

**Trade Policy Review Body**  
**3 and 5 March 2004**

Original: English/  
anglais/  
inglés

**TRADE POLICY REVIEW**

**SRI LANKA**

Minutes of Meeting

Addendum

*Chairperson: H.E. Mr. Milan Hovorka (Czech Republic)*

This document contains the advance written questions, and replies provided by Sri Lanka.<sup>1</sup>

**Organe d'examen des politiques commerciales**  
**3 et 5 mars 2004**

**EXAMEN DES POLITIQUES COMMERCIALES**

**SRI LANKA**

Compte rendu de la réunion

Addendum

*Président: S.E. M. Milan Hovorka (République tchèque)*

Le présent document contient les questions écrites communiquées à l'avance et les réponses fournies par Sri Lanka.<sup>1</sup>

**Órgano de Examen de las Políticas Comerciales**  
**3 y 5 de marzo de 2004**

**EXAMEN DE LAS POLÍTICAS COMERCIALES**

**SRI LANKA**

Acta de la reunión

Addendum

*Presidente: Excmo. Sr. Milan Hovorka (República Checa)*

En el presente documento figuran las preguntas presentadas anticipadamente por escrito, junto con las respuestas facilitadas por Sri Lanka.<sup>1</sup>

---

<sup>1</sup> In English only./En anglais seulement./En inglés solamente.



**ADVANCE WRITTEN QUESTIONS BY MEMBERS<sup>1</sup> AND  
REPLIES PROVIDED BY SRI LANKA**

**CONTENTS**

	<i>Page</i>
1. Economic Environment and Trade Policy Developments	5
1.1 New Economic Policy Objectives	5
1.2 Diversification of Exports and Markets	5
1.3 Labour Market Reforms	6
1.4 State-owned Enterprises and Privatization	7
1.5 Regional Trade Agreements	7
1.6 Corruption	8
2. Trade Policy Regime	8
2.1 Tariff Policy	8
2.2 Non-Tariff Barriers	11
2.3 Measures Affecting Exports	11
2.4 Import Licenses	12
2.5 Quantitative Restrictions	15
2.6 Import Procedures	15
2.7 Customs Procedures	16
2.8 Sanitary and Phytosanitary Standards	18
2.9 Technical standards	20
2.10 Contingent Trade remedies	21
2.11 Sri Lanka's Trade Strategy and Trade Policy	21
2.12 Regulatory Policy – Consumer Protection	22
2.13 Government Procurement	23
2.14 Intellectual Property Rights	25
2.15 Copyright and Related Rights	30
2.16 Patents	30
2.17 Trademarks	31
3. Sectoral Policies	31
3.1 Tariff on Agricultural and Food Products	31
3.2 Agriculture Policy	33
3.3 Industry and Investment	34
3.4 Special tax incentives	34
3.5 Telecommunications	35
3.6 Electricity	39
3.7 Financial and distribution services and Insurance	40
3.8 Computer and Related Services	42
3.9 Tourism	42

---

<sup>1</sup> From Australia; Hong Kong, China; Japan; New Zealand; the Republic of Korea; the European Union; the Separate Customs Territory of Taiwan Penghu, Kinmen and Matsu; Canada; and the United States.



## **1. Economic Environment and Trade Policy Developments**

### **1.1 New Economic Policy Objectives [Regaining Sri Lanka]**

**From Japan – Government Report - Economic Policy Developments New Economic Policy Objectives (WT/TPR/S/128, page 64, paragraph 257)**

1.1.1 We note that the time consumed by dispute settlement cases is an impediment for carrying out business in Sri Lanka. According to the Government Report “commercial legal reforms” have been raised as one of the major reforms on schedule.

- (a) Do such “commercial legal reforms” include the improvement of dispute setting system for business?

*In the new Company Law which is being drafted at present includes specific provisions for expeditious resolution of disputes by arbitration and other means.*

*Sri Lanka also has enacted a new Consumer Affairs Authority Act, in addition to the existing means of addressing commercial disputes, a Banking Ombudsman has already been appointed and an insurance ombudsman will be appointed shortly.*

- (b) If so, please indicate the specific contents of the improvement.

*At present existing system causes undue delay. Proposed changes will redress this situation effectively.*

### **1.2 Diversification of Exports and Markets**

**From U.S.A.**

1.1.2 Sri Lanka is heavily dependent upon a few Western industrialised markets for its exports, with the US market alone accounting for 38 per cent of Sri Lanka’s exports. According to the Government Report, Asia accounts for only ten percent of Sri Lanka’s exports and the SAARC region (which includes Bangladesh, Bhutan, India, the Maldives, Nepal and Pakistan) accounts for only 5 per cent of Sri Lanka’s exports. Textiles and garments comprise over fifty per cent of Sri Lanka’s exports, but only 5.3 per cent of its gross domestic product, of which 94 per cent of the exports are destined to the United States and European Union.

- (a) We note that Sri Lanka is engaged in efforts to negotiate regional trade agreements with its neighbours to enhance its export opportunities. Does Sri Lanka have a complimentary multilateral strategy to improve market access opportunities for its products in neighbouring markets?

*While we pursue bilateral and regional agreements with our neighbors, we strive to develop a multilateral strategy to gain greater market access in those countries.*

- (b) We note in Table II.2 of the Secretariat report that Sri Lanka has not been successful in utilising its tea and garment quota allocations in the India-Sri Lanka Free Trade Agreement (II.FTA), because of restricted access to Indian ports and lack of competitiveness for the products. Given the importance of these products to the Sri Lanka export earnings, what steps is Sri Lanka taking to enhance the competitiveness of these products?

*India has agreed to increase the number of ports from two to five for tea. Currently, Sri Lanka is in the process of negotiating with India to address the issue of other Non-Tariff Barriers affecting Sri Lanka's exports related to tea and garment products.*

### **1.3 Labour Market Reforms**

#### **From Japan – Government Report**

#### **4. Economic Policy Developments**

#### **4.1 Macro Economic Policy Developments**

#### **4.1.2 Recent Developments in Labour Market (WT/TPR/S/128, pages 32 to 33, paragraphs 144 to 150)**

1.3.1 We note that foreign direct investment is prevented, partly because Sri Lanka's labour laws provide advantages for employees, such as making it too difficult for employers to dismiss their employees. According to the Government Report, with a view to creating a flexible labour market, Sri Lanka has made progress in amending the existing labour laws and in implementing them.

(a) Please indicate the specific plans for doing so.

*Sri Lanka considers its work force as the most valuable asset of the country. Therefore, we have always made efforts to strike a balance between employment security of workers as well as interests of investors. In doing so, the government has recently amended a number of labour laws including termination of Employment Act of Workmen and Industrial Disputes Act.*

*Termination of Employment Act was amended, allowing employers greater flexibility in retrenching staff. Accordingly, the quantum of compensation has been re-scheduled whereby reducing the maximum compensation limit. The maximum amount of compensation is now fixed at 30 months wage instead of 50 months wage. This formula of payment of compensation was gazetted on 31<sup>st</sup> December 2003 and now in force.*

*However, it is noteworthy to state that with all these positive steps there are instances where investors have closed down their projects without any intimation to the employees or the relevant authorities and also defaulting statutory benefits entitled by the employees, eg: EPF, ETF, and wages.*

#### **From the Republic of Korea**

#### **On the Government Report (Page 32, Para. 147)**

1.3.2 In our understanding, laying off a workman requires his agreement and the prior approval of the Commissioner of Labour and the employers are supposed to pay compensation to the laid-off employees. Further softening of the regulation on the layoff procedure and amending the related articles of the laws concerning the compensation for laid-off employees would probably increase the flexibility of the labour market in Sri Lanka and encourage more foreign investment.

(a) What is the view of the Government of Sri Lanka on this opinion?

*Please refer the responses provided above in section 1.3.1.*

(b) It is our feeling that too much authority is concentrated in the Office of the Commissioner of Labour. What is the view of the Government of Sri Lanka on the suggestion of providing some limitations on the authority of the Commissioner, for example, by allowing for appeals to the judiciary about decisions by the Commissioner?

*Please refer the responses provided above in section 1.3.1.*

#### **1.4 State-owned Enterprises and Privatization**

##### **From Japan**

###### **Secretariat Report –**

- (2) Measures Affecting Production and Trade**
- (vi) State-Owned Enterprises and Privatization (WT/TPR/S/128, pages 65 to 66, paragraphs 127 to 132)**

1.4.1 Japan welcomes that Sri Lanka has promoted privatization, which encourages foreign direct investment. However, according to the Secretariat Report, state involvement remains strong, despite progress of privatization in some areas.

- (a) Please indicate the specific plans for completing a full privatization of the areas stated in the Secretariat Report.

*At present only 10% of business undertakings have state involvement. This too will be privatized before end 2004. The exceptions could be the two state banks.*

- (b) Please also indicate the areas that areas planned for privatization, other than those above, if such areas exist.

*Please see the above response.*

#### **1.5 Regional Trade Agreements**

##### **From U.S.A.**

1.5.1 Regional trade agreements appear to play an important role in Sri Lanka's trade policy strategy. Perhaps the most important such agreement for Sri Lanka is India-Sri Lanka Free Trade Agreement (ILFTA).

- (a) Since the signing of the ILFTA on 28 December 1998, have Sri Lanka and India taken steps to expand coverage of the agreement, by reducing the negative list of products cited in footnote 46 of the Secretariat report? Has Sri Lanka been able to meet its schedule for the 8-year schedule for the elimination of tariffs for covered products?

*The elimination is on schedule.*

- (b) We note in the Government report that Sri Lanka and India have decided to expand the scope of ILFTA to cover trade in services, investment and cooperation to form a Comprehensive Economic Partnership Agreement. What is the current status of the services negotiations? Given the large public sector involvement in the Sri Lanka economy, has consideration been given to expanding ILFTA to include government procurement?

*Liberalization of services is being discussed under the Comprehensive Economic Partnership Agreement, (CEPA). Inclusion of provisions relating to government procurement in to CEPA will be considered in order to broaden the scope.*

1.5.2 Sri Lanka is a party or is negotiating participation in several regional trade agreements, which appear to provide overlapping coverage, under different terms, to some of the same trading partners. For example, the South Asian Free Trade Area (SAFTA) will include Bangladesh, Bhutan, India, the Maldives, Nepal and Pakistan; the Bangkok Agreement includes Bangladesh, China, India, Korea and Laos; and the BIMST-Economic Cooperation agreement includes Bangladesh, India, Myanmar and Thailand. In addition, Sri Lanka has or is developing bilateral agreements with India, Egypt, Singapore and Bangladesh.

(a) What is the relationship of these various agreements to each other?

*The intention of all agreements is to improve market access and promote of freer trade within the region. Whenever overlapping concessions are present deepest concession is applied.*

(b) How does Sri Lanka's participation in the SAFTA, Bangkok Agreement and BIMST affect its ability to conclude free trade agreements within the region and beyond?

*Those agreements are necessary precursors for free trade in Asia as it provides invaluable experience to policy makers and market participants.*

## **1.6 Corruption**

### **From the EU**

1.6.1 According to the recent report by Transparency international, Sri Lanka has made progress in fighting corruption. However, the EC continues to receive complaints over persistent corruption among government officials. What systems are being used or foreseen to address this problem?

*The Bribery and Corruption Commission functions as an independent body and is comprised of retired supreme court and other judges of repute and integrity.*

## **2. Trade Policy Regime**

### **2.1 Tariff Policy**

#### **From the EU**

A transparent and efficiently working tariffs regime remains very important for enhancing trade and furthering economic development. In the case of Sri Lanka it appears that a rationalization of the tariff structure has not been attained and there remains a number of escalating tariffs. Furthermore, a number of other excise duties, levies and taxes are imposed on imported products.

*Sri Lanka's tariff structure has been rationalized to a great extent. Broadly, raw materials are placed at lower tariff rates while finished goods are placed at higher rates. The present rate structure was achieved with prior periodical reviews by several Presidential Commissions on Tariffs and Trade.*

*Tariff escalation is a global phenomenon. During last 5 years, Sri Lanka's levels of tariff escalations has declined.*

*Sri Lanka imposes only four types of levies, - customs duties, VAT, port and airport development levy and excise duty. Excise duty is applicable to less than 10 items.*



2.1.1 When does Sri Lanka expect to rationalize its tariff structure? What new rate structure is likely to be proposed? Does Sri Lanka envisage continuing with the conversion of specific duties to ad valorem duties?

*With a view to rationalizing the tariff structure on a continuous basis, a permanent Tariff Advisory Council (TAC) has been appointed to make recommendation on rationalization, simplification and reduction of tariff.*

*An integral part of rationalization is conversion of specific duties to ad valorem duties in the context of overall tariff rationalization.*

2.1.2 When does Sri Lanka intend to remove the import surcharge of 20% on imported goods which was supposed to be phased out by end 2003?

*The import surcharge was brought down from initial 40% in 2001 to 10% with effect from 2004. Surcharge will be phased out in the near future.*

2.1.3 When does Sri Lanka intend to remove the Port and Airport Development Levy (1% on CIF value) levied on all imports and a tax paid by all exporters (except gems, jewellery and diamonds) of 0.75% on their imported inputs, both of which act as constraints to exporters, in particular in the clothing industry?

*PAL was introduced in 2002 in lieu of stamp duty. PAL has been reduced to 0.5% on imports for export purposes.*

2.1.4 Although tariff rates for intermediate goods and raw materials have come down, there is room for high effective protection rates for some sectors producing for the domestic market. It could be argued that the effect is not only that productivity improvements in those sectors are not coming through, but also that the costs of non-tradable, such as water and electricity, become higher. The latter effect is detrimental to the international competitiveness of Sri Lankan exporters. What does Sri Lanka intend to do to reduce this anti-export bias?

*In the context of the country's development needs, Sri Lanka has undertaken a programme of trade/tariff liberalization which includes rationalization, simplification and reduction over the years. Most of these reforms are designed to address this question, among others, of reducing the anti-export bias. Further, the present economic reform programme under the "Regaining Sri Lanka (RSL)" envisages the broadening the scope of competitive environment including in those of the utility sector.*

#### **From New Zealand**

2.1.5 New Zealand notes with disappointment that the planned two-band tariff system has not been attained mainly because of revenue considerations and political pressure from protected producers and other interest groups. Of further disappointment is the decision by the Sri Lankan Government firstly to introduce a 40 percent import surcharge and secondly, not to phase it out by the end of 2003.

How does Sri Lanka justify the surcharge under its current bindings?

*The final affect of the surcharge is well below the current bindings. The surcharge has been gradually reduced from 40% in 2001 to 10% in 2004, and will be phased out in the near future.*

2.1.6 Given the comment by the Secretariat (*Chapter IV, Para 1*) that less protection on agricultural goods and other forms of assistance together with the adoption of a more predictable trade policy regime would lead to a better allocation of resources, thus raising productivity and increasing living standards, is the Sri Lankan Government giving further consideration to removing the import surcharge and moving to a simplified two tariff system? If so, when?

*Sri Lanka expects to phase out the surcharge in the near future.*

**From U.S.A.**

2.1.7 It is our understanding that the Parliament passed new tariff rates and import surcharges in its 2004 budget proposal.

- (a) Have these changes been enacted? Have they entered into effect? If not, what items are still pending and when the changes will be enacted?

*Yes. Gazette notification has been issued giving effect to the proposals.*

The import surcharge applicable to most goods was reduced from 40 per cent in 2001 to 20 per cent in 2003 and has been 10 per cent since the beginning of 2004.

- (b) Does the Government have a plan for the elimination of the remaining 10 per cent import surcharge?

*Yes. To be phased out in the near future.*

2.1.8 Reform of tax system - We note Government's strategy to achieve a simple, broad-based and transparent tax structure with a view to improving tax administration and creating an environment conducive to promoting socio-economic development. Ideally, reform of the tax system will reduce Sri Lanka's current reliance on revenues from customs duties (projected at 14 per cent in 2004) and will allow Sri Lanka to rationalize its tariff structure and reduce its tariff levels.

- (a) As part of its taxation reform process, Sri Lanka intended to shift from a two band VAT system to a uniform VAT rate of 15 per cent, as from 1 January 2004. Has the uniform VAT rate of 15 per cent entered into force?

*Yes, at present, it is in force.*

**From New Zealand**

2.1.9 New Zealand commends the Sri Lankan Government for reduction its average applied tariff on agricultural products from 27.6 to 21.3 percent between 1998 and 2003. However, New Zealand notes that this level of protection is relatively high compared to the average applied tariff in the industrial sector (8.0 percent) and Sri Lanka's overall average tariff of 9.8 percent. As noted in the Secretariat Report (*Chapter III, Para 17*), Sri Lanka's tariff shows a clear pattern of escalation in certain industries, particularly for agricultural and forestry related products (*Chart III.2, P32*).

- (a) What future changes to tariff policy is Sri Lanka currently considering with respect to these issues?

*Tariff escalation and high tariff levels in agriculture are common occurrences and are global phenomena. Nevertheless, tariff levels applied on Sri Lanka's agriculture are low compared to many other countries. Sri Lanka wishes to state that between the two periods of comparison the*

*level of tariff escalation has declined. With a view to addressing these concerns, a Tariff Advisory Council has been appointed to make recommendations on future tariff policy.*

2.1.10 New Zealand also notes with disappointment the small increase from 19 to 20.7 percent in the average tariff applied to dairy products between 2001 and 2003. Given the Sri Lankan Government's policy to move towards a low standardized tariff structure (*Secretariat Report, Chapter III, Para 19*), New Zealand hopes that significant reductions of these tariff rates will be made in the future.

*As we have explained rationalization, simplification and reduction of tariff over the years is a task entrusted with the TAC.*

2.1.11 Although the Secretariat notes that tariff escalation has promoted the development of a manufacturing sector, what consideration has Sri Lanka given to the impact of tariff escalation on end-users, both processors and consumers, especially their ability to purchase quality processed agricultural and forestry products at internationally competitive prices?

*TAC is at present studying the tariff structure and its impact on both consumers and industry. TAC is required to make suitable recommendations.*

2.1.12 The Secretariat Report (*Chapter III, Para 25*) notes that Sri Lanka replaced a number of ad valorem duties relating to agricultural products with specific duties to provide domestic farmers with adequate protection, minimizing price risk due to seasonal fluctuation of commodity prices.

- (a) What measures has Sri Lanka put in place to ensure that the level of protection provided by specific duties does not exceed the bound ad valorem rate in Sri Lanka's WTO Schedule of Commitments?

*When deciding specific duties, maximum caution has been exercised to fix the final custom duty to be within the bound level.*

## **2.2 Non-Tariff Barriers**

### **From U.S.A.**

2.2.1 When Sri Lanka has taken numerous steps to open its economy, non-tariff trade barriers continue to impose high economic costs.

- (a) What efforts are underway to address non-tariff barriers, such as import licensing and certification requirements?

*Sri Lanka has very few NTBs imposed for non-economic reasons, and to achieve objectives set forth in Articles XX and XXI of the GATT. Those are also being reviewed periodically to prevent them acting as trade barriers.*

## **2.3 Measures Affecting Exports**

### **From U.S.A.**

2.3.1 Does the Export Development Board ('EDB') provide financing or other kinds of support to exporters, other than the subsidized loans, and grants to direct, indirect, and potential exporters with a maximum of Rs. 1 million per project, described in paragraph 86 of the Secretariat report? If so, please describe the types of financing or tax incentives available through the EDB.

*At present, the EDB does not provide subsidized loans, grants or financial assistance to exporters. In addition to its general skills, product supply and market development programmes, EDB implements following assistance scheme for SMEs with the objective of fostering regional development.*

- (a) *Assistance to handloom exporters (10% of the FOB) value of exports affected for a two year period and will be phased out on 31<sup>st</sup> December 2005. The total payment in 2003 is only US\$ 0.16 million and 12 exporters were assisted.*
- (b) *Assistance for exporters own marketing efforts overseas or for the export oriented SMEs. In 2003, SMEs were assisted to the amount of US\$ 0.01 million.*
- (c) *Tax Incentives:*

*Tax incentives for exporters are not provided under EDB law.*

2.3.2 According to paragraph 88 of the Secretariat report, duties paid 'on imported materials used to manufacture and process goods' in Sri Lanka may be partially or fully rebated or refunded once the final good is exported.

- (a) Is the drawback scheme applied solely to duties levied on inputs consumed in the production process of another product, or does it also apply to duties levied on capital goods?

*This drawback scheme is not applicable to the capital goods. It is only applicable to duties levied on inputs consumed in the production process of another product.*

## **2.4 Import Licenses**

### **From the EU**

2.4.1 According to the report of the Government and the report of the WTO Secretariat, Sri Lanka imposes import licenses on a large number of products (474-546 products) under the Special Licensing Scheme for reasons related to national security, health and environment (those referred to in GATT Articles XX and XXI), as well as economic reasons. This creates an additional burden on imports and acts as an obstacle to trade.

Could Sri Lanka please provide detailed information on the formal procedure for issuing licenses?

*Sri Lanka has in place import licensing requirement to achieve the objectives set forth in Articles XX and XXI of the GATT. The Department of Export and Import Control has adopted formal procedures for issuing licenses. Accordingly, any person desirous of obtaining a license to import an item listed in the 'Commodity List' published by the Department shall make an application to the Controller in respect of each product, which he intends to import. Generally, the Controller may request the following documents:*

1. *The Proforma Invoice*
2. *Approval from the relevant government institution, which authorises the importation.*
3. *The nominal fee depending on the case.*

*When the Controller receives the above documents and the necessary fees, the import licenses are generally issued in all cases within two normal working days.*

**From Canada**

2.4.2 Please specify which items are subject to automatic licensing and which are not.

*Sri Lanka maintains a system of automatic licensing which applies to items referred to in Notification No.G/LIC/N/LKA/I*

**From the EU**

2.4.3 Would Sri Lanka consider removing licenses for products that are already covered by domestic legislation already requiring products to meet requirements related to health and safety (e.g. sanitary and phyto-sanitary requirements and technical regulations and standards), as such requirements cover the health, safety and environment protection objectives mentioned in GATT Article XX?

*At present following agencies administer requirements under domestic legislation depending on the type of good being imported.*

- *The Ministry of Health – The Food Act No.26 of 1980 and its subsequent amendments, which contain the laws and regulations for food safety;*
- *Ministry of Agriculture – The Plant Protection Act No.35 of 1999 and its subsequent amendments, which contain the laws and regulations for protection of plants, fresh fruits and vegetables, soil and other organisms;*
- *The Department of Animal Production and Health – The Animal Diseases Act No.52 of 1992 and its subsequent amendments, which contain the laws and regulations for protection of animal health;*
- *Ministry of Commerce and Consumer Affairs – Imports and Exports (Control) Act No. 1 of 1969 and its subsequent amendments, which contain regulations on articles that can not be imported in to Sri Lanka, if they do not conform to the Sri Lanka Standards set out by Sri Lanka Standard Institute;*
- *The Ministry of Health – The Cosmetics, Devices and Drugs Act no. 27 of 1980 and its subsequent amendments, which contain the provisions for regulating imports and local production of cosmetics, devices and drugs, through a system of registration.*

*The licensing authority, Department of Import and Export Control, acts as a central agency coordinating those activities. This procedure will be reviewed to minimize undue difficulties and duplication.*

**From U.S.A.**

2.4.4 We understand that importers have been discouraged from applying for licenses to import US chicken.

- (a) Please describe the requirements for imports of poultry and meat products and rationale for import restrictions of such products.

*Sri Lanka has a control mechanism in place to prevent introduction of exotic animal diseases into the country through import of livestock and livestock products. The legal back up for such a system is provided by the Animal Diseases Act No. 59 of 1992.*

2.4.5 The Secretariat Report describes import licensing as a policy instrument used to control domestic supply and prices, particularly on agricultural products. Comment

*Import licensing is not used as a policy instrument at present to control domestic supply and prices in general, except in a very few instances.*

- (a) Please explain how the above-mentioned practices are consistent with WTO disciplines.

*Please refer to at responses provided in Section 2.4.1, 2.4.2 and 2.4.3*

- (b) What steps are being taken to adopt less trade-distorting practices?

*Please refer to at responses provided in Section 2.4.1, 2.4.2 and 2.4.3.*

- (c) Which sectors within agriculture are subject to such policy?

*Please refer to at responses provided in Section 2.4.1, 2.4.2 and 2.4.3.*

- (d) How does Sri Lanka intend to inform other WTO members of when licenses are open?

*The government's intention to bring such items under import licenses, which are of temporary in nature, are informed well in advance through Government gazette. WTO members are informed of these changes notifications.*

### **From Japan**

#### **Secretariat Report –**

#### **Section II - Trade Policies and Practices by Measure**

#### **(2) Measures Directly Affecting Imports**

#### **(v) Import prohibitions, restrictions and licensing (WT/TPR/S/128, page 38, paragraph 34)}**

2.4.6 According to the Secretariat Report, the Special Licensing Scheme (SIL) was introduced on grounds of national security, health and environment, as well as “economic” reasons.

- (a) Please indicate what is meant by “economic reasons”.

*Import licenses are not used for economic reasons.*

- (b) Please also indicate the items that are subject to imports licensing for “economic” reasons”.

*Not applicable*

### **From Canada**

2.4.7 The Secretariat reports that Sri Lanka's Special Licensing Scheme was introduced “on the grounds of national security, health and environment, as well as ‘economic’ reasons”, and that 474

items at the eight-digit level are currently subject to licensing. Canada is concerned about the large number and variety of products subject to licensing requirements, and also about the fact that the list of products subject to licensing is changed frequently. A number of the products subject to licensing would not appear to raise issues related to national security, health or environment concerns. Would Sri Lanka please explain what “economic” reasons are being used to impose licensing requirements?

**(Report by the Secretariat (WT/TPR/S/128))**

***III Trade Policies and Practices by Measure; (2) Measures Directly Affecting Imports; (v) Import prohibitions, restrictions, and licensing; (b) Import licensing; paragraph 34***

*Please refer the responses referred above.*

2.4.8 We note that Sri Lanka issues import licenses for a fee of 0.1% of c.i.f. value. This is contrary to GATT Article VIII, which stipulates that fees should be limited to the approximate cost of the service rendered. What steps will Sri Lanka take to eliminate the ad valorem fee and institute a charge that is based on the cost of the transaction?

*Each import license issued is consistent with GATT Article VIII as the fee levied to commensurate with the cost of the services rendered. Practically, it is not feasible to institute a flat charge based on the cost of the transaction as the quantity and the value vary depending on each transaction.*

## **2.5 Quantitative Restrictions**

### **From Canada**

2.5.1 Canada is concerned that quantitative restrictions (QRs) could be inconsistent with Sri Lanka's GATT Article XI VIII, which stipulates that fees should be limited to the approximate cost of the service rendered. What steps will Sri Lanka take to eliminate the ad valorem fee and institute a charge that is based on the cost of the transaction?

*Sri Lanka does not maintain any quantitative restrictions.*

## **2.6 Import Procedures**

### **Cosmetic products - From Australia**

2.6.1 Sri Lanka's import regime requires that importers of cosmetic products provide details of the composition of the products, including the exact percentage of each constituent ingredient. This requirement has significant intellectual property implications. What is the rationale behind the requirement?

### **Responses:**

*Under the Cosmetics, Devices and Drugs Act No. 27 of 1980, all cosmetics, devices and drugs that are imported and produced locally should be registered with the Cosmetics, Devices and Drugs Authority. This is a mandatory requirement applied on both imports and goods produced domestically for safety reasons. Once the registration is granted for a particular cosmetic, device and a drug the registration will be valid for five years from the date of issue of registration certificate.*

*The Act requires the applicant to submit information specified in Form A of Schedule 1 of the Act. The information to be provided includes, among others, name of the cosmetic with brand name or official or approved name, composition of the product, which are ingredients that need to be listed by their chemical name and exact quantities and certificate of analysis and full information concerning analytical assessment and other control methods to ensure strength, quality and stability. The information sought herein is used only to ascertain the safety aspect of the product, so those substandard products will not be permitted to enter the country. The Authority who receives the information is bound to maintain the confidential nature of the information provided by the applicant.*

**From Japan**

**Secretariat Report –**

**Section II - Trade Policies and Practices by Measure**

**(2) Measures Directly Affecting Imports**

**(I) Procedures (WT/TPR/S/128, Page 28, Paragraphs 5 to 8)**

2.6.2 According to the Secretariat Report, the Import, Division of the Sri Lanka Customs Department consists of two separate units and the import documents to be submitted may vary by case.

- (a) Is it so that each custom's office requires a different procedure or document to be submitted when importing goods or entering persons to Sri Lanka?

*No.*

- (b) Please explain why the custom procedures for air cargo and for sea cargo are different from each other.

*Import division of SL Customs has two units as sea and air cargo. However, when CUSDECS are processed under ASYCUDA System, document processing time is same.*

*The custom procedures for air cargo and for sea cargo are not different from each other.*

- (c) Please indicate the measures to be taken for making common procedures among all customs.

**Responses:**

*There are common procedures already in place.*

**2.7 Customs Procedures**

**From Japan**

**Secretariat Report –**

**Section II - Trade Policies and Practices by Measure**

**(2) Measures Directly Affecting Imports**

**(I) Procedures (WT/TPR/S/128, Page 28, Paragraphs 5 to 8)**

2.7.1 The Secretariat Report states that, in 1994 the processing of import documents was computerized with the implementation of the ASYCUDA system, and that Sri Lanka is trying to implement an electronic data interchange system.



To what degree, is the ASYCUDA system equipped in each customs office?

*The ASYCUDA System is fully equipped in all Custom offices located in Colombo, where 99% of import cargo is discharged. All imports/ exports (Sea and Air), temporary imports, bonded cargo operational areas are automated for customs declaration processing in ASYCUDA system.*

2.7.2 Please specifically indicate the difference of time required for custom procedures between those where the ASYCUDA system is installed and those without,

*One day.*

2.7.3 Please indicate the specific schedule for implementing an electronic data interchange (EDI) system.

*May 2004.*

2.7.4 Please explain how an EDI system will have an effect on improving custom procedures.

*Faster dispatch of vessels and avoiding time consuming physical clearance by shipping agents and freight clearing houses.*

**From U.S.A.** – On improving Customs procedures

2.7.5 We are pleased to note in the Government report that Sri Lanka is moving toward Customs procedures based on risk-assessment. The report highlighted the Sri Lanka Automated Cargo Clearance System (SLACCS) and new import clearance procedures in an Electronic Data Interchange (EDI) environment. We are interested in learning more about this and the module that is used for automatic selectivity of low, medium and high-risk declarations.

- (a) Please clarify what is meant by “risk declarations” and how are the low, medium and high risks degrees defined? Please provide examples of the kinds of imports that would be in each of the three risk categories.

*“Risk Declaration” is a statement by a firm if it has committed an offence or contravened the Customs Ordinance. This is promptly verified against the computer data base of offenders.*

*Low risk category of importers are those classified by name who have excellent reputation and have committed no offences in the past. Medium risk importers are those who have 1-3 minor offences against their names with convictions. High risk declarations are from those with more than 3 convictions of contravening customs Law. The Colombo Port will very shortly purchase scanners. Medium and high risk importers’ and exporters’ containers will be scanned fully and containers of high risk category will in addition be opened and be subject to physical examination.*

- (b) What is the electronic address for the Customs website?

[www.customs.gov.lk](http://www.customs.gov.lk)

## **2.8 Sanitary and Phytosanitary Standards**

### **From the EU**

2.8.1 The Department of Animal Production and Health in Sri Lanka does not allow for meat products from EU to enter the Sri Lankan market, with reference to the mad cow disease as justification. Furthermore the same department does not allow the import of other meat products from EU such as pork, salami etc., However, no justification for this measure has been given. Due to these restrictions the EC has noticed that more and more substitute meat products such as salami etc. manufactured in Australia with European-sounding brand names are being imported to Sri Lanka thus depriving the European companies' export's to Sri Lanka.

*On the recommendation of the National Committee dealing with mad cow disease (BSE), the regulations under the Import and Export Control Act were amended and came into force on 12<sup>th</sup> November, 1996. The amendment brought several animal products intended for import under the license. Accordingly, import license will be issued by the Controller of Imports and Exports, subject to prior approval from Director General of the Department of Animal Production and Health (DG/AP&H). The DG/AP&H approves imports only from countries that are free from BSE.*

*There are a wide variety of products originated from animals that may carry BSE agent into the country. This includes meat and meat products and bi-products, which are covered under the existing Animal Disease Act and products (i.e. Catgut, gelatine, Di-calcium Phosphate) that are used by some other industries and not covered by the same Act. Therefore, it is necessary to categorise all those products that may carry the BSE agent into the country into a licensing system and to screen these products based on the BSE status of the exporting countries prior to import. In addition, all live animals and animal products imported into Sri Lanka are evaluated based on the disease status of the exporting country other than BSE having considered the appropriate level of protection (ALOP).*

2.8.2 Should Sri Lanka not review its restrictions related to the mad-cow disease?

*Restriction on import of beef and related meat products was imposed some time back due to mad cow disease (BSE). The Department of Animal Production and Health does not allow import of animal products originating from Ruminants from countries infected with BSE. This restriction is not applicable to other meat products. (eg. Pork, poultry, etc.) which are originating from non-ruminant species. However, importation of other meat products (pork and poultry) will be subjected to health requirements stipulated by the same department which depend on the disease status of the exporting country (i.e. out breaks of avian influenza).*

*The status on this is still the same and the department of Animal Production and Health may review the measure at the appropriate time. There is a national committee in Sri Lanka representing members from the Department of Animal Production and Health and the Ministry of Health dealing with the BSE issue. This Committee regularly reviews the global BSE status, restrictions imposed by Sri Lanka and makes necessary amendments to relax the measure from time to time.*

2.8.3 On what specific justification and scientific evidence does Sri Lanka motivate the restriction on the import of meat products such as pork salami etc. from the EU? Does Sri Lanka intend to review its approval procedures so that these products can be imported into Sri Lanka?

*This question does not arise as there is no such restriction on imports of meat products originating from non ruminant species imported from the EC.*

**From Japan**

**Secretariat Report –**

**Section II - Trade Policies and Practices by Measure**

**(2) Measures Directly Affecting Imports**

**(I) Procedures (WT/TPR/S/128, page 28, paragraphs 5 to 8)**

2.8.4 Procedures such as SPS requirements, other than custom procedures, may be complicated, if such procedures are needed when importing cargo.

- (a) Please indicate the actual time required for each procedure, section by section.

*There are many SPS measures taken by Department of Agriculture, Department of Animal Production and Health and Ministry of Health. Relevant units of the department/Ministry in general attend to these measures in the minimum possible time and facilitate expeditious clearance.*

- (b) Please explain if there are any plans to simplify procedures, e.g. by adopting a single-window procedure

*The Customs with the Department of Commerce has taken an initiative to introduce a computer system for CUSDEC and clearance procedures. Under this, Sri Lanka Standard Institute and Department of Animal Production and Health and other related institutions have been linked up directly. This would be a definite improvement towards the simplification of the above procedure.*

**From Canada**

**Trade policies and practices by measure: (2) Measures directly affecting imports; (vii) Standards and other technical requirements; (b) Sanitary and phytosanitary measures; paragraph 48, and (c) Labeling and marking requirements; paragraph 54**

2.8.5 Canada notes that according to the Secretariat report, Sri Lanka has implemented restrictions on the import of 21 genetically modified products, although we understand that this information might be outdated. Canada had been concerned about the July 19, 2001 SPS notification on the restrictions of imports of GM products and at the time made numerous representations to Sri Lankan officials. On August 4, 2001, the Canadian High Commissioner met with Secretary of Health, Thilak Ranavirajah, who informed us that an expert committee had been appointed to look into the ban and that a delay in implementation would occur until the committee submitted its report. On September 3, 2001 Reuters News Service published a report stating that Sri Lanka had postponed indefinitely plans to impose a ban on 21 genetically modified food products. According to a Sri Lankan senior official, a circular had been issued by the Secretary of the Ministry of Health, ordering that the regulations not go into force until further notice. The Ceylon Chamber of Commerce requested a delay until 2004. Canada still has not received any further information on the expert committee's report, leading us to understand that the implementation of the ban is still pending. Please clarify Sri Lanka's position on the import of genetically modified food products.

*A gazette notification restricting the importation of GM foods was issued in April 2001. This Regulation was issued under the Food Act by the Director General of Health Services who is the Chief Food Authority. On representations made by local and international agencies, the effective date for implementation of the relevant gazette had been differed until further notice. The expert group appointed by the Health Ministry recommended, among others, introducing a*

*mandatory labeling scheme. However, this was not implemented following the Cabinet Decision. Considering the consumers' right to know, a scheme of labeling is expected to be introduced.*

2.8.6 The Secretariat report notes that Sri Lanka banned the importation of products containing biotechnology on 1 September 2001. However, according to Sri Lanka's Ministry of Health Gazette Notification, published on August 29, 2001, the ban was suspended indefinitely.

- (a) What is the current status of this regulation?

*Please refer responses above.*

- (b) What entity within the Ministry of Health is responsible for the regulation?

*Food and Drug Advisory Committee*

- (c) When does Sri Lanka expect to define a regulatory system for products containing biotechnology?

*Sri Lanka recognizes the important role played by Biotechnology in addressing issues relating to food shortages and generating high yielding varieties. Sri Lanka covers few areas such as improved plant breeding & multiplication (viz : gene transfer, tissue culture), control of diseases and pests food processing etc. Such activities are regulated by the Ministries of Agriculture and Environment.*

*Biotechnology in any other areas have not yet been developed. As it develops an appropriate regulatory regime will be designed taking into account international best practices.*

## **2.9 Technical standards**

### **From U.S.A.**

2.9.1 According to the Secretariat report, domestic and overseas manufacturers whose products conform to Sri Lanka standards are entitled to put the "SLS mark" on their products. For certain products, the SLS certification mark appears to be mandatory for importation. However, only local producers have been approved for using the SLS mark.

- (a) Please identify any products that require the SLS mark in order to be imported.

*Conformity to relevant Sri Lanka Standard had been made compulsory for 84 specified items under Regulations issued under the Import/Export Control Act. Also it should be noted that there is a difference between conformity standards and having the SLS mark specifically granted by SLSI under the Product Certification Scheme. SLS mark (Product Certification) is not compulsory for these items imported into the country. However, conformity to the relevant standard is a regulatory requirement. With regard to 84 items listed, exporters are required to provide quality certificates from the exporting countries. Surveillance inspection and monitoring activities are carried out at the Port of entry to Sri Lanka.*

- (b) Please explain why no overseas producers have been granted the SLS mark.

*The SLS marketing scheme is a product certification scheme which is open to local manufacturers as well as overseas manufacturers. On applications made by overseas manufacturers, we have already granted three licenses to a manufacture in India.*

2.9.2 Question raised by Hong Kong with respect to standard and technical requirements in their statement made on 3rd March.

*In formulating our national standards Sri Lanka Standards Institute (SLSI) practices a policy of direct adoption of international standards promulgated by international standard setting bodies such as ISO and IEC, whenever feasible and available. In cases where SLSI standards are identical with available international standards, corresponding reference numbers are indicated against them. The technical content of certain other national standards are same as those of available international standards. Due to the capacity constraints Sri Lanka Standards Institute is pleased if reference is made to any specific national standards not aligned with the above practice.*

## **2.10 Contingent Trade remedies**

### **From Japan**

#### **Secretariat Report –**

#### **Section II - Trade Policies and Practices by Measure**

##### **(2) Measures Directly Affecting Imports**

##### **(V) Contingency Measures (WT/TPR/S/128, page 40, paragraphs 36 and 37)**

2.10.1 According to the Secretariat Report, Sri Lanka has no laws or regulations governing anti-dumping or countervailing actions, nor any laws or regulations relevant to safeguards measures.

- (a) Please indicate the specific timetable for establishing laws or regulations regarding trade remedies.

*The Government of Sri Lanka has deferred the decision of enacting the Anti Dumping, Countervailing & Safeguard Legislation in Sri Lanka indefinitely.*

## **2.11 Sri Lanka's Trade Strategy and Trade Policy**

### **From the EU**

2.11.1 Sri Lanka has adopted strategies for developing capacities in a number of fields. How is the issue of trade being dealt with in Sri Lanka's national strategies? Are the strategies based on the possibilities for advancing the country's development objectives in the context of increasing globalization through trade? What is the relationship between Sri Lanka's strategy vis-à-vis trade liberalization and other development strategies?

*Trade policy liberalization is an important part of the overall development policy outlined in "Regaining Sri Lanka". One of the key strategies in this sector has been to increase international integration by lowering barriers to trade on unilateral basis.*

2.11.2 The EC considers that the WTO and multilateral liberalization is the most certain way for small countries to promote their interests. How does Sri Lanka judge the relative importance and weight of bilateral/FTA policies and further development of the WTO system in terms of its own trade and development needs?

*Sri Lanka is committed to the primacy of the multilateral trading system. Sri Lanka considers regional integration initiatives as complementary processes to multilateralism.*

*Multilateral trade liberalization agenda generally has not responded to the global challenges and therefore bilateral/FTA policies are designed to address these challenges.*

#### **From New Zealand**

2.11.3 Chapter II, Para 1 of the Secretariat report notes that Sri Lanka's general trade policy objectives include moving to a more outward-oriented trade regime, strengthening and increasing overseas market access for Sri Lankan products through multilateral, regional and bilateral trade negotiations. New Zealand notes that Sri Lanka's Free Trade Agreement with India includes a number of 'carve-outs' and tariff quotas for agricultural products.

- (a) Given that a significant proportion exported products is made up of agricultural products what plans does Sri Lanka have to ensure that this agreement is actually comprehensive?

*To expand bilateral trade on agricultural products, the Joint Ministerial Committee established under the Framework Agreement is reviewing the negative list.*

#### **2.12 Regulatory Policy – Consumer Protection**

##### **From New Zealand**

2.12.1 New Zealand notes that the Consumer Affairs Authority, established in mid 2003, contains a Consumer Protection Authority (CPA) which "functions to control or eliminate restrictive trade agreements among enterprises, arrangement between companies with regard to price, abuse of dominant position, restraining competition, investigate in to anti c competitive practices and protect consumer rights" [SL Govt. report Paras 280-282].

*The name of the institution should be Consumer Affairs Authority. Section 18 of the Consumer Affairs Authority Act No. 9 of 2003 empowers the Minister in consultation with the Authority to prescribe by order published in the Gazette any good or service, if the Minister is of the opinion that such good or service is essential to the life of the Community or part thereof. Once a good or a service is prescribed, the manufacturer or trader concerned is required to obtain the prior written approval of the Authority before the price of such good or service is increased. The law requires the Authority to be satisfied that such increase is reasonable. The Authority is required to communicate its decision within one month of receipt of the application for increase of price.*

2.12.2 New Zealand would appreciate clarification of whether the CPA's powers are limited to these functions, or whether, as it appears, the CPA is further empowered to determine prices for "specified articles essential to the life of the community" [SL Govt. report Para 284], and whether or not there is any evidence of anti-competitive practices.

*Yes, powers are limited to those functions.*

*So far we have not found any evidence on anti-competitive practices.*

2.12.3 New Zealand would appreciate an explanation of the basis for determination of a "specified article" in this context. It is also unclear as to what checks and balances operate on the CPA, given that both it and the Consumer Protection Council form part of the Consumer Affairs Authority. Clarification on this point would also be appreciated.

*Specified article is one deemed by the authority to be an essential item very important in the day to day life of the majority of consumers. Thus, at present eight such items have been declared as specified.*

*It is important to highlight that the Consumer Affairs Council, even though incorporated in the same law, functions independently. There are two situations where the Council is mandated to act.*

1. *Where at the conclusion of an investigation into the existence of an anti-competitive practice, the Authority refers a report to the Council for determination.*
2. *Under Section 19 where it appears to the Director General that any good or service is being sold at excessive prices or any market manipulation or other market imperfection exists with regard to such goods or services, in consultation with the Authority, such issues may be referred to the Council for investigation and report.*

## **2.13 Government Procurement**

### **From Japan**

#### **Secretariat Report –**

#### **Section II - Trade Policies and Practices by Measure**

#### **(2) Measures Directly Affecting Imports**

#### **(viii) Government Procurement (wt/tpr/s/128, page 44, paragraph 55)**

2.13.1 According to the Secretariat Report, Sri Lanka is considering joining the WTO GPA

- (a) Please indicate the specific plans for acceding to the GPA

*Sri Lanka has prepared a four-year implementation plan outlining the measures to be taken for improving the government procurement mechanism and studies are in progress on the actual program for the liberalization of government procurement sector in line with the requirement under GPA. Sri Lanka considers it important to improve its capacity within the procurement program, for which the finalization of the four year implementation plan is underway.*

### **From the EC**

2.13.2 In the report of the WTO Secretariat (*paragraph 55*), it is written that Sri Lanka considers joining the Agreement on Government Procurement. When do the Sri Lankan authorities expect to join the Government Procurement Agreement (GPA)?

*Sri Lanka is desirous of becoming a member of GPA and will, as a preliminary measure join GPA as an observer.*

2.13.3 Although the Guidelines on Government Tender Procedure prescribed for the creation of an Appeal Board to review complaints regarding awards, no such entity has been established to date (Paragraph 58). When do the Sri Lanka authorities envisage creating such an entity?

*This is an important area under finalization within the four year implementation plan.*

In the report of the WTO Secretariat it is mentioned (paragraph 60) that calls for tender must be given the widest possible publicity. Are Electronic means currently in use, and if not, are there any plans to introduce electronic tendering in the future?

*Sri Lanka's tender guidelines, procedures, practices specify that wide publicity should be given to tender notices mostly in the printed media both in Sri Lanka and overseas as appropriate. Electronic tendering is progressively being used though it is currently limited to several*

*government entities having the relevant infrastructure. Sri Lanka has decided to actively promote electronic tendering in all government entities and this aspect is well taken care of in the four year implementation plan.*

2.13.4 Price preferences for locally manufactured goods (20%) or to governmentally approved societies (5%) are currently applied (paragraph 65). To which extent would the Sri Lankan authorities be willing to eliminate these restrictions and with which time frame?

*Price preferences for local manufacture were introduced in government procurement on the requirements stipulated under donor assisted projects by some donors. This was not introduced on the Government's initiative.*

2.13.5 A number of companies continue to complain that they have been unfairly disadvantaged through a lack of transparency in tender procedures. Reasons for this could be: The changing of specification part during the tendering procedures to favour a competitor, poor evaluation of the tender documents or may be in-proportionate time, etc. How is the Government planning to address this issue? Are there plans to look at systems to try to increase the level of transparency? How does the Government assess the economic impact in case of such inefficiencies in government procurement?

*The government procurement regulations require all government entities to follow stipulated regulations outlined in the tender guidelines regarding the procurement of works, services, and supplies. The implementation of electronic tendering procedure helps eliminate issues associated with transparency in this respect. The economic impact in case if any inefficiency is assessed by the Economic Policy Committee of the Cabinet.*

#### **From the Republic of Korea**

##### **Secretariat Report –**

##### **Section II - Trade Policies and Practices by Measure**

##### **(2) Measures Directly Affecting Imports**

##### **(viii) Government Procurement (Page 44-47, Para.55-66)**

2.13.6 The Secretariat reports that the Government of Sri Lanka uses Government procurement as an important instrument of economic policy. It is our understanding that the Government of Sri Lanka grants preferential treatment to local bidders compared with foreign businessmen.

Please clarify, if any, the differences in policy between local and foreign bidders.

*A margin of preference for local manufacturers under specific circumstances was introduced in to the procurement requirements stipulated by some donors.*

2.13.7 What is the future plan of the Government of Sri Lanka to enhance transparency in Government procurement (including with respect to joining the Government Procurement Agreement)?

*Please refer 2.13.1 – 2.13.4 above.*

#### **From the USA**

2.13.8 We understand government tender procedures may be non-transparent and do not ensure a level playing field for all contenders. Moreover, tenders are often delayed, subject to undue outside influence, and changed or cancelled without warning.



- (a) What efforts are underway to reform the government procurement system and improve technical capacity?

*Government tender procedure and guidelines ensure a level playing field for all contenders. All government tenders on procurement of works, services, and supplies are published in the principal newspapers fulfilling one of the transparency requirements giving both local and foreign suppliers the opportunity to tender. The four year implementation plan to improve procurement mechanism includes among other things, capacity building in the government procurement sector.*

- (b) What is the status of the establishment of the Tender Appeal Board and when does Sri Lanka expect it to begin operations? Who will make up the Tender Appeal Board?

*The Economic Policy Committee of the Cabinet functions as the Tender Appeal Board. Government is in the process of implementing a four year plan to improve the government procurement mechanism. These measures include among other things, development of functional specification of goods, introduction of electronic tendering, introducing of a code of conduct for procurement professionals etc.*

## **2.14 Intellectual Property Rights**

### **From Japan**

#### **Secretariat Report –**

- (2) Measures Affecting Production and Trade  
(vii) Intellectual Property Rights (WT/TPR/S/128, page 67, paragraph 134)

2.14.1 The Secretariat Report states that in July 2003, Parliament approved a new Intellectual Property Act of 2003.

- (a) Please indicate the specific timetable for enacting and implementing the new Intellectual Property Act, which would appear to protect intellectual property rights comprehensively.

*The new Intellectual Property Law is already effective from November 12, 2003 and is in operation now.*

### **From Canada**

#### **Trade Policies and Practices by Measure; (4) Measures Affecting Production and Trade; (vii) Intellectual Property Rights; paragraph 134**

2.14.2 It is Canada's understanding that the Sri Lankan Parliament has approved the new Intellectual Property Act of 2003, but that this Bill has not yet been certified by the Speaker of the House, as required. Could you please elaborate on when this Bill, which would bring Sri Lankan intellectual property laws into compliance with WTO-TRIPS, will come into effect in Sri Lanka?

*Intellectual Property Rights law is effective from 12<sup>th</sup> November 2003.*

### **From Japan**

2.14.3 During the time period when the new Intellectual Property Act is not being enacted, it would seem that the laws and regulations of Sri Lanka are incompatible with the WTO TRIPS Agreement.

***The new Intellectual Property Act No. 36 of 2003 contains the provisions that are compatible with the WTO TRIPS Agreement.***

2.14.4 Please explain how Sri Lanka plans to implement the obligations under the TRIPS agreement in the run-up to the new Intellectual Property Act being enacted and implemented.

***Please refer the responses provided in question No. 2.14.1 and 2.14.2.***

2.14.5 According to the Secretariat Report, a producer of sound recordings has the exclusive right to import. ***Secretariat Report – (2) Measures Affecting Production and Trade (vii) Intellectual Property Rights (WT/TPR/S/128, page 68, paragraph 140)***

Please provide the specific provisions whereby a producer of sound recording has the exclusive rights to import.

***Section 18 (1)(b) of the new Act which states that the producer of a sound recording has the exclusive right to carry out or to authorise the importation of copies of sound recording or a substantial part thereof, even where such imported copies were made available with the authorization of the producer.***

2.14.6 Please also provide any other materials, regarding a producer having the exclusive right to import, if such material exists.

***Not applicable.***

2.14.7 Please indicate how often this right is exercised by showing the relevant statistics.

***Statistics are not available.***

2.14.8 Please explain how the enforcement of the intellectual property right is realized in Sri Lanka, and please provide the relevant laws and regulations thereof. ***Secretariat Report – (2) Measures Affecting Production and Trade (vii) Intellectual Property Rights (WT/TPR/S/128, page 70, paragraph 152)***

***The following measures are in place in the section relating to enforcement in the new IPR law.***

- a) Both civil remedies and criminal sanctions are available.***
- b) A special court has been established for IP litigation.***
- c) The Customs have been empowered to stop importation and exportation of goods that are in violation of IP rights.***

#### **From Canada**

2.14.9 Please explain what measures the Government of Sri Lanka is currently taking, or intends to take in the future, to enforce its intellectual property laws.

***The following measures have been taken by the Government of Sri Lanka with regard to Intellectual Property Rights and the new IPR Act No.36 of 2003 contains necessary provisions in this regard.***

- (a) Both civil remedies and criminal sanctions are available.***

- (b) *A special court has been established for IP litigation.*
- (c) *The Customs have been empowered to stop importation and exportation of goods in violation of intellectual property rights.*
- (d) *The Intellectual Property Office has been empowered under the law to settle disputes involving copyright and related rights.*

2.14.10 What means, other than legal action, are available to foreign companies in Sri Lanka seeking redress for intellectual property violations?

*On an adverse report issued by the specially trained police officers on a complaint received from an affected party of a composer/song-writer/an artist or a company, the Ministry of Commerce will take action to suspend the trading license of the defaulting company and registrar of companies who functions under the Ministry of Commerce will be directed to cancel the business license/registration of the company.*

#### **From Japan**

2.14.11 According to the Secretariat Report, the piracy rate for optical discs is 99% for international repertoire. In this regard, please provide the relevant statistics showing nation by nation the pirated data, if such statistics exist.

*The statistics relating to the level of piracy are not available.*

#### **From the EC**

2.14.12 To the knowledge of the EC, more than a year ago a new Intellectual Property Act was presented to parliament and according to the Intellectual Property Rights office in Sri Lanka this Act was finally made operational on 12 November 2003. In this light the EC should like to ask the following questions:

2.14.13 Is the Government planning to enforce this act by training customs & police officers? And do they have any training activity already planned for the near future or in progress? Even though the Act became operational in November we still see IPR infringements and counterfeit activity going on with regard to software. CDs, DVDs, etc.

*The Government is planning to enforce this Act by training Customs and Police officers. Training activities have already been planned for the near future. However due to the financial constraints the opportunities that can be made available is rather limited. Hence technical assistance in the form of training is very welcome.*

*In recognition of the importance of having a strong enforcement mechanism in place, the Government of Sri Lanka has initiated a number of measures to address counterfeiting activities, namely:*

1. *Training of Customs and Police officers*
2. *A core group on enforcement chaired by the Director of Intellectual Property and consisting of the representatives of main enforcement agencies and IP right owners have been established to enhance the enforcement activities.*
3. *A special unit for IP right related offences have been established in the Criminal Investigations Department of Sri Lanka Police.*
4. *A similar unit will be established in Sri Lanka Customs and the Attorney General's Department.*

**5. Extensive awareness programmes have been earmarked for implementation.**

**From the U.S.A.**

2.14.14 New Intellectual Property Law and Enforcement- Sri Lanka should be commended for taking steps to enforce intellectual property rights including Parliamentary passage of what we understand to be a new and stronger Intellectual Property Act in 2003. We have received reports of cooperation with private sector IPR committees and a willingness of Sri Lanka to accept industry and US Customs-led training. We urge Sri Lanka to implement training, elevate public awareness, and begin enforcement and raids to reverse piracy trends and develop an environment that protects local and international intellectual property.

- (a) Will the appropriate offices receive the necessary resources to fulfill their new responsibilities under the new Intellectual Property Law?

***The necessary resources will be provided to the maximum possible level. The technical cooperation under the implementation of the TRIPS Agreement from the member countries is also expected.***

- (b) Is intellectual property rights border enforcement provided for in the Code of Intellectual Property Act No.52 of 1979 as amended, the Intellectual Property Act of 2003, or other legislation? If such border enforcement is provided for in law, does Sri Lanka have implementing regulations that can be made available?

***The border control measures have been introduced under Section 206 of chapter XLI of the new Intellectual Property Act by amending the relevant provisions of the Customs Ordinance. The new provisions can be implemented even in the absence of implementing regulations. The Sri Lanka Customs will make regulations, if necessary.***

- (c) Please elaborate on Sri Lanka's plans to enforce the new intellectual property bill.

***The law is already in force since 12 November 2003.***

- (d) What steps is Sri Lanka taking to improve its IPR enforcement and coordinate those efforts with rights holders, as well as with foreign governments?

- (a) ***A special Court has been established for IP litigation.***
- (b) ***A Core-Group on Enforcement chaired by the Director of Intellectual Property and consisting of representatives of Enforcement Agencies, IP owners and certain embassies in Colombo have been established to enhance the enforcement activities.***
- (c) ***A Special Unit for IP related offences have been established in Sri Lanka Police. Similar Units will be established in Sri Lanka Customs and Attorney General's Department.***
- (d) ***Training programmes for the Customs and Police Officers will be expanded.***
- (e) ***The Consumer Affairs Authority will take part in the enforcement as far as consumer rights are concerned.***
- (f) ***An extensive awareness programme will be implemented.***
- (g) ***The Police and Customs will carry out enforcement activities including raids and prosecution.***

- (e) With respect to the existing IPR regime, what is the level of civil, criminal and border enforcement of IPR rights, including prosecutions, convictions, fines, etc., for criminal offences?

*As provided for in Sections 177-203 of Chapter XXXVIII of the new Act, violation of any IP right is a punishable offence carrying the punishment of imprisonment of 06 months or Rs.500,000/- or both. Second or subsequent convictions will double the punishment.*

(f) How does Sri Lanka impose deterrent civil and criminal penalties for infringement activities?

*For criminal penalties see the above answer.*

*Injunctions both temporary and permanent and damages and other appropriate remedies are available as civil remedies, under Sections 170, 171, 172, and 173 of the new Act.*

(g) How does Sri Lanka address copyright infringements committed over the Internet that have no profit motivation.

*Any act, which is not an act of fair use, would be an act of infringement.*

2.14.15 Are these actions criminalized?

**Response:**

*Yes.*

2.14.16 Does Sri Lanka criminalize the import of counterfeit or pirated goods?

*Yes.*

2.14.17 Does it criminalize the export of such goods?

*Yes.*

2.14.18 How does Sri Lanka ensure that sentences for IPR crimes are proportional in accordance with TRIPS Art? 61?

*Chapter XXXVIII of the new Act meets all requirements.*

2.14.19 Do Sri Lanka courts issue preliminary injunctions, including ex parte preliminary injunctions, for IPR infringements?

*Yes. Please refer the responses provided under Section 2.14.14 above.*

2.14.20 Have Sri Lanka courts issued decrees to preserve evidence in IPR litigations?

*Under the new law the courts will issue new orders.*

### **From the EC**

2.14.21 According to an ordinance issued by the Minister of Commerce & Consumer Affairs (No.1286/18 of 2 May 2003) permits suppliers of LPG to refill cylinders belonging to other suppliers. This also applies to cylinders, which are the property of a company and bears its registered trademark. This appears to violate both TRIPS and general principles on property rights.

(a) Does Sri Lanka intend to withdraw this ordinance and if so when?

*This issue is pending in Courts as Shell Gas Lanka Ltd., has filed an action against the ordinance under reference. In the circumstances, Sri Lanka will be bound by the Court decision.*

**From U.S.A.**

**2.15 Copyright and Related Rights**

2.15.1 Please clarify whether the principle codified in Article 6 (2) of the Intellectual Property Act applies to the categories of works listed in Article 7, such that all works are protected from the time of their creation.

*Yes.*

2.15.2 How does Sri Lanka comply with Article 18 of the Berne Convention for the Protection of Literary and Artistic Works?

*The necessary requirements are complied with.*

2.15.3 Does Sri Lanka intend to join the WIPO Performances and Phonograms Treaty and the WIPO Copyright Treaty? What is Sri Lanka's time-frame for joining these treaties?

*It is under consideration, but the time frame has not been decided.*

2.15.4 We note in the Secretariat Report that the piracy rate for optical discs allegedly totaled 35 percent for Sinhalese repertoire, 99 percent for international repertoire, and 100 percent for Tamil and Hindi repertoire.

- (a) Does the Government of Sri Lanka consider these rates to be accurate? Please describe the steps that are being taken to address this piracy problem. How does Sri Lanka explain its relative lack of success in address international, Tamil and Hindi repertoire products to Sinhalese repertoire products?

*It is difficult to say whether these rates are accurate, as a study has not been done. With regard to the steps being taken, please see above answers. Sri Lanka is trying its best, and at the same time, expects the owners of the Intellectual Property also to be active in protecting their works and helping the enforcement agencies particularly in product identification.*

**2.16 Patents**

2.16.1 Please explain how the laws of Sri Lanka allow process patent owners to exclude others from the acts of using, offering for sale, selling or importing a product obtained directly by the patented process, as required by TRIPS Article 28.

*Necessary safeguards are available under Sections 84 (3)(b) and 85 of the new act.*

2.16.2 Please explain how Sri Lanka provides for the protection of plants under TRIPs Article 27.3 (b). If Sri Lanka has a sui generis system of plant protection, please explain whether it is consistent with UPOV 91.

*Sri Lanka is in the process of making a law on the protection of new plant varieties.*

2.16.3 Please provide examples of disclosures that may occur within six months of a patent application's filing date that would not bar patentability due to abuse of the rights of the applicant or his predecessor in title, as described in Article 64 (3) (b) of the Intellectual Property Act of 2002.

*We have not so far, come across any instance where such claim has been made.*

## **2.17 Trademarks**

2.17.1 Initials, names or abbreviated names of States are not required to be protected under the Paris Convention, nor is their protection required under international law. Is the reference in Section 103 (1) (i) of Chapter XX in the 2003 Code to "initials, names or abbreviated names" intended to apply only to intergovernmental international organizations?

*It covers reproductions or imitations of armorial bearings, flags or other emblems, initials, names or abbreviated names of any State or any other inter-governmental international organization or any organization created by international convention.*

2.17.2 What is the rationale for the 2-year moratorium on registration of a mark that has been renounced? If it is removed or nullified? For example, would a claimant who had prevailed in a removal or nullification action against a third-party registration need to wait for two years before he could seek registration of that mark?

*The rationale underlining this provision is to remove the possibility of misleading the public. Such claimant can make an application immediately, as such application is unlikely to mislead the public.*

2.17.3 Under Section 104 (1) (b)-(c), what happens where the applicant with a conflicting application is unaware of prior third-party use of a mark or trade name, i.e. in his application for registration refused?

*In such circumstances, the applicant will be advised to submit a fresh application for another name.*

2.17.4 Are there processes by which the registrations of certification marks and collective marks can be opposed?

*Yes, as in the case of a normal trade mark.*

## **3. Sectoral Policies**

### **3.1 Tariff on Agricultural and Food Products**

#### **From Australia**

3.1.1 Sri Lanka maintains high tariff protection for most agricultural and food products, including milk and dairy products, fresh fruit and vegetables, fresh meat and processed foods. Does Sri Lanka intend to review the level of import customs duty on these items?

*Sri Lanka is predominantly an agricultural economy. Agriculture contributes to about 20% of GDP providing 33% of the total employment. Against this background, with a view to keeping the sector at a sustainable level, the present tariff structure, which is well below the bound tariffs, has been introduced. Sri Lanka continues to review these tariffs.*

3.1.2 On 1 January 2004, Sri Lanka increased the Value Added Tax on fresh fruit and vegetables from zero to 15 per cent. What is the rationale for imposing a significant new tax on a basic foodstuff that is already subject to a large import duty?

*Sri Lanka, during the past few years, was faced with a problem of reduction in government revenue to GDP continuously. The Report prepared by the government in section 2.3 (b) reveals that there has been a persistent decline in revenue mobilisation, as indicated by the decline in the revenue to GDP ratio from 19% of GDP in 1996 to below 14.5% in 2002. Among the measures taken towards augmenting revenue included the introduction of a uniform rate of 15% and broadening the tax base by reducing the number of items under the exemption list. In this exercise, fruits and vegetables along with several other items have been made liable for VAT.*

3.1.3 **Wine [From Australia]** - On 1 January 2004, Sri Lanka increased its import customs duty on wine from Rs. Sri Lankan 175 per litre to Rs. 200 per litre. What is the rationale behind this increase?

*On January 1 2004, when the uniform rate of VAT and the halving of the surcharge was introduced, with the sole purpose of keeping these changes revenue neutral, import duty on wine has been adjusted to present levels. The total duty incidence remains at the same level on a litre of wine.*

**From the Separate Custom Territory of Taiwan Penghu, Kinmen and Matsu**  
**Tariff on Agriculture products (Table III, Page 31 WT/T/S/128)**

3.1.4 My delegation would first like to express its full support for Sri Lanka's decision to replace control measures with high tariffs. We also appreciate Sri Lanka's efforts to simplify the tariff system while at the same time reducing non-tariff barriers.

My delegation notes from *table III on page 31 of the Secretariat Report*, which provides information on Sri Lanka's structuring of MFN tariffs, Sri Lanka binds most agriculture tariffs at 49.5%. This figure greatly exceeds the applied rates of 21%. We realize how important the agriculture sector is to Sri Lanka's economy. Nevertheless, we would like to see bound rates for agricultural products set as close to applied rates as possible.

It would be appreciated if the Sri Lankan government could describe the rationale behind the disparate rates.

*Sri Lanka is among the countries whose bound rates are very low. However, Sri Lanka wishes to indicate that this issue (disparate rates) is looked at in the context of multilateral negotiations. These gaps are necessary to address further development needs of the country.*

**From U.S.A.**

3.1.5 The Secretariat Report notes that agricultural tariffs fluctuate based on domestic supply.

Please identify the products subject to tariff fluctuation and describe how the tariff fluctuation operates.

*Only five basic agriculture items are subject to seasonal tariff adjustments. Having regard to production cycles of those five items, it is essential lower tariff to ensure regular imported supplies during the lean production periods. It is necessary to discourage imports by levying higher tariff during glut/very heavy production.*



What per cent of Sri Lanka's agricultural products are subject to fluctuating tariffs?

*It is marginal since only five items are subject to such tariff.*

How does Sri Lanka intend to inform other WTO Members of its applied tariff rates in order to ensure transparency?

*Through notification to Integrated Data Base (IDB) of the WTO.*

### **3.2 Agriculture Policy**

#### **From New Zealand - On the Secretariat Report**

3.2.1 The National Agricultural Policy and Strategy (NAPS) identified the need for market reform, for enhancing the role of private entrepreneurs in agriculture, for the closer integration of the agriculture sector with the food processing industry and for the conservation and sustainable use of resources.

- (a) Does the Sri Lankan Government have a timeline for implementing policies identified in the NAPS to improve the fortunes of the agricultural sector?

*Sri Lanka promotes industrialization in general and promotes a conducive environment. In this environment, the private sector is encouraged to choose viable industries.*

3.2.2 According to *Chapter IV, Para 10 of the Secretariat report*, Sri Lankan authorities have stated that the elimination of non-tariff barriers and the reduction of tariffs in the agriculture sector have led to an increase in food imports which have had an adverse effect on food production and consequently on food security. New Zealand agrees that food security is important, but we also believe that true food security can only be obtained through an open international market rather than one striving for self-sufficiency, and that isolating markets leads to greater climatic and input risk effects as well as an inefficient global market.

- (a) How does Sri Lanka view the international market as contributing to its food security needs and how does this influence Sri Lanka's overall trade policy?

*Sri Lanka is a net food importing country. In a global environment where agriculture is heavily protected, Sri Lanka's tariff policy is designed to provide a level playing field for its farmers.*

#### **From U.S.A.**

3.2.3 According to paragraph 164 of the Government report, the development of biotechnology policies is included among the activities covered under agricultural policies. What is the status of the development of its regulatory system pertaining to biotechnology ?

*Biotechnology in Sri Lanka covers few areas such as improved plant breeding & multiplication (viz : gene transfer, tissue culture), control of diseases and pests food processing etc. Such activities are regulated by the Ministry of Agriculture and Environment.*

*Bio technology in other areas have not yet been developed. As it develops, an appropriate regulatory regime will be designed taking into account international best practices.*

3.2.4 Since its last review, what are the new initiatives geared to encourage the growth of the domestic poultry sector ? Specifically, which policies have been budgeted in 2004 ?

*The new initiatives for the poultry sector are the moves to increase productivity and reduce cost of production per unit of output, facilitation of the adoption of quality standards of the private sector and more assistance for disease control.*

### **3.3 Industry and Investment**

#### **From Japan**

##### **Government Report**

#### **4. Economic Policy Developments**

##### **4.2.2 Industry (WT/TPR/S/128, page 50, paragraph 174)}**

The Government Report States that in order to promote regional growth, a new BOI Act was passed in 2002 to create five Economic Zones (EZ) in the country.

3.3.1 Are these Economic Zones (EZ) the same as the “Specific regions”, stated on page 86, paragraph 44 of the Secretariat Report, for which a special tax incentive package for enterprises has been approved under the new BOI Act?

*Specific Regions mentioned in the report refers to Regional Economic Development Commissions (REDC's). A new BOI Bill was passed in December 2002 to create five REDC's. However, this has not yet been enacted as a Law. However, this concept has been applied establishing REDC's as Regional Offices of BOI until administrative procedures are fulfilled to enact this Law. At present the BOI Regulation No. 3 of 2003 is in force with regard to incentives offered under BOI Regime which is applicable to all Regions throughout the country and each Region will be marketing their comparative attributes professionally to foreign investors.*

3.3.2 If not, please fully describe what exactly are these Economic Zones (EZ).

*Not applicable.*

#### **From U.S.A.**

### **3.4. Special tax incentives**

3.4.1 Please provide further details on the ‘special tax incentive package for enterprises approved under the new BOI Act’?

*The new BOI bill does not specify any special incentives for BOI enterprises. However it contains provision to incorporate incentives granted under the Inland Revenue Act to the agreement in the same manner and to the same extent.*

3.4.2 Are all industries in every sector eligible to receive these ‘special tax incentives?’

*Only selected sectors/industries are eligible.*

3.4.3 We note in the Secretariat Report that the Board of Investment of Sri Lanka administers export-processing zones and industrial parks.

Please describe the incentives available to investors in the export processing zones and industrial parks, i.e., tax alleviation, production subsidies, and export promotion.

*Investors entered into an agreement with the BOI, become eligible for incentives irrespective of their location of investment. For details, please visit BOI website [www.boi.lk](http://www.boi.lk)*

### **3.5 Telecommunications**

#### **From the EU**

The EC appreciates and recognizes that Sri Lanka has taken commitments in a number of service sectors during previous negotiations, and hope that Sri Lanka will also take an active part in the current round of services negotiations. While fully recognizing this, the EC should like to ask the following questions.

3.5.1 The telecommunications sector is bound to play an important role for Sri Lanka's development, as communication will become of increasing importance for both visitors as well as business in Sri Lanka. Given the importance of this sector why has the liberalization policy in telecom been suspended? When will it resume, in particular when will alternative operators be allowed to apply for licenses for fixed network services?

*Although the National Communication Policy (NCP) is suspended, the process of liberalization is continuing and the following aspects amongst others are being implemented as the national communication policy of Sri Lanka.*

#### **1. Liberalization**

*Transforming the telecommunications market structure and regulation towards a more liberalized, technology neutral model; very few restrictions on cross-ownership of multiple network and service exist; The opening of the international services market (External Gateway Operator Licenses), with no predetermined limitation on the number of licenses, liberal licensing regime to permit maximum entry with minimum barriers, provisions for promoting and enforcing fair competition are important and noteworthy aspects.*

#### **2. Investment**

*Creating the conditions for continued private investment in the communication sector by ensuring a stable and transparent policy and regulatory environment, consonant with Sri Lanka's international commitment, is a pillar of telecom policy..*

#### **3. Regulator**

*Granting greater independence and authority for the TRCSL to regularize the Communication sectors, as well as complete transparency and public participation in its procedures. Restructuring of the organization is planned for more effective functioning.*

#### **4. Regulation of scarce resources**

*Ensuring the efficient management of key technical facilities, including the frequency spectrum, numbers, and rights-of-way is pivotal. This also envisages the strengthening of the Commission's spectrum management functions and capabilities. Included is reinforcing the planning and allocation as well as the spectrum assignment, monitoring and control activities of*

*the Commission. Effective and efficient management of the use of this scarce resource amongst competing users, is a main responsibility of the Commission.*

**5. Tariff regulation and consumer protection**

*Redefining the Commission's responsibilities for regulating tariffs, quality of service, and consumer protection; deregulation of tariffs for competitive services including mobile and internet services are planned. Enhancing the quality of service regulation with minimized barriers is to be shortly implemented.*

**6. International Relations and Trade**

*Ensuring that Sri Lanka's international relations and trade links are efficiently maintained and strengthened by the usage of Information and Communications Technologies.*

*The aspects of Telecommunication contained in the National Communications Policy are being implemented.*

*However, an overall policy which would contain aspects of Broadcasting and Information Technologies as well would be developed in the near future.*

3.5.2 Further, has rebalancing of telecom tariffs been completed? If not why, given the long period since the start of the process, and what are the plans to complete it?

*Yes, rebalancing is completed. With the full liberalization of the International Telecom Sector, the Government of Sri Lanka has granted 32 External Gateway Operator (EGO) Licenses. Simultaneously, TRCSL gazetted Interconnection Rules in March 2003. Even though the Rules and Regulations were in place, there were several practical problems faced by PSTN operators, i.e. Capacity, commercial arrangement for transit traffic etc., with regard to the provision of interconnection.*

**From Hong Kong, China**  
**(WT/TPR/S/128, P. 100, Para.96)**

3.5.3 We are pleased to know that Sri Lanka has taken the initiative to further liberalize the telecommunications sector by announcing a new communication policy in 2002, which would open the telecommunication sector to competition. We however note from the Secretariat report that the policy has been suspended since August 2003. We would appreciate more information on the current status of liberalization of the telecommunications sector.

In order to continue the process of liberalization the following aspects amongst others are being adopted and implemented on the National Communications Policy of Sri Lanka.

*Please see the response given for 3.5.1*

**From the Separate Custom Territory of Taiwan Penghu, Kinmen and Matsu**  
**(Paragraphe 182, page 52, WT/TPR/G/128)**

3.5.4 My delegation welcomes Sri Lanka's 2002 new policy to further liberalize Telecommunication services, including the operation of international gateways. As a result of the policy, Sri Lanka's Telecommunication sector has already become more transparent and open in the face of foreign competition. However, my delegation would appreciate receiving clarification on the

legal status of the Telecommunication Regulatory Commission of Sri Lanka (TRCSL) specially, we would like to know whether the TRCSL is an independent regulatory body as defined in the WTO Telecommunication Reference paper.

*The Telecommunications Regulatory Commission of Sri Lanka established by Act of 27 of 1996 is separate from suppliers of basic telecommunication services. The Telecommunications Regulatory Commission is empowered to make decisions and procedures impartially with respect to all market participants.*

3.5.5 In addition, my delegation would like to encourage Sri Lanka to adopt the provisions contained in the WTO Telecommunication Reference Paper to ensure fair competition for all Telecommunication operators.

*Noted.*

**From Canada - Trade Policies by Sector; (5) Services; (iii) Telecommunication services: paragraph 96**

3.5.6 Canada is pleased to see that Sri Lanka has taken steps to make its Telecommunications Regulatory Commission (TRC) more independent of the services providers. Please explain specifically what was done to strengthen the independence of the TRC. Also, please provide Canada with a general update on the process of strengthening TRC.

*TRCSL has been granted financial independence and operational independence. The Board consists of professionals drawn from independent bodies.*

3.5.7 Canada understands that as part of the National Communications Policy of 2003, a number of changes were to be made to telecommunications regulations in Sri Lanka, such as requiring mandatory interconnection, introducing a liberal licensing regime, and lifting other licensing restrictions. Please provide an update on the progress of these changes. Is Sri Lanka experiencing problems in the implementation of these changes? If so, what are the problems and when does Sri Lanka expect to fully implement the National Communications Policy?

***An update on the progress of the changes and problems experienced-***

- *Transforming the telecommunication market structure and regulation towards a more liberalized, technology neutral model; few restrictions on cross-ownership of multiple network and services (planned); opening of both the switched access and dedicated network segments. This will inter alia include opening of the international services market, with no pre-determined limitations on the number of licenses, liberal licensing regime to permit maximum entry with minimum barriers, provisions for promoting and enforcing fair competition.*
- *Creating the conditions for continued private sector participation by ensuring a stable and transparent policy and regulatory consonant with Sri Lanka's international commitments.*
- *Granting greater independence and authority for the TRCSL to regulate the communications sectors, as well as complete transparency and public participation in its procedures. Restructuring of the organization, establishment of a separate budget and creating an environment of private sector organization is in progress.*

- *Ensuring the efficient management of bottle neck facilities, including the frequency spectrum, numbers, and rights-of-way. This also envisages the strengthening of the Commission's spectrum, management functions and capabilities. This includes reinforcing the planning and allocation as well as the spectrum assigned, monitoring and control activities of the Commission. Effective and efficient managing the use of this scarce resource is among the competing uses is a main responsibility of the Commission.*
- *Redefining the Commission's responsibilities for regulating tariffs, quality service and consumer protection; deregulation of tariffs for competitive services, including mobile and internet services; quality of service regulation with minimized barriers.*
- *Ensuring that Sri Lanka's international relations and trade links are maintained and strengthened by the usage of Information and Communications Technologies.*
- *However, an overall policy which would contain aspects of broad casting and information technology as well would be developed in the future.*

*National Communications Policy will be resumed in the future*

3.5.8 Canada is pleased to see that Sri Lanka Telecom Ltd. (SLT) no longer has a monopoly for international voice services and wire line operation. Canada notes that SLT is still the sole provider of fixed line telephone services in Sri Lanka. Given that the waiting list for fixed access services is growing each year and was over 300,000 in 2002 (paragraph 95), additional suppliers of these services would likely help to fill this growing demand. When does the government of Sri Lanka intend to completely liberalise all sectors of the telecommunications market?

*Improving competitiveness of all markets is the policy of the Government and it would be considered in the context of overall policy changes.*

3.5.9 Canada is pleased to see that the government of Sri Lanka has allowed more foreign equity in SLT. IV. Trade Policies by Sector; (5) Services; (iii) Telecommunication services; paragraph 100

*The Sri Lankan government considers divestiture of commercial activities which includes telecom as well.*

3.5.10 Canada notes that Sri Lanka has not made commitments for the following sub-sectors in its services schedule:

- (a) Domestic basic telephone services through Fixed Local Loop;
- (b) Facsimile through Fixed Local Loop;
- (c) Data transmission through Fixed Local Loop;
- (d) Telex services;
- (e) Telegraph services; and
- (f) Private leased circuit services.

Is there any particular reason why Sri Lanka has not made such commitments? Does Sri Lanka have any intention to offer commitments for these services in the current round of GATS negotiations?

*We have offered to open up a few more sub-sectors under communications services and further offers will be negotiated in the current round of negotiations.*

**From U.S.A.**

3.5.11 Investors in the telecommunications sector have complained about Sri Lanka Telecom's (SLT) role as provider of telecom services and as a competitor. SLT appears to regularly ignore government instructions to provide access to liens and other services to private telecom entities.

- (a) Would the representative of Sri Lanka please comment on Sri Lanka's plans for the National Communications Policy that was suspended in August 2003?

*Please see the response at 3.5.1*

3.5.12 The Government Report states that the Telecommunication Regulatory Commission (TRC) has announced a new telecommunications policy to increase competition. We understand that a key issue in Sri Lanka's telecommunications sector is that the TRC has not been enforcing existing regulations to establish an efficient and transparent interconnection regime. Without an interconnection regime competition is less likely to flourish.

*With the full liberalization of the International Telecom Sector, the Government of Sri Lanka has granted 32 External Gateway Operator (EGO) Licensees. Simultaneously TRCSL gazetted Interconnection Rules in March 2003. Even though the Rules and Regulations were in place, there were several practical problems faced by PSTN operators. i.e. Capacity, commercial arrangement for transit traffic etc. with regard to the provision of interconnection.*

*Now SLTL is upgrading its network to accommodate requests for interconnection from EGOs and other domestic operators. The Commission has already initiated a process to address the transit issue.*

*SLTL has already submitted two Interconnection Agreements SIGNED by non affiliated EGOs to the Commission for its approval and more than 10 EGOs are in the process of negotiation with the PSTN operators for interconnection.*

*Further to the above the Commission is involved in the process of amending the Sri Lanka Telecommunications Act. With this amendment it is proposed to empower the Commission to establish an efficient and transparent Interconnection regime.*

**3.6 Electricity**

**From the EU**

An efficient supply of power is truly important for all sectors of the economy and for creating a basis for further development across the board. In this light the EC should like to ask the following questions about liberalization in the sector of electricity.

3.6.1 In the report from the WTO Secretariat, section on trade policy by sectors. It is mentioned that the reform of the electricity sector for the time being has a limited impact: "Sri Lanka is moving from one monopoly situation to another, competition will be allowed only in distribution". Could the Government of Sri Lanka kindly explain the rationale of this reform and in particular what competition will be allowed in distribution: Does this mean that customers will have the possibility to choose from different distributions? And if so, how does the Government estimate the likely impact if there is no competition at the level of the offer (generation of electricity remain a monopoly).

*Power Sector Reforms Office (PSRO) under the Ministry of Power and Energy is empowered to deal with the Policy matters with regard to the re-structuring of the Power Sector.*

*So far the PSRO has taken steps to re-structure the Power Sector under the following main groups.*

- (a) A Generation Company*
- (b) A Transmission Company*
- (c) Five Distribution Companies*
- (d) An ancillary services Company*
- (e) A super-annuation Fund Management Company*

*It is pertinent to mention that apart from the Generation Company operating the CEB Power Plant, there are 07 other independent Power Producers (PP) to supply electricity to the National Grid pre-determined rates. Future Thermal Plants also will be operated in a similar manner. However, as at present the customers do not have the choice to select distributors.*

### **3.7 Financial and distribution services and Insurance**

#### **From the EU**

Financial and distribution services are of great importance for furthering development and ensuring growth. In this light, the EC should like to ask:

3.7.1 The report of the WTO Secretariat (para 91) states that “limits on overseas reinsurance were eased”. Could Sri Lanka please give more details? Are there still limits on the cross-border provision of reinsurance services? In particular, are there still compulsory cessions to the national company?

*“Limits on overseas reinsurance was eased”*

*There are no limitations on the cross boarder provision of reinsurance services to the Insurance Companies in Sri Lanka by the overseas reinsurance companies. In terms of the previous insurance legislation, the control of Insurance Act No. 25 of 1962, Insurance Companies were required to cede 15% of the gross premium on fire and marine Insurance business to the National Insurance Corporation, however, with the introduction of the new Insurance Legislation, the Regulation of Insurance Industry Act No. 43 of 2000 which came into effect from 1<sup>st</sup> March, 2001, this requirement of compulsory cession was withdrawn and the insurance companies are not subject to any compulsory cessions.*

3.7.2 The report of the WTO Secretariat (para 91) states that “foreign branches must be locally-incorporated firms”. Could Sri Lanka explain under which legal form foreign insurance undertakings can establish in Sri Lanka? Are subsidiaries and branches both allowed? If so, what are the differences between their regimes?

*“Foreign branches must be locally incorporated firms”*

*For a foreign insurance undertaking to engage insurance business in Sri Lanka, the requirements in terms section 13 of the Regulation of Insurance Industry Act No. 43 of 2000 (RII Act), are that the undertaking has to incorporate a public company under the Companies Act No. 17 of 1982 and obtain the registration from the Insurance Board of Sri Lanka under RII Act. Even the subsidiaries and branches of foreign insurance companies are also subject to the same requirement as above.*



3.7.3 The EC should like to enquire as to the to Sri Lanka's assessment of the effect of the distribution sector in overall economic growth, employment and social development, and also in other economic sectors like construction, transport, computer services, education and professional training?

*Distribution services are essential for Sri Lanka. Sri Lanka has liberalized the sector subject to a condition that foreign equity holdings are not permitted for small scale retailing services with less than US\$ 1 Mn capital.*

3.7.4 Further would Sri Lanka inform the EC about existing legislation applicable to retailing services?

*Existing regulation permits foreign equity participation in retailing services subject to a condition that foreign equity holdings are not permitted for small scale retailing services with less than US \$ 1 Mn capital.*

**From Hong Kong China**

**(WT/TPR/S/128, P. 98-99, Paras. 90-91)**

3.7.5 **On the insurance sector**, it is noted that foreign investment limits have been removed since April 2002 as autonomous liberalization. Foreign investment restrictions were removed and limits on overseas re-insurance were eased, thus allowing unrestricted entry of insurance companies. We are pleased to note that full commitment has been offered in Sri Lanka's initial offer on services for commercial presence of direct insurance services. However, it is noted that the offer has not included commercial presence in re-insurance and retrocession services. We would like to know if there remain any restrictions in this sub-sector, and if not, we would like to encourage Sri Lanka to consider reflecting its more liberal regime in its services commitments so as to bring its commitments into line with its actual regime and to increase the legal certainty and predictability of the regime.

*As the Regulation of Insurance Industry Act No. 43 of 2000 which regulates the insurance industry in Sri Lanka does not have the necessary provisions in the Act to register and regulate the reinsurance companies. The commercial presence of overseas re-insurers was not included under the WTO commitment.*

*The Regulation of Insurance Industry Act. No. 43 of 2000 may have to be amended to include the necessary provisions in order to register and regulate the reinsurance companies.*

**The Separate Custom Territory of Taiwan Penghu, Kinmen and Matsu**

**(paragraph 80, page 95, WT/TPR/S/128)**

3.7.6 As indicated in this Secretariat Report, the Banking Act and the Monetary Law Act of Sri Lanka, which regulate financial services, are to be fully overhauled within the next two years. It is mentioned that legislation to combat money laundering is also being drafted covering a wide range of financial activities. My delegation would like to compliment the Sri Lankan government on its efforts in making such great strides, which should lead to more transparent and competitive financial market.

(a) We are interested in knowing what key areas in the Monetary Law Act and the Banking Act are due to be amended, and the policy objective of the changes.

*Monetary Law Act – The changes proposed to the Monetary Law Act are to make domestic price stability the primary objective of the Central Bank; strengthening and streamlining the powers of the Central Bank with regard to monetary policy and exchange rate policy; to enhance*

*the operational autonomy of the Central bank and to strengthen the accountability and governance of the Central Bank*

*Banking Act - This Act has been enacted in 1988 & from time to time amendments have been introduced. The main objective of the present amendments is to rationalize the structure and classification of banks; to strengthen the powers of prudential regulation, enforcement and bank resolution measures and to streamline the winding-up of banks.*

**From Canada: Sri Lanka Services Schedule**

**3.8 Computer and Related Services**

3.8.1 Canada notes that Sri Lanka has not taken any commitments for computer and related services in its services schedule. Does Sri Lanka have any intention to offer commitments for that sector in the current round of GATS negotiations?

*No.*

**3.9 Tourism**

Tourism is fairly important for Sri Lanka's economy. Given this, the EC should like to ask the following questions.

3.9.1 Would Sri Lanka inform us about their existing plans to promote the tourism sector, and what measures the government is taking to ensure non-discrimination of Foreign Service suppliers?

*Visas for tour managers/leaders are granted on a seasonal basis on requests made by travel agents, and to tour operators from time to time, and there is no discrimination whatsoever, with regard to those matters. The policy of the Sri Lanka Tourist Board has always been to facilitate operations of all service providers.*

3.9.2 What is the approach of Sri Lanka to the regulation of tourism-related aspects of general interests such as environment, wildlife, urban planning, etc?

*The Sri Lanka Tourism takes maximum protection in product development in terms of conserving and preserving environment, wild life, and to be in accordance with urban planning. Sri Lanka tourism does not approve any product, which have not been given adequate clearance from the Central Environmental Authority, the Coast Conservation, the Department of Archaeology etc. Whatever clearance required from the Department of Wild Life Conservation and the Urban Development Authority are also ensured.*

3.9.3 What is Sri Lanka's viewpoint about the tourism sector and promotion of local cultures, development of water supply and sanitation services, and public security?

*Tourism is considered as an industry where the community involved is playing a major role. The Sri Lanka's tourism has adopted a new promotional drive, which is "beyond beaches, nature, culture and adventure". Thereby, Sri Lanka tourism takes maximum precautions with novel development projects ensuring adequate benefits to the local community while preserving the culture and the environment within a broader perspective. With regard to Water Supply and Sanitary Services, Sri Lanka tourism has taken a prominent initiative to seek funding assistance from foreign donor countries to develop such facilities in the most saturated tourism resources*

*along the Southern coastal belt. Similar projects will not only support the tourism services but benefit the local community living in those areas.*

3.9.4 We would like to know about Sri Lanka's assessment of the effect of the tourism sector in overall economic growth and employment, and in particular in other economic sectors?

*Sri Lanka's tourism is considered by the Government and the private sector as an effective economic activity, which earns valuable foreign exchange to the economy, next to traditional exports, garments, Middle East employment and machinery & equipment. Tourism has the capacity to generate the maximum number of employment opportunities within the shortest possible time, which any other industry cannot do. Therefore, the government takes maximum initiatives to support the tourism industry by way of encouraging foreign investment in the tourism sector, which will bring in to the country most modern technologies and high quality tourism products.*

3.9.5 Would Sri Lanka inform us about the existing legislation applicable to tour managers (professionals accompanying groups of tourists in their travel through the country) and tourists groups? Would Sri Lanka inform us about the plans that the government is considering to reduce or eliminate discrimination of foreign service suppliers in these fields?

*The existing legislation provides for the formulation of regulations to govern the activities of tour managers and tour operators and the tourist groups. The Government of Sri Lanka is not contemplating any reduction or elimination of foreign service suppliers in these fields since tourism is considered a growth sector in the economy of the country.*

---