedure for import and

export of goods at least 50 by 2022; To ensure the implementation of trade facilitation in line with WTO-TFA; and To trade regulatory reform by addressing NTMs and procedural/documentary obstacles faced by private sectors.

Lao exporters can summarize the problems of NTMs used by importing countries that create barriers to exports, especially legislative information, procedures, and documents, and then send it through the line of ministries that are related to NTMs or send it directly to the Department of Foreign Trade Policy or as an official in trade negotiations to raise these issues in various frameworks. Currently, there are many pieces of legislation that are based on the use of countermeasures regarding NTMs, such as the Law on Anti-Dumping and Countervailing Measure No. 65/NA, dated June 14, 2019, the Law on Safeguards No. 27/NA, dated October 30, 2017, etc. However, in actual practice, the Lao PDR has not yet used the various measures available to respond due to many factors, especially a lack of capacity to collect data on domestic production capacity related to the NTMs.

4. Discussions

The findings of this study shed light on the challenges faced by exporters in Lao PDR concerning Non-Tariff Measures (NTMs), particularly those imposed by Thailand. The identified NTMs, encompassing technical regulations, product standards, customs procedures, and inspection requirements, have been perceived by exporters as significant impediments to trade, posing hurdles to market access and compliance with foreign regulations. This finding aligns with the findings reported by Sitthideth in the study of NTMs in Lao PDR in 2019.

The study reveals that exporters in Lao PDR encounter considerable difficulties in complying with Thailand's NTMs. The compliance process is marred by delays in testing and certification, a lack of transparency in requirements, and limited availability of information on these regulations. These procedural obstacles contribute to increased compliance costs, affecting the competitiveness of Lao exports not only to Thailand but also to other markets. These findings echo the

observations made by the World Bank in 2016 in their comparative overview of the incidence of NTMs on trade in Lao PDR.

In response to these challenges, the Lao PDR government has implemented various measures aimed at addressing and streamlining NTMs. Notably, the Department of Foreign Trade Policy, Ministry of Industry and Commerce, plays a pivotal role in summarizing and classifying NTMs measures, ensuring transparency through the Lao Trade Portal website. Furthermore, Lao PDR fulfills its obligations within the frameworks of ASEAN and the World Trade Organization, with a specific focus on the notification of NTMs. The establishment of the National Trade Facilitation Committee (NTFC) at both central and provincial levels demonstrates a commitment to coordinating efforts in tackling NTMs.

The legal framework for NTMs streamlining is reinforced through Prime Minister's Orders, such as the Order on Improvement of Regulations and Coordination Mechanism for Doing Business and the Order on Facilitating Import-Export. These orders articulate clear objectives, including the reduction of time and procedures for import and export, alignment with WTO-TFA standards, and regulatory reform to address NTMs and procedural obstacles faced by the private sector.

Despite these proactive measures, the study reveals a gap between policy intent and practical implementation. Lao PDR, due to several factors, especially a lack of capacity to collect data on domestic production related to NTMs, has not fully utilized available measures, such as those outlined in the Law on Anti-Dumping and Countervailing Measures and the Law on Safeguards.

5. Conclusion

NTMs such as SPS and TBT measures are remaining challenges for Lao exporters due to their internal capacity. To enhance the oversight and implementation of SPS and TBT measures in Lao PDR, international development organizations should be requested to provide short-term technical assistance and funding for various activities. These include a review of laws and regulations, an inventory of laboratory assets, an assessment of training needs, and the

identification of opportunities for collaborative border management. Additionally, the Lao PDR should modernize its approach by reducing unnecessary inspections and testing-related delays, formulating a transition strategy for international standards, and incorporating SPS and TBT concerns into national and regional transport and trade facilitation bodies. National Single Windows and single-stop border inspection facilities should also be improved to enhance harmonization of SPS and TBT implementation, enable mutual recognition of laboratory findings, refine risk management procedures, and make relevant information accessible to trade regulation agencies. Finally, it is necessary to promote coordination among ministries and the capacity-building of officials dealing with standards to boost exports from the Lao PDR. The government alone cannot build the infrastructure needed to facilitate exports, so technical assistance, international aid, and private sector investments are essential for improving the country's capacity and infrastructure for dealing with standards.

Enhancing collaboration between Thailand and Lao PDR in addressing Non-Tariff Measures (NTMs) involves establishing a mutual understanding of their impact on trade. Regular discussions and information sharing among relevant agencies and stakeholders are crucial. Leveraging existing regional agreements, such as the ITWG, ACCSQ, and SOM AMAF, can promote trade by harmonizing standards and regulations. Additionally, bilateral trade agreements should be utilized, particularly addressing sanitary and phytosanitary measures, technical barriers, and customs procedures. Capacity building in NTM-related areas, including training programs and workshops, is essential. Establishing a mechanism for timely NTM issue resolution, through consultations and joint committees, is recommended. The Ministries of Commerce in Thailand and Industry and Commerce in Lao PDR, along with ITD, can play vital roles in capacity building and addressing NTMs.

6. Conflict of Interest

We certify that there is no conflict of interest with any financial organization regarding the material discussed in the manuscript.

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