LST REVIEW

Volume 9 Issue 134 December 1998

PARLIAMENTARY SYSTEM AND HUMAN RIGHTS

LAW & SOCIETY TRUST

LST REVIEW

(This is a continuation of the Law & Society Trust Fortnightly Review)

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Editor's note.....

In this issue we publish an article by Dr Neelan Tiruchelvam on the Parliamentary system in Sri Lanka. He discusses the history of the parliamentary system in Sri Lanka and points out that few parliaments in the developing region are able to develop meaningful legislation. He proposes the modernisation of parliamentary procedures through a comprehensive review of Standing Orders, introducing new technologies to strengthen the effectiveness and accountability of parliament, rethinking the composition of parliament and reconceptualising parliament.

We also publish the concluding chapter from *Judicial Independence in Sri Lanka* published by the Centre for Independence of Judges and Lawyers, Geneva. The recommendations and conclusions are categorised under legislation and emergency, the judiciary, lawyers and legal services, disappearances and extra-judicial executions, the National Human Rights Commission and international obligations. It also discusses the proposed constitution. The recommendations include bringing national law on par with its international obligations; repealing the validation clause in the Constitution (present as well as the draft Constitution which provide that the existing law will continue to be in force notwithstanding any inconsistency with the fundamental rights chapter of the Constitution); all new emergency regulations be placed before parliament for approval; publishing all emergency regulations, reducing laws delays; taking steps to punish those found guilty of violating fundamental rights; and strengthening the Human Rights Commission.

We also publish the text of the Speech delivered by Ms Janet Lim, Representative, UNHCR, Colombo, at the inauguration of the human rights film festival organised by the Trust to commemorate the 50th anniversary of the UDHR. The text of the Free Trade Agreement signed recently between India and Sri Lanka is also published in this issue.

The Reform of Parliament: Is it possible?

Neelan Tiruchelvam[*]

Sri Lanka is one of the oldest democracies in South Asia as universal adult franchise was introduced as early as 1931.[1] Power has also periodically and relatively peacefully alternated between two major political parties. Sri Lanka is also the only South Asian democracy which has introduced proportional representation to all its representative institutions at the national, provincial and local authority levels. It also adopted under the Second Republican Constitution a Gaullist form of Executive Presidency with a view to ensuring a stable executive which would survive vicissitudes in the fortunes of the legislature. Despite its electoral and constitutional experimentation, there is deep discontent and dissatisfaction with Parliament.[2] Similar discontent exists within the sub-continent and even in several other commonwealth states leading to a crisis of governance. Political parties in the sub-continent are being critiqued for having carried the concept of adversarial politics to an absurd degree. Both in Bangladesh and in Pakistan, boycotts of parliaments by the opposition have sometimes resulted in bringing about a paralysis in national decision making. Even in Sri Lanka, it has been pointed out that the polity appears to be bitterly divided on every issue of public policy.[3]

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[*] Delivered at the opening session of the Commonwealth Parliamentary Association's Conference on "Governance Structure and the Democratic Process: Round Table on Managing Parliament," 1st December 1998. Cape Town.

1 K.M. de Silva, *Universal Franchise 1931-1981: The Sri Lankan Experience*, Department of Information, Ministry of State Democratic Socialist Republic of Sri Lanka, 1981.

2 M. Chen & Sir Geoffrey Palmer, *Public Law in New Zealand: Cases, Materials, Commentary and Questions*, Oxford University Press, Auckland, 1993, p 676. They state that in New Zealand too there is widespread disillusionment with the way the country is governed.

3 See generally, Lord Bryce, "The Decline of Legislatures" in P. Norton (ed), *Legislatures*, Oxford University Press, 1992. Lord Bryce's words though uttered

It could be argued that a vigorous and even acrimonious public debate on issues is necessary to expose maladministration and abuse of power in a representative democracy. However, there seems to be no common political or economic purpose which transcends the cacophony of incessant disputation. The legitimacy of political institutions continues to slide as some of these countries seem incapable of mobilising the collective resolve to address the serious economic and political problems which cripple their development.

The loss of legitimacy

Public disillusionment with the nature of contemporary politics is also seen in the diminishing interest in the parliamentary process. One of the most important functions of the legislature is to enact legislation.[4] Increasingly, few parliaments in the developing regions are able to develop meaningful legislative programmes. Often the legislative agenda is driven by multilateral agencies which link it to structural adjustment programmes or other forms of developmental assistance to facilitate private sector development. Legislatures have also struggled to reconcile the contradictions between legal reform to facilitate private sector development and the legislative agenda for sustainable development including protection of the environment and socially and economically vulnerable groups. Where legislative reforms have been initiated by specialised bodies such as Law Reforms Commission or expert committees, they often receive little detailed scrutiny within Parliament. Considerable amount of time is devoted to the incorporation of charitable institutions and professional bodies which should otherwise be directed to

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more than 70 years ago accurately express sentiments that are prevalent today. He states that "They tell him, in terms much the same everywhere, that there is less brilliant speaking than in the days of their own youth, that the tone of manners has declined, that the best citizens are less disposed to enter the chamber, that its proceedings are less fully reported and excite less interest, that a seat in it confers less social status, and that for one reason or another, the respect for it has waned."

4 For a classical perspective on the functions of Parliament see W. Bagehot, *The English Constitution*, Fontana Press, 1993, Chapter 4, pp 153-155. The five functions put forward are: the elective function, the expressive function, the teaching function, the informing function and the political education given by the Parliament to the whole nation.

acquire legal personality by incorporation under the Companies Act or the Societies Ordinance.[5]

While the move towards a market economy has resulted in the emphasis on complementary legal reform, no comprehensive theoretical model has been developed on the relationship of the law to the economy. In contemporary legal theory, there has been a continuing debate between evolutionary and deterministic approaches to law and social change. Savigni was the principal proponent of the evolutionary thesis according to which law should essentially follow and not endeavour to lead social sentiment. On the other hand, theorists such as Bentham believed that law could be "the determined agent in the creation of new norms."[6] According to Savigni, only "when popular custom in part articulated by lawyers is fully evolved," could and should legislative action take place. He, therefore, opposed the trend towards the codification of the law and the spread of Napoleonic Codes throughout the world. On the other hand, Bentham was a fervent believer in the efficacy of 'rationally constructed reforming laws' and devoted a great part of his life to drafting of codes for a large number of countries from Czarist Russia to newly emerging Republics of Latin America.[7] Similar debate has taken place within the law and development movement where scholars began to critique the premise that legal change in developing countries would ultimately result in the adoption of legal ideals and institutions similar to those in the west. These critiques saw the law and development movement as imposing a foreign model

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5 See generally, J. Anderton MP, House of Representatives, New Zealand, Committees in Commonwealth Parliaments: An Overview (unpublished), Paper for the Round Table on Managing Parliament, 1998. M. Sekaggya (Mrs) Chairperson of the Uganda Human Rights Commission, Committees in Commonwealth Parliament: The Perspective of Oversight Institutions- A Case of Uganda (unpublished), Paper for Conference on Governance Structures and Democratic Process: Round Table on Managing Parliament-Executive Interface in the Commonwealth 1998, organised by Commonwealth Parliamentary Association Secretariat, Cape Town, South Africa. Supra n.2, Chapters 14, 15 & 16.

6 W. Friedman, *Law in a Changing Society*, Penguin Books, London, 1964.

7 Ibid.

of law in developing countries and accused it of 'ethno-centricity, and insensitivity to local customs, values and development objectives.[8]

Advocates of comprehensive law reforms to meet the needs of a liberalised economy confront similar dilemmas and paradoxes. Firstly, there is often a contradiction between the efforts to create a legal framework to facilitate private sector development and the need to promote sustainable development. Legal reforms for sustainable development must include laws and policies that protect the environment, and enhance the social status of women and other vulnerable section of the society.[9] For example, laws and policies to promote foreign investment and establish export oriented industrial zones seek to contain wage demands and often limit the freedom of association of labour. Fiscal policies directed towards limiting and dismantling social welfare programmes impact adversely on women, children and the rural poor. There is, therefore, a need for a conceptual and policy framework which reconciles the imperatives of legal reform, to promote private sector development with the imperatives of advancing the social objectives of sustainable development. Secondly, there is an increasing tendency for multilateral agencies which support legal reform to complement market economies to encourage the cross border transplantation of legal systems and concepts. It is important to ensure that each country make its own fundamental choices about the structure and direction of its legal systems and where there is a need to adopt legal transplants, they are suitably modified and developed in accordance with the indigenous values and conditions. In this regard, the European Community Independent States Joint Task Force on Legal Reform noted that:

> *However underdeveloped our comprehension of law and social change may be, the lesson has been learned at considerable cost that legal change is not a matter of fitting spare parts into a machine. Adaptation and even inventiveness are the skills*

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8 See D. Trubeck & Marc Galanter 1974 "Scholars in Self-Estrangement: Some Reflections on the Crisis in Law & Development Studies in the United States" in Wisconsin Law Review, 1974 - No. 4. See further in this regard Katherana Pistor and Philip A. Wellors *The role of Law and Legal Institutions in Asian Economic Development - 1969-95,* Asian Development Bank (1991).

9 See N. Tiruchelvam, "Legal Challenge posed by the Economic Transition: Impact on the Legal Systems of the Region" (unpublished), Paper presented at the Conference on 'Transition, the Post Independence Changes and the Future: Critical Issues of Law and Justice in South Asia, Faculty of Law, University of Colombo, 1998.

required, with a considerable dose of imagination and a profound knowledge of the contextual framework into which the adaptations are to be introduced.[10]

The scrutiny of executive action

Although the parliamentary control of finance is a principle of the highest constitutional importance, it is progressively being eroded of its content. There is little or no attention being paid to a systematic study of estimates and budgetary projections are becoming less reliable in view of revenue shortfalls and expenditure overruns for defence and related purposes. The budget debate itself is of declining importance as no serious attempt is made to either critique the new fiscal proposals or to seriously examine the state of the national economy. Most speeches are focused on constituency issues or emotive denunciations of political opponents. There is a significant decline in the intellectual content of parliamentary debates with only a few legislatures devoting the time to study a problem in depth. Legislative control of finance and scrutiny of executive action are the critical elements of the parliamentary forms of the government. In practice, however, the work in legislative chambers or in committees, have little or no impact on the budgetary process or the working of government.

Similar concerns have been expressed with regard to the committee system in Parliament. In Sri Lanka, the Select Committee on appointments is expected to review all high appointments including ambassadors, secretaries to ministries and chairpersons of all public corporations.[11] However, the review process is so slow that many appointments are reviewed more than a year after they were effected. Although amendments were made to the Standing Orders to enable public representation and participation in the Select Committee process, no committee has as yet invoked these procedures. In South Asia in general, the direct involvement of the public in the legislative process is minimal.

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[10] European Community Independent States Joint Task Force on Legal Reform.

[11] 5128 A Standing Order of the Parliament of the Democratic Socialist Repubic of Sri Lanka.

Proposals for Reform

The question arises whether in this context of the loss of legitimacy any meaningful reform of Parliament would make a difference. There are several alternative approaches to the reform of Parliament. The first would be to modernise parliamentary procedures through a comprehensive review of Standing Orders. Procedural reforms have included changing the rules of debate, reform of the committee system, enhancing participation by the public and public interest groups in the legislative process and the committee system, more effective disposal of Parliamentary questions, the appointment of a committee on assurances and the more orderly organisation of Parliamentary business. Strengthening the committee system should involve the appointment of a member of the Opposition as the Chairperson of Committees and conferring on Chairpersons of the more important committees a rank analogous to a Cabinet Minister. These reforms should include the televising and broadcasting of parliamentary proceedings.

The second approach which would be a variant of the first would be to introduce new technologies to strengthen the effectiveness and accountability of parliament. This would include a parliamentary web-site on which all Bills, Acts of Parliament, subsidiary legislation, committee reports and Parliamentary proceedings are electronically published in all of the official languages. The web-site should also be utilised to put out legislative proposals and discussion documents and to invite public comments and observations.[12] The public should be invited to contribute their ideas via the internet, fax or through more conventional means. As Victor Perton the Chairman of the Law Reform Committee in the Parliament of Victoria has pointed out these innovations would significantly 'broaden public participation in the law making and the political process.'[13]

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[12] The Law Reform Committee on the Regulatory Efficiency Legislation of the Victorian Parliament, October 1997, too has recommended similar procedures and stated that the Committee itself in the course of its inquiries had used the internet effectively to receive submissions and comments from all over the world.

[13] V. Petron MP, Chairman Law Reform Committee Parliament of Victoria, Australia, Regulation in the Information Age (unpublished), Paper Presented at the "Commonwealth Round Table on Governance Structures and the Democratic Process - Managing the Parliament - Executive Interface in the Commonwealth," Cape Town, South Africa, 1998.

Thirdly, the mere reform of Parliamentary procedures and standing orders may not be adequate. There is a need to rethink the composition of Parliament so that it may more effectively reflect the diversity of the polity. Proportional representation in several countries has contributed towards a more balanced representation of ethnic and religious groups and of smaller political formations.

In Sri Lanka we endeavoured in Provincial Councils and local bodies to facilitate youth representation by compelling political parties to ensure that at least 40% of the nominations list consists of persons between the ages of 18 and 40. No systematic study has yet taken place on the impact of this change on youth representation, and on their perceptions of representative democratic forms. The issue of gender continues to be one of the foremost importance as the representation of women in most Commonwealth Parliaments is appallingly low. South Africa has made significant and impressive strides in this regard through the conscious effort of political parties. Several women's groups have advocated the acceptance of at least a 33% quota to ensure a demonstrable improvement in women's representation. Legislation in India to achieve this objective has encountered many obstacles. Some studies suggest that the entry of women into the panchayats has had a qualitative impact on the nature of politics and on the issues that were being debated in the panchayats. It is difficult to re-imagine our political future without increased representation of women and of the future generation.

Finally, in addition to issues of process and of composition there is a compelling need to reconceptualise Parliament. There is growing disillusionment with the excesses of the adversarial Westminster model. Sir Geoffrey Palmer, a former Prime Minister of New Zealand, has pointed out that Parliament whether it is enacting legislation or reviewing expenditure becomes no more than a forum for party political contest. He adds that "The New Zealand House of Representative is a bearpit of ill-mannered and vituperative political debate to the exclusion of nearly everything else."[14] Most other Commonwealth Parliaments have been weakened by petty and even abusive forms of contestation between political parties. One proposal that has been made in this regard is to call for power sharing between political parties

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[14] G. Palmer, "New Zealand's Constitution in Crisis" (1992) 108-110, in M. Chen & Sir Geoffrey Palmer, *Public Law in New Zealand: Cases, Materials, Commentary and Questions*, Oxford University Press, Auckland, 1993.

in the discharge of executive functions. This is achieved by ensuring that there is proportional representation at the legislative and executive levels. Each political party will be represented at the executive in proportion to its representation in the legislature. Politics would no longer seem to be a winner takes all or a zero-sum game. No doubt a radical reform of this nature would have its costs and its downside. It is not always clear whether political cultures accustomed to a competitive and acrimonious party and electoral systems can easily accommodate such a change. But both policy makers and concerned citizens must recognise the need to arrest the decline in the legitimacy and effectiveness of the institutions of governance. Mere procedural reform may not be enough. We need to reconceptualise the role and purpose of Parliament, particularly in the context of a change in the very nature of the state.

International Commission of Jurists

JUDICIAL INDEPENDENCE IN SRI LANKA*

CHAPTER X - CONCLUSIONS AND RECOMMENDATIONS

Chapter III - Legislation and the Emergency

1. The President's power under the Public Security Ordinance to proclaim a state of emergency should be subject to challenge in the Supreme Court if there is no reason to believe that a state of emergency exists or is imminent.

2. There is insufficient Parliamentary control over the making of Emergency Regulations. All new regulations, or amendments to existing regulations, should be required to be laid before Parliament for approval. Except in cases of necessity, such regulations or amendments should not take effect until so approved.

3. Section 8 of the Public Security Ordinance (which provides that no Emergency Regulation shall be called in question in any court) should be repealed.

4. Section 9 of the Public Security Ordinance should be repealed in so far as it excludes civil or criminal liability for acts not in fact authorised by Emergency Regulations.

5. Fundamental rights under the Constitution should be liable to restriction on the grounds of national security only when a state of emergency has been proclaimed and then only to the extent strictly required by the exigencies of the situation.

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* Extracts from "Judicial Independence in Sri Lanka" (1997). Centre for Independence of Judges & Lawyers, Geneva. (Report of a Mission 14-23 September 1997).

6. The current situation in parts of Sri Lanka justifies the proclamation of a state of emergency. It is one which "threatens the life of the nation" within the meaning of Article 4 of the ICCPR.

7. Preventive detention cannot be ruled out in principle. However, a much greater degree of judicial control is required than is provided by the existing Emergency Regulations. In particular

   (a) the initial order of preventive detention should be subject to confirmation by a Magistrate within one month

   (b) subsequent renewals of the order should be made by a Magistrate

   (c) there should be a strict limit on the total duration of an order

   (d) there should be a proper and speedy system of appeal to a judicial body against the making or renewal of an order.

8. The power of detention following arrest in all districts subject to Emergency Regulations should be limited to 7 days.

9. The requirements that Magistrates should be supplied with lists of detainees, should post the lists on notice boards, and should visit detention camps monthly are valuable in reducing "disappearances" but are not being properly observed. Steps should be taken to ensure observance of these requirements.

10. Rehabilitation Orders should be made by the courts (and not by the Secretary to the Ministry of Defence) and should be limited to 2 years.

11. The Regulation which requires all those who surrender voluntarily to serve a period of rehabilitation is unjustified and should be repealed.

12. Emergency Regulations should prescribe minimum standards for conditions of detention which should comply with the body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the UN General Assembly.

13. Powers of detention under the Prevention of Terrorism (Temporary Provisions) Act should be abolished or made subject to the same restrictions as are recommended above for detention under Emergency Regulations, and should be made only when and where a state of emergency is in force.

14. The power under the PTA to make restriction orders falling short of detention should be reviewed and, unless a clear case for its retention can be made out, should be repealed.

15. The exclusion of liability under the PTA for acts done in good faith but not in fact authorised by the Act should be repealed.

16. The exclusion by section 7 of the PTA power to grant bail to persons arrested on suspicion of "unlawful activity" leads to remands in custody for relatively minor offences. It also puts undue pressure on defendants to plead guilty in the expectation of receiving a suspended sentence rather than remain in custody pending a contested trial. The PTA should be amended to permit the courts to grant bail except in the most serious cases.

17. The Supreme Court has asserted its power to intervene in cases involving breaches of fundamental rights protected by the Constitution, despite the provisions of the Public Security Ordinance and the PTA purporting to oust the jurisdiction of the courts. The Supreme Court, in doing so, has shown independence and good judgement in balancing the interests of national security against the fundamental rights of petitioners.

18. Publicity for Emergency Regulations is very inadequate. All new Emergency Regulations, and amendments or rescissions of existing Regulations, should be published in Sinhala, Tamil and English language newspapers.

19. The Government should prepare and keep updated the text of the Emergency Regulations for the time being in force. This should be accessible to the public and as soon as possible should be accessible on the Internet.

20. There has been abuse of the power to make Emergency Regulations by introducing Regulations having no real connection with the Emergency (for example, by removing the application of existing environmental protection legislation from the generation of power and energy). This reinforces the case for allowing the validity of Emergency Regulations to be challenged in court (see para. 3 above).

21. The Indemnity Act (which gives retrospective immunity from suit for certain acts done "in good faith" before December 1988) has little practical importance but is in principle wholly unjustifiable and should be repealed.

22. The admissibility under Emergency Regulations and the PTA of confessions made to police officers encourages the use of torture and should be abolished.

Chapter IV - the Judiciary

23. A High Court should be opened in Jaffna as soon as possible.

24. Access to justice of Tamil-speaking parties to proceedings and lawyers is seriously restricted by the lack of interpreters, by delays in publishing legislation and Emergency Regulations in Tamil, and by the absence of Law Reports and textbooks in Tamil. Steps should be taken to remedy these problems. Judges should be encouraged to develop the ability to conduct trials in Tamil.

25. Recent delays in filling vacancies to the Court of Appeal were unfortunate. Consideration should be given to permitting newly promoted judges to continue hearing cases which they were hearing at the time of promotion.

26. The system of appointment and promotion of judges would be improved by selecting the Judicial Service Commission by methods which will make it more independent and by requiring appointments to the higher courts to be made by the Commission, or by the President from a short list of names selected by the Commission.

27. If the proposals in para. 26 are not adopted, constitutional force should be given to the conventions that the President consults the Chief Justice before making appointments and that the two senior judges of the Supreme Court and the Chief Justice make up the Judicial Service-Commission.

28. The Secretary of the Judicial Service Commission should be appointed by the Chief Justice or by the Commission and not by the President.

29. In making appointments the desirability of increasing the number of women and Tamil judges should be borne in mind.

30. The Sri Lanka Judges Institute should be helped to provide

(a) intensive training in Tamil and English for newly appointed judges who need it

(b) an intensive course of lectures and seminars for new judges

(c) specialised training in commercial law for new High Court judges

(d) a proper library to meet the needs of its own course and of the judiciary.

The attention of foreign donor governments and organisations should be drawn to the needs of the institute.

31. The present provisions for removal of judges of the Supreme Court and the Court of Appeal from office by a Parliamentary process should be replaced by a provision requiring investigation and proof of alleged misbehaviour or incapacity to be carried out by an appropriate judicial body.

32. There is a strong culture of judicial independence in Sri Lanka. The Supreme Court is vigorously independent and uses its fundamental rights jurisdiction under the Constitution freely and effectively.

33. There are very serious delays in the Court of Appeal. Action should be taken to cut these delays; such action should include a tougher attitude towards adjournments for the convenience of counsel and either an increase in the number of full-time judges or the use of retired judges on a part-time basis.

34. The delays in dealing with habeas corpus applications under the Court of Appeal's original jurisdiction are completely unacceptable. Habeas corpus applications should be treated by the Court as matters of the utmost urgency. The Court should insist on rapid responses from respondents, and should normally hear the evidence itself instead of referring cases to a lower court of inquiry and report.

Chapter V - Lawyers and Legal Services

35. Taking into account Sri Lanka's relatively poor economy, current arrangements for providing legal assistance to those charged with serious offences, and to petitioners in fundamental rights cases, are reasonably satisfactory.

36. Lawyers are not at present subject to intimidation or personal danger for political reasons.

Chapter VI - Disappearances and Extra-Judicial Executions

37. Between 1983 and the present day the security forces in Sri Lanka (including the armed forces, the police, and local militia units armed by the government) have been responsible for thousands of unlawful killings. The worst offences took place during the JVP insurgency in 1987 to 1990. However, hundreds of unlawful killings have also occurred in the course of the struggle against the LTTE. After a welcome decline in 1994 and 1995, there was a significant recurrence in 1996 (mainly in the Jaffna peninsula) and, though declining again, these incidents are still continuing.

38. Both the UNP Government, from 1991 onwards, and the present People's Alliance Government have taken some steps to reduce further violations of human rights linked to the emergency. In particular the Human Rights Task Force, created in 1991, proved to be a very

effective weapon in protecting the lives of detainees and improving their conditions. The Emergency Regulations have been amended in ways which give greater protection to detainees.

39. However, steps so far taken to punish those responsible for the killings have been manifestly inadequate. A culture of impunity has developed. At the date of the Mission, not a single member of the security forces had been convicted of murder in any case arising out of the misconduct of those forces. Perpetrators of grave violations have been convicted of minor offences or, in most cases, not at all.

40. The Reports of the three Commissions of Inquiry appointed in 1994, which were finally delivered in September 1997, offer a last chance to escape from the culture of impunity. It is essential that

(i) a number of target cases should be selected from the information provided by the Reports

(ii) further investigations into the target cases should be carried out as quickly and thoroughly as possible

(iii) members of the security forces under investigation should be suspended from duty

(iv) where the investigations produce sufficient evidence to justify changes, the cases should be prosecuted swiftly and vigorously.

41. The killing of detainees after they have been taken into custody appears to have stopped. However, other killings are still occurring as a result of failures in discipline. It is essential that all such cases be fully investigated and that there are quick and effective prosecutions wherever the evidence justifies them.

Chapter VII - the National Human Rights Commission

42. The Commission potentially has a great deal to contribute to human rights in Sri Lanka, and its creation is to be greatly welcomed. However, it is unfortunate that it has no woman member, and that a

Chairman was appointed who does not have the confidence of local human rights organisations.

43. It is unfortunate that the Human Rights Task force was wound up and its responsibilities transferred to the Human Rights Commission before the Commission was fully established. This created damaging uncertainty about the future of the work and staff of the Task Force.

Chapter VIII - International Obligations

44. There are a number of important respects in which the fundamental rights recognised by the present Constitution of Sri Lanka fall short of the standards required by the ICCPR. In particular:

(i) the Constitution does not recognise the right to life

(ii) the death penalty is not restricted to the most serious crimes, and is not prohibited for crimes committed by persons under 18

(iii) there is no prohibition of slavery or forced or compulsory labour

(iv) the provisions of the Constitution providing for freedom from arbitrary arrest, detention and punishment and for the prohibition of retrospective legislation, are weaker than the equivalent provisions of Articles 9 and 15 of the ICCPR

(v) there is no provision requiring persons deprived of liberty to be treated with humanity and dignity

(vi) the provisions of the Constitution governing criminal proceedings provide very much less protection than does Article 14 of the ICCPR

(vii) the Constitution contains no provisions equivalent to Article 17 (prohibition of arbitrary interference with privacy, family, home or correspondence) 23 (protection of families and the right to marry and 24 (protection of children) of the ICCPR.

45. Some of the fundamental rights which are recognised by the Constitution are subject to restrictions which go beyond those authorised by the ICCPR.

46. The present and previous Governments of Sri Lanka have been in serious breach of their obligations to ensure to all individuals subject to their jurisdiction the rights recognised by the ICCPR. These rights have been infringed by killings and torture by security forces; by detention without trial; delays in habeas corpus proceedings; and by inadequate conditions of detention.

47. Although introduction of a power of detention without trial could have been the subject of a lawful derogation under Article 4.1 of the ICCPR, the Government has failed to give the Secretary-General of the UN notice of any such derogation, as required by Article 4.3 of the ICCPR. In the absence of such a derogation, detention constitutes a breach of the obligations of the Government under Article 9.

48. The fact that hardly any prisoners are taken by either side in fighting between the security forces and the LTTE gives reason to believe that both sides are in breach of Common Article 3 of the Geneva Conventions, enquiring combatants who surrender or are incapacitated to be treated humanely.

Chapter IX - The Proposed New Constitution

49. The draft chapter on Fundamental Rights is a considerable improvement on the present Constitution and corrects many of the defects pointed out in para above. However, it still does not fully comply with ICCPR standards. In particular, it does not restrict the death penalty to the most serious crimes or exclude crimes committed by persons under 18, nor does it give effect to Article 23 and 24 of the ICCPR. Certain rights are subject to restrictions which are not permissible under the ICCPR, and two rights which are absolute under the present Constitution are subject to restriction under the draft.

50. The protection given by the draft new Constitution to fundamental rights is severely and unjustifiably restricted by the provision that "all existing written law or unwritten law shall be valid and operative

notwithstanding any inconsistencies with" the provisions recognising fundamental rights.

51. The power to invalidate new legislation on the ground of unconstitutionality for a period of two years from its enactment is a major improvement on the present situation (whereby a challenge can only be made at the Bill stage) but there is no sufficient justification for imposing a cut-off date at all.

52. The inclusion of certain economic and social rights in the Chapter on Fundamental Rights is welcome.

53. The proposed changes to the constitutional provisions for appointment and removal of the highest judiciary are improvements, but do not go far enough. We refer to our recommendations in paras, 26, 27 and 31 above. The proposed new removal procedure (involving both a judicial and a parliamentary committee) is inappropriate; the decision should be taken by a judicial committee alone.

54. In dealing with the adoption of a new Constitution, a responsibility rests on both the Government and the Opposition to act responsibly in the national interest and in accordance with existing constitutional procedures. In terms of human rights and the administration of justice, the new Constitution (although criticised above) is a considerable improvement on the present Constitution.

50TH ANNIVERSARY OF UNIVERSAL DECLARATION OF HUMAN RIGHTS

Janet Lim[*]

Distinguished guests, ladies and gentlemen,

It is indeed an honour for me, as the representative of UNHCR, to participate in the commemoration of the 50th Anniversary of the Universal Declaration of Human Rights. It has been said that after the United Nations Charter, the Declaration is probably the most important instrument adopted by the UN.

Let me begin by asking you a question. How many of you have actually read the Universal Declaration of Human Rights from beginning to end? In fact, I must confess that I had never read the whole thing until I had to prepare this presentation.

And when I did read it, I was struck by a paradox. On the one hand, the Declaration is amazingly crafted. It is idealistic; it is even profound. It is a rare embodiment of ideals that still ring true 50 years later, even in this our cynical and materialistic age. On the other hand, as one reads on, from article to article, the eyes begin to glaze over; the ideas run together. It is hard to keep the concentration - all the way to the thirtieth and last article. How is it that the one and same document excites, inspires, and - brings on a nap?

Let me try and give an answer. I think it is because most of us still think of human rights in the wrong way. We are accustomed to view the Declaration, and indeed all human rights, as lofty ideals, far removed from our daily life - beautiful - but distant, unattainable, and worse - complicated, controversial and even intimidating. Thinking about this in preparation for this event, I

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[*] Speech made at the inauguration of the human rights film festival organised by the Law & Society Trust to commemorate the 50th anniversary of the Universal Declaration of Human Rights, on 11th & 12th December 1998. Edited for publication.

came to a personal challenge, one I raise now for your consideration: how can we decrease the distance between ourselves and the Declaration? How can we integrate the Declaration into our lives and work? How can we take these beautiful ideals and make them daily reality?

This is both hard, and not so hard to do. It is not so hard if we start to think about human rights in a different way. We have thought of human rights too narrowly for far too long. Not only have we thought of them as lofty and unattainable, but we have also focused on only a few human rights, and only on a few ways to attain them. This has been primarily due to the work of many famous human rights groups of the last fifty years. They have concentrated on political rights, and have used a political approach. This approach involves uncovering violations, publicly condemning them, and thereby pressuring the perpetrators to stop committing them. These efforts have been very brave and important. It has saved many lives and changed the relationship between citizen and state, making the state accountable for the well-being of its citizens. Such work must continue.

But at the 50th anniversary of the Declaration, we should focus on the totality of human rights and at different ways of attaining them, including ways that make human rights less threatening and more real. This encompasses not only political rights, but also economic, social and cultural, that all of us enjoy, and in fact, take for granted. The rights that enable us to move about as we wish, sleep safely each night in a safe home; have enough food on the table, have meaningful work; send our children to school; go to the doctor; go to the temple; come to a gathering like this, discuss human rights, and watch interesting, even controversial movies, freely and openly. Be safe, be healthy, be productive, be happy, be ourselves, and live without fear.

In my work, I have seen many situations where these rights do not exist. A woman in Africa has been driven from her home because her family belongs to a particular ethnic group. She now has to walk 10 miles each day to the nearest water supply. The water she brings back home makes her children sick. Bandits who rape women wait for her along the road she takes. Right to life, right to physical security, right to housing, right to a basic standard of living that is healthy, and the right to public order are all being violated here. A child in Latin America suddenly finds that his parents cannot provide the family with enough food. He has to leave school and go out on to the streets to beg. He is picked up by someone and sexually assaulted. He is infected

with HIV. Right to life, right to health, right to education, right to freedom from exploitation, and the right to a basic standard of living are all being violated. A man in Asia goes out to work his field alone. His wife cannot join him because she has lost a leg to mine she stepped on in the same field. A band of men come along and accuse of him belonging to the other side, they force him to carry their equipment to their camp, where he is kept against his will for several weeks. He now fears the government will believe he is a rebel and arrest him. Again the right to physical security, the freedom of citizens to be protected from warfare, the right to work, freedom from slavery, freedom of association are being violated. The list goes on. These, or variations of them are daily events in the lives of hundreds, if not thousands, of people around the world.

Much of work that many of you here carry out responds to these sorts of human rights issues. You provide, or support the provision, of medical care, education, law and order and job creation. You write about those in need. You create movies, works of art, that depict their situation with power and grace and change attitudes from intolerance to compassion and acceptance. This is human rights work. And in my mind it should be a big part of the direction of future human rights work: finding very practical, concrete ways to make human rights real; offering a programme of activities and services that make human rights real; helping governments respond to the human rights needs of their citizens; making human rights less of a threat and more of a service - a very human service that everyone can understand, expect, and participate in.

The 50th anniversary of the Universal Declaration of Human Rights is a time to reflect seriously on how the Declaration might function as a tool by which to programme our professional lives and inspire our personal lives. We can use this opportunity to ask: which rights are affected by our work? What are we doing each day that strengthens one of the rights in the Declaration? How should we change our work and ourselves to better achieve one or more of the rights described? How do we, in very concrete ways, in the communities we live in and serve, become human rights activists? In sum, how do we take the Universal Declaration of Human Rights, and with it is as our guide, make the inspiration, practical and the practical, inspiring? How do we make human rights real?

Thank you.

FREE TRADE AGREEMENT BETWEEN SRI LANKA AND INDIA

During the state visit of President Chandrika Bandaranaike Kumaratunga to India, the President and the Prime Minister of India, Shri Atal Bihari Vajpayee signed the Free Trade Agreement between the Democratic Socialist Republic of Sri Lanka and the Republic of India on 28 December, 1998.

Preamble

The Government of the Republic of India and the Government of the Democratic Socialist Republic of Sri Lanka, (hereinafter referred to as the "Contracting Parties").

Considering that the expansion of their domestic markets, through economic integration, is a vital prerequisite for accelerating their processes of economic development.

Bearing in mind the desire to promote mutually beneficial bilateral trade.

Convinced of the need to establish and promote free trade arrangements for strengthening intra-regional economic co-operation and the development of national economies.

Further recognising that progressive reductions and elimination of obstacles to bilateral trade through a bilateral free trade agreement (hereinafter referred to as "The Agreement") would contribute to the expansion of world trade.

Have agreed as follows:

Article I - Objectives

1. The Contracting parties shall establish a Free Trade Area in accordance with the provisions of this Agreement and in conformity with relevant provisions of the General Agreement on Tariffs and Trade, 1994.

2. The objectives of this Agreement are:

   (i) To promote through the expansion of trade the harmonious development of the economic relations between India and Sri Lanka.

   (ii) To provide fair conditions of competition for trade between India and Sri Lanka.

   (iii) In the implementation of this Agreement the Contracting Parties shall pay due regard to the principle of reciprocity.

   (iv) To contribute in this way, by the removal of barriers to trade, to the harmonious development and expansion of world trade.

Article II - Definitions

For the purpose of the agreement:

1. "Tariffs" means basic customs duties included in the national schedules of the Contracting Parties.

2. "Products" means all products including manufactures and commodities in their raw, semi-processed and processed forms.

3. "Preferential Treatment" means any concession or privilege granted under this Agreement by a contracting Party through the elimination of tariffs on the movement of goods.

4. "The Committee" means the Joint Committee referred to in Article XI.

5. "Serious injury" means significant damage to domestic producers, of like or similar products resulting from a substantial increase of preferential imports in situations which cause substantial losses in terms of earnings, production or employment unsustainable in the short term. The examination of the impact on the domestic industry concerned shall also include an evaluation of other relevant economic factors and indices having a bearing on the state of the domestic industry of that product.

6. "Threat of serious injury" means a situation in which a substantial increase of preferential imports is of a nature so as to cause "serious injury" to domestic producers, and that such injury, although not yet existing is clearly imminent.

   A determination of threat of serious injury shall be based on facts and not on mere allegation, conjecture, or remote or hypothetical possibility.

7. "Critical circumstances" means the emergence of an exceptional situation where massive preferential imports are causing or threatening to cause "serious injury" difficult to repair and which calls for immediate action.

Article III - Elimination of Tariffs

The Contracting Parties hereby agree to establish a Free Trade Area for the purpose of free movement of goods between their countries through elimination of tariffs on the movement of goods in accordance with the provisions of Annexures A and B which shall form an integral part of this agreement.

Article IV - General Exceptions

Nothing in this Agreement shall prevent any Contracting Party from taking action and adopting measures, which it considers necessary for the protection of its national security, the protection of public morals, the protection of human, animal or plant life and health, and the protection of articles of artistic, historic and archaeological value, as is provided for in Articles XX and XXI of the General Agreement on Tariff and Trade, 1994.

Article V - National Treatment

The Contracting Parties affirm their commitment to the principles enshrined in Article III of GATT 1994.

Article VI - State Trading Enterprises

1. Nothing in this Agreement shall be construed to prevent a Contracting Party from maintaining or establishing a state trading enterprise as understood in Article XVII of General Agreement on Tariff and Trade, 1994.

2. Each Contracting Party shall ensure that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the obligations of the Contracting Parties, under this Agreement and accords non-discriminatory treatment in the import from and export to the other Contracting Party.

Article VII - Rules of Origin

1. Products covered by the provisions of this Agreement shall be eligible for preferential treatment provided they satisfy the Rules of Origin as set out in annexure C to this Agreement which shall form an integral part of this Agreement.

2. For the development of specific sectors of the industry of either Contracting Party, lower value addition norms for the products manufactured or produced by those sectors may be considered through mutual negotiations.

Article VIII - Safeguard Measures

1. If any product, which is the subject of preferential treatment under this Agreement, is imported into the territory of a Contracting Party in such a manner or in such quantities as to cause or threaten to cause serious injury in the importing Contracting Party, the importing Contracting Party may, with prior consultations except in critical circumstances, suspend provisionally without discrimination the preferential treatment accorded under the Agreement.

2. When action has been taken by either Contracting Party in terms of paragraph I of this Article, it shall simultaneously notify the other Contracting Party and the Joint Committee established in terms of Article XI. The Committee shall enter into consultations with the concerned Contracting Party and endeavour to reach mutually acceptable agreement to remedy the situation. Should the consultations in the Committee fail to resolve the issue within sixty days, the party affected by such action shall have the right to withdraw the preferential treatment.

Article IX - Domestic Legislation

The Contacting Parties shall be free to apply their domestic legislation to restrict imports, in cases where prices are influenced by unfair trade practices like subsidies or dumping. Subsidies and dumping shall be understood to have the same meaning as in the General Agreement on Tariff and Trade, 1994 and the relevant WTO Agreements.

Article X - Balance of Payment Measures

1. Notwithstanding the provisions of this Agreement, any Contracting Party facing balance of payments difficulties may suspend provisionally the preferential treatment as to the quantity and value of merchandise permitted to be imported under the Agreement. When such action has taken place, the Contracting Party, which initiates such action shall simultaneously notify the other Contracting Party.

2. Any Contracting Party, which takes action according to paragraph I of this Article, shall afford, upon request from the other Contracting Party, adequate opportunities for consultations with a view to preserving the stability of the preferential treatment provided under this Agreement.

Mechanisms for Settlement of Disputes

Joint Committee

1. A Joint Committee shall be established at Ministerial level. The Committee shall meet at least once a year to review the progress made

in the implementation of this Agreement and to ensure that benefits of trade expansion emanating from this Agreement accrue to both Contracting Parties equitably. The Committee may set up Sub-Committees and/or Working Groups as considered necessary.

2. In order to facilitate co-operation in customs matters, the Contracting Parties agree to establish a working group on customs related issues including harmonisation of tariff headings. The working group shall meet as often as required and shall report to the Committee on its deliberations.

3. The Committee shall accord adequate opportunities for consultation on representations made by any Contracting Party with respect to any matter affecting the implementation of the Agreement. The Committee shall adopt appropriate measures for settling any matter arising from such representations within 6 months of the representation being made. Each Contracting Party shall implement such measures immediately.

4. The Committee shall nominate one apex chamber of trade and industry in each country as the nodal chamber to represent the views of the trade and industry on matters relating to this Agreement.

Article XII - Consultations

1. Each Contracting Party shall accord sympathetic consideration to and shall afford adequate opportunity for consultations regarding such representations as may be made by the other Contracting Party with respect to any matter affecting the operations of this Agreement.

2. The Committee may meet at the request of a Contracting Party to consider any matter for which it has not been possible to find a satisfactory solution through consultations under paragraph 1 above.

Article XIII - Settlement of Disputes

1. Any dispute that may arise between commercial entities of the contracting parties shall be referred for amicable settlement to the nodal apex chambers. Such reference shall, as far as possible, be settled through mutual consultations by the Chambers. In the event of

an amicable solution not being found, the matter shall be referred to an Arbitral Tribunal for a binding decision. The Tribunal shall be constituted by the Joint Committee in consultation with the relevant Arbitration Bodies in the two countries.

2. Any dispute between the Contracting Parties regarding the interpretation and application of the provisions of this Agreement or any instrument adopted within its framework shall be amicably settled through negotiations failing which a notification may be made to the Committee by anyone of the contracting Parties.

Article XIV

This Agreement shall remain in force until either Contracting Party terminates this Agreement by giving six months written notice to the other of its intention to terminate the Agreement.

Article XV - Amendments

The Agreement may be modified or amended through mutual agreement of the Contracting Parties. Proposals for such modifications or amendments shall be submitted to the Joint Committee and upon acceptance by the Joint Committee, shall be approved in accordance with the applicable legal procedures of each Contracting Party. Such modifications or amendments shall become effective when confirmed through an exchange of diplomatic notes and shall constitute an integral part of the Agreement.

Provided however that in emergency situations proposals for modifications may be considered by the Contracting parties and if agreed, given effect to through an exchange of diplomatic notes.

Article XVI - Annexures to be finalised

Annexures D(i) and D(ii) (Negative Lists of India and Sri Lanka respectively), E (Items on which India has undertaken to give 100% tariff concession on coming into force of the Agreement) and F (Items on which Sri Lanka has undertaken to give 100% tariff concession on the coming into force of the Agreement) shall be finalised within a period 60 days of the signing of this Agreement. All the Annexures shall form an integral part of the Agreement.

Article XVII - Entry into Force

The Agreement shall enter into force on the thirtieth day after the Contracting Parties hereto have notified each other that their respective constitutional requirements and procedures have been completed.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at New Delhi this 28th day of December 1998 in two originals in the English language.

For the Government of the Democratic Socialist Republic of Sri Lanka.

For the Government of the Republic of India.

Annex - 'A'

The Government of India shall grant duty free access to all exports from Sri Lanka in respect of items freely importable into India, except on items listed in Annex 'D' of this Agreement, in accordance with the phase out schedule detailed below:

1. Upon entry into force of the Agreement:

   (a) Zero duty access for the items in Annexure 'E'.

   (b) 50% margin of preference on the remaining items except on items listed in Annexure 'D'. Concessions on items in Chapters 51 to 56, 58 to 60 and 63 shall be restricted to 25%.

2. The margin of preference on the items mentioned in (b) above shall be increased to 100% in two stages within three years of the coming into force of the Agreement, except for the textiles items referred to in 1(b) above.

Annex - 'B'

Government of Sri Lanka shall provide tariff concessions on exports from India to Sri lanka in respect of items freely importable into Sri Lanka, as detailed below:

1. Zero duty for the items in Annex 'F' - I, upon entering into force of the Agreement.

2. 50% margin of preference for the items in Annex 'F' - II, upon coming into force of the Agreement. The margin of preference in respect of these items shall be deepened to 70%, 90% and 100%, respectively, at the end of the first, second and third year of the entry into force of the Agreement.

For the remaining items except those in Annex 'B', the tariffs shall be brought down by not less than 35% before the expiry of three years and 70% before the expiry of the sixth year and 100% before the expiry of eight years, from the date of entry into force of the Agreement.

Annex - 'C'

Rules of Origin

1. Short title/commencement:

   These rules may be called the rules of determination of Origin of Goods under the Free Trade Agreement between the Democratic Socialist Republic of Sri Lanka and the Republic of India.

2. Application:

   These rules shall apply to products consigned from the territory of either of the Contracting Parties.

3. Determination of Origin:

   No product shall be deemed to be the produce or manufacture of either country unless the conditions specified in these rules are complied with

in relation to such products, to the satisfaction of the appropriate Authority.

4. Claim at the time of importation:

The importer of the product shall, at the time of importation:

(a) make a claim that the products are the produce or manufacture of the country from which they are imported and such products are eligible for preferential treatment under the Agreement, and

(b) produce the evidence specified in these rules.

5. Originating products:

Products covered by the agreement imported into the territory of a Contracting Party from another Contracting Party which are consigned directly within the meaning of rule 9 hereof, shall be eligible for preferential treatment if they conform to the origin requirement under anyone of the following conditions:

(a) Products wholly produced or obtained in the territory of the exporting Contracting Party as defined in rule 6; or

(b) Products not wholly produced or obtained in the territory of the exporting Contracting Party, provided that the said products are eligible under rule 7 or rule 8.

6. Wholly produced or obtained:

Within the meaning of rule 5(a), the following shall be considered as wholly produced or obtained in the territory of the exporting Contracting Party:

(a) raw or mineral products extracted from its soil, its water or its sea bed;

(b) vegetable products harvested there;

(c) animals born and raised there;

(d) products obtained from animals referred to in clause (c) above;

(e) products obtained by hunting or fishing conducted there;

(f) products of sea fishing and other marine products from the high seas by its vessels;

(g) products processed and/or made on board its factory ships exclusively from products referred to in clause (f) above;

(h) used articles collected there, fit only for the recovery of raw materials;

(i) waste and scrap resulting from manufacturing operation conducted there;

(j) products extracted from the sea bed or below sea bed which is situated outside its territorial waters, provided that it has exclusively exploitation rights;

(k) goods produced there exclusively from the products referred to in clauses (a) to (j) above.

7. Not wholly produced or obtained:

(a) Within the meaning of rule 5(b), products worked on or processed as a result of which the total value of the materials, parts or produce originating from countries other than the Contracting Parties or of undermined origin used does not exceed 65% of the f.o.b. value of the products produced or obtained and the final process of manufacture is performed within the territory of the exporting Contracting Party shall be eligible for preferential treatment, subject to the provisions of clauses (b), (c), (d) and (e) of rule 7 and rule 8.

(b) Non-originating materials shall be considered to be sufficiently worked or processed when the product obtained is classified in

a heading, at the four digit level, of the harmonised Commodity Description and Coding System different from those in which all the non-originating materials used in its manufacture are classified.

(c) In order to determine whether a product originates in the territory of a Contracting Party, it shall not be necessary to establish whether the power and fuel, plant and equipment, and machines and tools used to obtain such products originate in third countries or not.

(d) The following shall in any event be considered as insufficient working or processing to confer the status of originating products, whether or not there is a change of heading:

(1) Operations to ensure the preservation of products in good condition during transport and storage (ventilation, spreading out, drying, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations);

(2) Simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, painting, cutting up.

(3) (i) Changes of packing and breaking up and assembly of consignments;

(ii) simple slicing, cutting and repacking or placing in bottles, flasks, bags, boxes, fixing on cards or boards etc., and all other simple packing operations.

(4) The affixing of marks, labels or other like distinguishing signs on products or their packaging;

(5) simple mixing of products, whether or not of different kinds, where one or more components of the mixture do

not meet the conditions laid down in these Rules to enable them to be considered as originating products;

(6) simple assembly of parts of products to constitute a complete product;

(7) a combination of two or more operations specified in (a) to (i);

(8) slaughter animals;

(e) the value of the non-originating materials, parts or produce shall be;

(i) The c.i.f. value at the time of importation of the materials, parts or produce where this can be proven; or

(ii) The earliest ascertainable price paid for the materials, parts or produce of undetermined origin in the territory of the Contracting Parties where the working or processing takes place.

8. Cumulative rules of origin:

In respect of a product, which complies with the origin requirements provided in rule 5(b) and is exported by any Contracting Party and which has used material, parts or products originating in the territory of the other Contracting Party, the value addition in the territory of the exporting Contracting Party shall be not less than 25 per cent of the f.o.b. value of the product under export subject to the condition that the aggregate value addition in the territories of the Contracting Parties is not less than 35 per cent of the f.o.b. value of the product under export.

9. Direct consignment:

The following shall be considered to be directly consigned from the exporting country to the importing country:

(a) If the products are transported without passing through the territory of any country other than the countries of the Contracting Parties.

(b) The products whose transport involves transit through one or more intermediate countries with or without transhipment or temporary storage in such countries; provided that

(i) the transit entry is justified for geographical reasons or by considerations related exclusively to transport requirements;

(ii) the products have not entered into trade or consumption there; and

(iii) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition.

10. Treatment of packing:

When determining the origin of products, packing should be considered as forming a whole with the product it contains.

However, packing may be treated separately if the national legislation so requires.

11. Certificate of origin:

Products eligible for a Certificate of origin in the form annexed shall support preferential treatment issued by an authority designated by the Government of the exporting country and notified to the other country in accordance with the certification procedures to be devised and approved by both the Contracting Parties.

The following are the salient features of the Agreement

1. ***Elimination of tariffs***
By India

(i) *Zero duty on around 1000 items upon entering into force of the Agreement - the list is to be finalised within 60 days of signing the Agreement.*

(ii) *50% margin of preference upon coming into force of the Agreement on all items, except for those in the Negative List.*

(iii) *Tariffs to be brought down to zero over a period of three years.*

(iv) *Concessions on textiles items restricted to 25%. Four Chapters under the textiles sector retained in the Negative List (Chapter 50, 57, 61 & 62).*

By Sri Lanka

(i) *Zero duty on about 300 items upon entering into force of the Agreement.*

(ii) *50% margin of preference for about 600 items upon coming into force of the Agreement. The preference to be deepened to 100% within three years.*

(iii) *For the remaining items, except for those in the Negative List, preference to be deepened to 100% within eight years.*

2. ***Negative Lists:***

A Sri Lankan and an Indian Negative List shall constitute Annexure D to the Agreement. The Indian Negative List would be a short one comprising roughly 400 items mainly including garments, petro-chemicals, alcoholic spirits and coconuts and coconut oil. The Negative Lists and the list of items on which both sides will extend tariff concessions are to be finalised within sixty days from the date of the signing of the Agreement.

Items in the Negative Lists shall not be subject to tariff concessions.

3. ***Rules of Origin:***

Domestic value addition requirement has been kept at 35%. If the raw material/inputs are sourced from each other's country, this is reduced to 25% within the overall limit of 35%. The criterion of 'substantial transformation' has been provided in the Rules.