FREE TRADE AGREEMENT
BETWEEN
THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA
AND
THE REPUBLIC OF INDIA

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 cooperation and the development of national economies.

FURTHER RECOGNIZING 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 Tariff 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 this 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 more 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 & 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 endeavor 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 Contracting 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 1 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.

Article XI
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 cooperation in customs matters, the Contracting Parties agree to establish a Working Group on customs related issues including harmonization 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 operation 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 references 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 any one of the Contracting Parties.

Article XIV
Duration and Termination of Agreement

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 finalized

Annexure 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 of 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 where of 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.
3. For the remaining items except those in Annex 'D' 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 Socialistic 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 any one 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[1] extracted from its soil, its water or its sea bed;
(b) vegetable products [2] harvested there;
(c) animal 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 [3 ,4] ;
(g) products processed and/or made on board its factory ships exclusively from products referred to in clause (f) above [4,5];
(h) used articles collected there, fit only for the recovery of raw materials;
(i) waste and scrap resulting from manufacturing operations conducted there;
(j) products extracted from the seabed or below seabed which is situated outside its territorial waters, provided that it has exclusive 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 undetermined 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 re-packing 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 (f);

(8) Slaughter of 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 transshipment or temporary storage in such countries; provided that

(i) the transit entry is justified for geographical reason 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.

12. Prohibitions :-

Either country may prohibit importation of products containing any inputs originating from States with which it does not have economic and commercial relations;

13. Co-operation between contracting parties

(a) The Contracting Parties will do their best to co-operate in order to specify origin of inputs in the Certificate of origin.

(b) The Contracting Parties will take measures necessary to address, to investigate and, where appropriate, to take legal and/or administrative action to prevent circumvention of this Agreement through false declaration concerning country of origin or falsification of original documents.

(c) Both the Contracting Parties will co-operate fully, consistent with their domestic laws and procedures, in instances of circumvention or alleged circumvention of the Agreement to address problems arising from circumvention including facilitation of joint plant visits and contacts by representatives of both Contracting Parties upon request and on a case-by-case basis.

(d) If either Party believes that the rules of origin are being circumvented, it may request consultation to address the matter or matters concerned with a view to seeking a mutually satisfactory solution. Each party will hold such consultations promptly.

14. Review

These rules may be reviewed as and when necessary upon request of either Contracting Party and may be open to such modifications as may be agreed upon.

Notes:

1. Include mineral fuels, lubricants and related materials as well mineral or metal ores
2. Includes agricultural and forestry products
3. "Vessels" shall refer to fishing vessels engaged in commercial fishing, registered in the country of the Contracting Party and operated by citizen or citizens of the Contracting Party or partnership, corporation or association, duly registered in such country, at least 60 per cent of equity of which is owned by a citizen and/or Government of such Contracting Party or 75 per cent by citizens and/or Governments of the Contracting Parties. However, the products taken from vessels, engaged in commercial fishing under Bilateral Agreements which provide for chartering/leasing of such vessels and/or sharing of catch between Contracting Party will also be eligible for preferential treatment.
4. In respect of vessels or factory ships operated by Government agencies, the requirements of flying the flag of the Contracting Party does not apply.
5. For the purpose of this Agreement, the term "factory ship" means any vessel, as defined, used for processing and/or making on board products exclusively from those products referred to in clause (f) of Rule 6.
6. Cumulation as implied by Rule 8 means that only products which have acquired originating status in the territory of one Contracting Party may be taken into account when used as inputs for a finished product eligible for preferential treatment in the territory of the other Contracting Party.

[1] . Includes mineral fuels, lubricants and related materials as well as mineral or metal or mental ores

[2] . Include agriculture and forestry products

3 "Vessels" shall refer to fishing vessels engaged in commercial fishing, registered in the country of the Contracting Party or partnership, corporation or association, duly registered in such country, at least 60 per cent of equity of which is owned by a citizen or citizens and/or government of such Contracting Party or 75 per cent by citizens and/or Government of the Contracting Parties. However, the products taken from vessels, engaged in commercial fishing under Bilateral Agreements which provide for chartering/leasing of such vessels and/or sharing of catch between Contracting Party will also be eligible for preferential treatment.

[4] In respect of vessels or factory ships operated by Government agencies, the requirements of flying the flag of the Contracting Party does not apply.

[5]. For the purpose of this Agreement, the term "factory ship" means any vessel, as defined, used for processing and/or making on board products exclusively from those products referred to in clause (f) of Rule 6.

6. Cumulation as implied by Rule 8 means that only products which have acquired originating status in the territory of one Contracting Party may be taken into account when used as inputs for a finished product eligible for preferential treatment in the territory of the other Contracting Party.