

### III. TRADE POLICIES AND PRACTICES BY MEASURE

#### (1) INTRODUCTION

1. Sri Lanka's trade reform efforts since its last Review have proceeded at a mixed pace. Policy actions have included steps to enhance transparency, but have also resulted in the introduction of new border charges, which have, on average, increased border protection. Sri Lanka's trade policy has relied mostly on price-based measures, which are more transparent, rather than on non-tariff measures. Incentive programmes have been streamlined but continue to be complex and overlapping. Efforts have been undertaken to enhance intellectual property protection, through the passage of new legislation stepping up enforcement, but further action still needs to be undertaken. The end of the civil strife and the relatively high growth rates offer the opportunity to step up economic, trade, and institutional reform so as to enhance living standards and spread more widely the gains of economic growth. In June 2010, the Government announced an overall reduction in tariffs, lowering many tariff rates to zero, and eliminating a 15% import surcharge applied on most imports. The Government is also envisaging unifying and further reforming its incentives regime and introducing comprehensive competition legislation.

2. Tariff simplification has not proceeded quite as planned and, on average, tariffs are higher than in the previous Review. The simple average applied MFN tariff was 11.5% in 2010, up from 9.8% reported in Sri Lanka's last Review for 2003. This is due mainly to the increase in one of the most widely used tariff rates from 25% to 30%, as a result of extensive rate changes introduced in August 2007 and June 2010, and despite the large number of lines that are duty free. In this respect, and despite the increase in the average rate, the proportion of duty-free lines rose from 10% of the total in 2003 to 44.4% in 2010. Although the originally planned two-band tariff system has not been attained, the tariff structure has been simplified, with the number of MFN applied rates falling from 11 in 2003 to 9 in 2010. Only some 36.4% of all tariff lines are bound, at rates ranging from 0% to 75%. In general, bound rates greatly exceed applied rates, with an average bound tariff of 32.7%. However, at current applied levels, some 103 HS eight-digit tariff lines exceed their bound rates, affecting mostly tobacco products, textiles, carpets, ploughs, and switches, among others.

3. A number of import duty exemptions remain in place, although some effort has been undertaken to reduce them. The overall value of the waivers on import duties and other taxes on imports in 2008, calculated as revenue forgone, is estimated at some 1.2% of GDP, with the main loss stemming from lower excise and import duty collection due to exemptions granted for the importation of automobiles. Further reducing import duty exemptions would add transparency to the import regime and increase tariff revenue. Despite the general increase in tariffs during the period under review, import duty collection as a percentage of imports declined from 5.1% in 2004 to 4.2% in 2008, compared with an average applied tariff of 12%.

4. Apart from tariffs, imports into Sri Lanka are subject to excise duty, a cess, VAT, and various levies and charges. These charges increase the cost of importing into Sri Lanka considerably, in some cases by over 100% of the value of the product. Tobacco products and motor vehicles face the highest overall import charges. Most imports, with the exception of some basic goods, were subject to a 15% surcharge until June 2010, while an Export Development Board (EDB) Levy (Cess) is charged on imports under some 3,500 tariff subheadings covering a relatively large range of products, including fruits, vegetables, processed and unprocessed food, shoes, bags, rubber and plastic products, textile products, toiletry and perfumes. The Cess is applied on the customs value calculated in rupees adding a 10% margin, and ranges from 1% to 35%, with most goods at rates at or above 20%. Excise duties are levied on tobacco products, oil products, aerated water, liquor, beer, motor vehicles, and certain household electrical items. Although locally manufactured products are also subject to excise

fees, when calculating the excise fee on imports, an imputed profit margin of 15% is added to the import price including most other import duties. Applied excise duty rates vary considerably; they may be *ad valorem* or specific and, in some cases, alternate. The highest rates are applied on automobiles and some machinery. Imports are also subject to the Ports and Airports Development Levy (PAL) at a rate of 5%, and since early 2009 to a Nation Building Tax, currently at a rate of 3%. The VAT is applied at a general rate of 12%, with some exceptions.

5. A Special Commodity Levy was introduced in 2007 on 11 essential food commodities, including milk powder, dhal, sugar, potatoes, and onions. This single composite levy replaced the different duties and taxes applicable in respect of essential food commodities with a view to controlling the price escalation of these products. Rates are adjusted periodically to reflect price and demand and supply developments; adjustments may be general or limited to specific products. The levy has resulted in lower import duties for the products concerned.

6. Despite increases in tariffs and other charges on imports, Sri Lanka has tried to make information available online regarding applied tariff levels and all other import charges. However, and although orders modifying tariff and other import tax rates are published and available online, the constant change in rates adds discretion and creates confusion among importers. Another important step toward transparency is the publication of figures with respect to revenue forgone due to tariff and other tax exemptions.

7. Although a major change since the last Review has been the implementation of the WTO Customs Valuation Agreement (CVA), Sri Lankan legislation grants the authorities the flexibility to depart from its principles when deemed necessary in the interest of the national economy or for any other reason, allowing for the use of minimum values. During the period under review, minimum import prices have been applied on imports of used cars.

8. The use of non-tariff barriers is relatively limited, mainly through the form of import licences. Sri Lanka maintains import prohibitions on a range of goods, mainly for health, safety, security, environment, and moral reasons. The list of prohibited imports may be amended by Parliament at any time. Sri Lanka has a Special Import Licensing Scheme in place; products under this scheme are subject to non-automatic licensing, as and when the country requires imports of these goods. In June 2010, 512 items at the eight-digit HS level covering an array of goods including grains, chemicals, some textiles, petroleum, and motor vehicles were subject to non-automatic licences. Sri Lanka does not have any provisions in place to use contingency measures. Two bills containing provisions on anti-dumping, countervailing duties, and safeguard measures were gazetted in October and November 2005, but are still awaiting the approval of Parliament (June 2010).

9. Sri Lanka's national standards and technical regulations generally follow international guidelines. Sri Lanka had notified 103 trade-related technical regulations to the WTO; all were included in the Imports (Standardization and Quality Control) Regulations 2006, which specify products that must conform to a Sri Lanka Standard (SLS), to be allowed entry. These goods are subject to inspection at the border. Up to March 2010, Sri Lanka had made 18 SPS notifications to the WTO. Imports of certain plants, some live fish, soil, and living modified organisms are prohibited. Imports of animals and animal products of ruminant origin are allowed only from countries that have been officially declared "BSE Provisional Free Status" by the OIE. The importation of genetically modified (GM) food products requires prior approval from the Chief Food Authority.

10. Sri Lanka imposes border charges on certain exports. Export duties are levied on value-added vein quartz and raw vein quartz; these duties replaced the system of minimum prices. An export Cess

is currently levied on cashew nuts, raw hides, metal scrap, natural rubber, coconut products, and tea, for reasons varying from discouraging exports in raw form, ensuring local supplies, and generating funds for cultivation. The use of these levies on exports of locally produced inputs may act as an incentive to domestic processing, as it diverts the supply of inputs towards the domestic market and lowers domestic prices by penalizing exports.

11. Several export incentive programmes are available. Customs operates three schemes: a duty rebate (drawback) scheme, a temporary importation for export processing scheme (TIEP), and the manufacture-in-bond scheme. Sri Lanka also has an export processing zones (EPZs) scheme; the 11 free-trade zones, also called export processing zones, are administered by the Board of Investment (BOI). Some 220 enterprises operate in the EPZs, employing over 75,000 persons. Locating an enterprise in an EPZ entitles the company to tax holidays, duty-free imports, and concessionary land prices. Exporters of non-traditional goods or services also enjoy a number of tax concessions, such as a preferential income tax rate on profits from these exports and a full tax holiday for three to seven years for new investments. These companies are required to export at least 80% of their goods production and 70% of services.

12. There is no comprehensive single competition law in Sri Lanka that outlaws practices per se; anti-competitive practices relating to monopolies, and mergers and acquisitions are not covered by competition legislation. Although the Consumer's Affairs Authority may investigate the effects on consumers of anti-competitive practices, Sri Lanka's legislation does not allow it to conduct investigations on the existence of monopolies per se or to examine mergers or acquisitions that have already taken place. Moreover, there are no provisions that make pre-merger notification mandatory. As a result, the only investigations on the effects of mergers are for utilities, which are under the purview of the Public Utilities Commission. The Government is in the process of drafting new competition legislation to address most of these issues, including the mandatory examination of mergers across the board (June 2010).

13. Sri Lanka has not made any notifications to the WTO with respect to state-trading enterprises within the meaning of Article XVII of the GATT 1994. Sri Lanka launched a programme of public enterprise reform and privatization in 1990, reinforced with the establishment, in 1996, of the Public Enterprises Reform Commission (PERC). The PERC completed some 50 privatization operations, before it was closed in 2007 and the legal basis to privatize was repealed. The current policy on public enterprises is not to privatize, but to restructure and improve their performance and to invite the private sector to invest in them and to make them profitable, while keeping government ownership of at least 51%.

14. Sri Lanka offers a wide range of tax incentives, notably tax holidays, primarily for investment purposes. The two main investment incentive regimes are under the Board of Investment (BOI) Act, and under the Inland Revenue Act. Sri Lanka's current system of tax incentives results in duplication and overlapping of beneficiaries if not of benefits. Effective tax rates can vary substantially by firm and sector. Although there is no estimate available of revenue forgone due to these incentives schemes, income tax receipts, remain low (2.9% of GDP), and well below revenue from taxes on goods and services (7.4%). Investment under the BOI Act scheme is subject to a number of requirements, including export performance and minimum exports. The duration of the tax holiday depends on the amount invested. Under the Inland Revenue Department (IRD) regime, income tax exemptions are provided usually for five years or for three years in some cases.

15. Sri Lanka does not participate in the WTO Plurilateral Agreement on Government Procurement (GPA). Procurement guidelines have been streamlined and clarified to make the process more efficient and transparent. However, government procurement continues to be used as an instrument of economic policy, to promote domestic suppliers and products. Sri Lanka grants price

preferences for locally manufactured goods to promote value added of local raw materials and for domestic bidders. The margins of preference for domestic bidders for works and contracts are 7.5% for contracts funded by international donors, and 10% for contracts funded by the Government; the margins for domestically manufactured goods are 15% and 20%, respectively.

16. Sri Lanka introduced new, comprehensive intellectual property legislation in 2003, aimed at ensuring compliance with the TRIPS Agreement. The new Act covers: copyright and related rights; industrial designs; patents; marks and trade names; layout designs of integrated circuits; unfair competition and undisclosed information; and geographical indications. The new Act has also extended the term of copyright protection, from life plus 50 years, to life plus 70 years. Although enforcement of IPRs was reinforced during the period under review, counterfeiting and piracy, particularly of computer software are still pervasive. Tougher legal provisions to fight piracy have been introduced in recent years, but there is room for improvement with respect to enforcement.

## **(2) MEASURES DIRECTLY AFFECTING IMPORTS**

### **(i) Procedures**

#### **(a) Registration and documentation**

17. Sri Lanka Customs, which is under the remit of the Ministry of Finance, is responsible for customs procedures. Details on customs procedures are contained in the Customs Ordinance, which is available online.<sup>1</sup> The Ordinance was amended by Customs (Amendment) Act No. 2 of 2003, which, among other things, introduced WTO customs valuation rules (see below).<sup>2</sup>

18. Importers and exporters must be registered with Customs to operate in Sri Lanka. In order to register, importers must be registered with the Inland Revenue Department to obtain a tax identification number (TIN); and must submit a completed customs declaration (CUSDEC) form to Customs, with all other relevant documents. These documents include: a delivery order, bill of lading; invoice; exchange documents; packing list; certificate of origin; certificate of registration, with an English translation for used motor vehicles; a load port survey certificate for food items; and, if applicable, an import licence, a sanitary and phytosanitary or quarantine certificate. Sri Lanka Customs must ensure that the necessary approvals have been obtained from other relevant government authorities (e.g. Import and Export Control Department, Sri Lanka Standard Institution, and Health, and Plant Quarantine) prior to releasing a cargo. A hard copy of the CUSDEC is no longer required (since July 2010).

19. Sri Lanka uses the Automatic System for Customs Data (ASYCUDA) for centralized, electronic implementation and control of customs procedures. The system processes data, including transit and customs warehouses information, and manages the allocation of preferential quotas under FTAs. The authorities indicated that 246,596 declarations were processed in 2009. The average processing time is 16 hours.

20. The Customs Department Imports Division secretariat ("D" branch) is the final authority for classification disputes, exchange, and import control violations. Duty waivers, concessions, and exemptions are also processed by "D" branch, which is responsible for the registration of Customs house agents, and for conducting investigations and inquiries on matters related to imports.

<sup>1</sup> Sri Lanka Customs online information. Viewed at: <http://www.customs.gov.lk/ordinance.htm>.

<sup>2</sup> Customs Act No. 2. Viewed at: <http://www.customs.gov.lk/docs/25325.pdf>.

21. With the aim of facilitating trade, the Imports Division gives pre-import classification rulings on commodities. Importers who wish to obtain the HS Classification of a commodity must apply to the "D" branch; there is a fee of Rs 300 (US\$2.70). The ruling is binding for a period of six months, but Customs has the right to change the HS classification before the end of this period if new information becomes available. The new classification would be applicable to all imports made on the basis of the earlier opinion and, if required, customs duties would be adjusted.

22. No duties are levied on goods in transit or transshipped goods. Goods re-imported into Sri Lanka after two years are subject to the same duties, regulations, and restriction as any import. Goods subject to any duty rebates or drawback at the time of exportation would be subject to the appropriate duties, if re-imported.

23. Payments for imports can be made under Letters of Credit (LC), Documents against Payment (DP), Documents against Acceptance (DA), or Advance Payment (AP) terms. Letters of Credit are valid for up to 365 days. AP terms are allowed where the total value of the goods does not exceed US\$10,000; goods must be received by the importer within 90 days of payment.

24. In March 2007, the Government lifted a requirement, introduced in October 2006, to keep a 50% deposit on LC on more than 40 categories of non-essential imports of consumer items. The Central Bank introduced in late 2008 temporary limits on forward contracts for the sale and purchase of foreign exchange, stopped prepayments on import bills, and imposed a 100% deposit requirement on LC for the import of a range of items, including confectionary, chocolates, personal care products, electrical items, tableware, apparel, footwear, lighting products, and watches. The deposit requirement for motor vehicles is 200% of the import value. These limits were later withdrawn.

25. Customs charges include seal charges at Rs 100/per container and container examination charges at Rs 400 for the first container and Rs 100 per additional container.

26. According to the World Bank's 2010 Doing Business report, an average of six documents are required for each import operation in Sri Lanka, below the South Asia average of nine. The time needed to complete an import operation is 20 days (32 days for South Asia), and the cost to import is US\$745 per container, considerably lower than the average for South Asia (US\$1,509).<sup>3</sup>

(b) Preshipment inspection

27. Sri Lanka has notified to the WTO that it has no regulations on preshipment inspection.<sup>4</sup>

**(ii) Customs valuation and rules of origin**

(a) Customs valuation

28. As a developing country, Sri Lanka was scheduled to start applying the provisions of the WTO Agreement on Customs Valuation on 1 January 2000, but was granted several extensions.<sup>5</sup> The extensions were requested by Sri Lanka on the grounds that it required additional time to put in place the necessary legislation, administrative mechanisms and procedures, train customs personnel, and modernize Sri Lanka Customs; the latest extension was until 28 February 2003. Sri Lanka completed

<sup>3</sup> World Bank (2010).

<sup>4</sup> WTO documents G/VAL/W/41/Add.1, 3 March 2000, and G/PSI/N/1/Add.10, 19 July 2004.

<sup>5</sup> WTO documents G/VAL/W/41, 24 September 1999; G/VAL/W/41/Add.1, 3 March 2000; G/VAL/W/41/Add.2, 11 October 2000; G/VAL/W/90, 15 October 2001; G/VAL/W/90/Add.1, 22 October 2001; G/VAL/W/90/Corr.1, 25 October 2001; G/VAL/52, 8 January 2003.

this process in late 2002 and implemented the required amendments to the Customs Ordinance through Customs (Amendment) Act No. 2 of 2003.<sup>6</sup> As a result, Sri Lanka started applying the WTO Customs Valuation Agreement on 7 January 2003, before the end of the extension.<sup>7</sup> Until that date, Sri Lanka used a valuation system based on the Brussels Definition of Value (BDV).

29. Although the implementation of the CVA has been a major change since Sri Lanka's last Review, its legislation grants the authorities the flexibility to depart from its principles when deemed necessary. While Schedule "E" of Customs (Amendment) Act No. 2 of 2003 by and large implements the WTO Customs Valuation Agreement, Article 10 of the schedule grants the Minister (of Finance), with the approval of the Cabinet of Ministers, and in the interest of the national economy or for any other reason, the authority to apply minimum values for any goods and for a period to be specified in the Order implementing the measure.

30. In accordance with this provision, Sri Lanka requested the WTO Committee on Customs Valuation in March 2003 to retain established minimum values on certain products for customs purposes, under the provisions of paragraph 2 of Annex III. Sri Lanka was granted an extension to delay its application of the relevant provisions of the Agreement and to maintain a minimum value system on used motor vehicles and motor cycles classified under HS ex 87.01-87.04 and ex 87.11 until 28 February 2005.<sup>8</sup> In February 2005, Sri Lanka requested a further extension to apply minimum values on used motor vehicles and motor cycles until it could strengthen enforcement. Sri Lanka noted that it had explored alternate methods to do away with the minimum value system, including the possibility of introducing specific duties instead of *ad valorem* duties for motor vehicles, restricting imports of used motor vehicles for environmental reasons, and had studied the experience of other countries as to how they dealt with valuation fraud. However, the studies had revealed that each system had its drawbacks.<sup>9</sup>

31. Order No. 1,373/5 of 28 December 2004 under Customs (Amendment) Act, No. 2, extended the use of minimum values for used motor vehicles under HS headings 87.01, 87.02, 87.03, 87.04 and 87.11 for two years starting from 7 January 2005. The valuation method used is based on a "Depreciation Table for the Valuation of Used Motor Vehicles", valid since 15 October 2004. Values are established as a percentage of the f.o.b. value and range from 25% for vehicles of more than six years to 90% for vehicles of more than six months but less than a year in the case of commercial vehicles, and from 40 to 95% in the case of non-commercial motor vehicles. The authorities indicated in the course of this Review that minimum prices are still applied for used cars.

32. As at January 2010, Sri Lanka had not submitted its replies to the Checklist of Issues on Customs Valuation contained in WTO document G/VAL/5.

(b) Rules of origin

33. Sri Lanka does not make use of non-preferential rules of origin, although it has not submitted a notification in this respect to the WTO. Preferential rules of origin are applied under bilateral and regional trade agreements (Table III.1). The criterion to confer origin is generally a change in tariff heading at the four- or six-digit level, and a percentage of local value added, which ranges between 30% and 60% according to the agreement and trading partner. Goods that undergo no transformation must be fully originating in the preferential trading partner. Accumulation is allowed under the various agreements.

<sup>6</sup> See WTO document G/VAL/W/99, 25 April 2002.

<sup>7</sup> WTO document G/VAL/W/118, 10 January 2003.

<sup>8</sup> WTO documents G/VAL/W/118, 10 January 2003, and G/VAL/W/119, 26 February 2003.

<sup>9</sup> WTO document G/VAL/N/4/LKA/3, 21 March 2005.

**Table III.1**  
**Rules of origin**

Agreement	Rules of origin
Asia-Pacific Trade Agreement (APTA)	Foreign content must not exceed 55% of f.o.b. value (65% for LDCs). Cumulative rules of origin: products that comply with origin requirements and are used by a participating State as input for a finished product eligible for preferential treatment by another participating State are considered as a product originating in the territory of the participating State where working or processing of the finished product has taken place, provided that the aggregate content originating in the territory of the participating States is not less than 60% of its f.o.b. value (50% for LDCs)
South Asia Preferential Trading Agreement (SAFTA)	Foreign content should not exceed 60% of the f.o.b. value of the finished good if produced in a single country, (70% for LDCs); and 50% if several members are involved (40% for LDCs). Cumulative rules of origin: products that comply with origin requirements and are used by a contracting State as input for a finished product eligible for preferential treatment by another contracting State are considered as a product originating in the territory of the contracting State where working or processing of the finished product has taken place provided that the aggregate content originating in the territory of the contracting States is not less than 60% of its f.o.b. value (50% for LDCs)
South Asian Free Trade Area (SAFTA)	Change in tariff heading at the HS 4-digit level. Foreign content should not exceed 60% of the f.o.b. value of the finished good if produced in a single country, (70% for LDCs); and 50% if several members are involved (40% for LDCs). Regional accumulation allowed if the aggregate content (value of inputs plus domestic value added in further manufacture) is not less than 50% of the f.o.b. value; and the domestic value content (value of inputs originating in the exporting contracting State plus domestic value added in further manufacture in the exporting contracting State), is not less than 20% of the f.o.b. value; and there is change of tariff heading
Indo-Sri Lanka Free Trade Agreement	Change in tariff heading at the HS 4-digit level. Minimum national content 35% of the f.o.b. value; foreign content should not exceed 65% of the f.o.b. value of the product. Cumulative Rules of origin
Pakistan Sri Lanka Free Trade Agreement (PSFTA)	The domestic value added (DVA) in the exporting country must not be less than 35% of the f.o.b. value of the finished product and HS Codes of the imported raw materials and the finished products should be different at the 6-digit level (Change of Tariff Heading criteria)
Global System of Trade Preferences (GSTP)	No less than 50% of the f.o.b. value of the final good if it originates from a single member State, (60% for LDCs); 60% if several members are involved (50% for LDCs)

Source: WTO document G/RO/W/129, 28 September 2009; Sri Lanka Department of Commerce online information. Viewed at: [http://www.doc.gov.lk/web/indusrilanka\\_freetrade.php](http://www.doc.gov.lk/web/indusrilanka_freetrade.php), and [http://www.doc.gov.lk/web/pakissrilanka\\_freetrade.php](http://www.doc.gov.lk/web/pakissrilanka_freetrade.php); SAARC online information. Viewed at: <http://www.saarc-sec.org>; UNESCAP online information. Viewed at: <http://www.unescap.org/tid/aptao.pdf>; and GSTP online information. Viewed at: [http://www.unctadxi.org/Secured/GSTP/LegalInstruments/gstp\\_en.pdf](http://www.unctadxi.org/Secured/GSTP/LegalInstruments/gstp_en.pdf).

### (iii) Tariffs

#### (a) Applied tariff

34. The Sri Lankan 2010 applied tariff (HS2007 nomenclature) has 6,592 tariff lines at the eight-digit level, comprising rates ranging from 0% to 200%. Over 96% of tariff lines are *ad valorem*, levied on the c.i.f. value of imports; specific duties apply to 3.9% of all tariff lines, up from 1.3% in 2003 (Table AIII.1). The simple average applied MFN tariff was 11.5% in 2010, up from 9.8% reported in Sri Lanka's last Review for 2003. This is mostly due to the increase from 25% to 28% of the most widely used tariff rate, as a result of extensive rate changes introduced in August 2007 through Revenue Protection Order (RPO) No. 03/2007 (Customs Duty Changes).<sup>10</sup> The 28% rate was increased to 30% in June 2010, through RPO No. 01/2010.<sup>11</sup>

<sup>10</sup> Customs Department online information. Viewed at: [http://www.customs.gov.lk/tariff/duty\\_changes\\_2007\\_august.pdf](http://www.customs.gov.lk/tariff/duty_changes_2007_august.pdf).

<sup>11</sup> Customs Department online information. Viewed at: <http://www.customs.gov.lk/news/rpoweb10.pdf>.

35. As a result of these changes, although the average was increased, the tariff structure was simplified, with the number of MFN applied rates falling from 11 in 2003 to 9 in 2009 (0, 5, 6, 15, 16, 30, 75, 100, and 250%). The highest rates (100% and 250%) are applied on a handful of products, mostly cigarettes and tobacco. Some 44.4% of total tariff lines are duty free; 23.1% bear a tariff of 15%; and 21.3% are subject to a 30% rate (mostly agricultural and food products, consumer goods, chemicals, and other intermediate goods manufactured locally). In general, most basic raw materials are duty free, semi-processed raw materials are subject to a rate of 5%, intermediate products to 15%, and many finished products to a 30% rate.

36. Despite the increase in the average, the proportion of duty-free lines increased significantly during the review period, from 10% of the total in 2003 to 44.4% in 2010 (Table III.2). Specific duties affect mainly agricultural products (e.g. rice, chillies, onions, and potatoes), but goods subject to specific or alternate duties also include footwear, screws, driers, tiles, wood, belts, table and kitchenware, coal, and perfume. Sri Lanka does not calculate AVEs. As noted in the previous Review, in the absence of AVEs to indicate otherwise, specific rates may well conceal tariff peaks.

**Table III.2**  
Sri Lanka's tariff structure, 2003, 2009, and 2010  
(%)

	MFN applied 2003	MFN applied 2009	MFN applied 2010 <sup>a</sup>	Final bound <sup>b</sup>
1. Bound tariff lines (% of all tariff lines)	..	35.8	36.4	36.4
2. Simple average tariff rate	9.8	12.0	11.5	32.7
Agricultural products (HS01-24)	21.0	24.2	25.4	50.1
Industrial products (HS25-97)	7.9	9.9	9.1	19.8
WTO agricultural products	21.3	24.3	25.6	50.1
WTO non-agricultural products	8.0	10.1	9.2	21.1
Textiles and clothing	5.2	7.3	7.4	12.2
ISIC 1 - Agriculture, hunting, fishing	16.8	19.9	20.8	48.5
ISIC 2 - Mining	5.3	7.3	6.3	50.0
ISIC 3 - Manufacturing	9.3	11.5	10.9	29.2
Manufacturing excluding food processing	7.9	9.9	9.1	19.4
First stage of processing	12.5	14.9	15.7	45.9
Semi-processed products	4.4	5.4	4.1	16.9
Fully processed products	12.1	14.9	14.5	32.5
3. Duty-free tariff lines (% of all tariff lines)	10.0	11.7	44.4	0.4
4. Non- <i>ad valorem</i> tariffs (% of all tariff lines)	1.3	3.9	3.9	1.8
5. Non- <i>ad valorem</i> tariffs with no AVEs (% of all tariff lines)	1.3	3.9	3.9	1.8
6. Tariff quotas (% of all tariff lines)	0.0	0.0	0.0	0.0
7. Domestic tariff "peaks" (% of all tariff lines) <sup>c</sup>	0.3	0.3	0.3	0.1
8. International tariff "peaks" (% of all tariff lines) <sup>d</sup>	21.9	23.8	23.9	69.3
9. Overall standard deviation of tariff rates	12.4	13.5	14.7	20.2
10. Coefficient of variation of tariff rates	1.3	1.1	1.3	0.6
11. Nuisance applied rates (% of all tariff lines) <sup>e</sup>	27.1	0.0	0.0	0.0

.. Not available.

a As of June.

b Implementation of the U.R. was achieved in 2001. Calculations for final bound rates are taken from the CTS database, adjusted to the 2010 tariff schedule. Including partially bound rates.

c Domestic tariff peaks are defined as those exceeding three times the overall simple average applied rate.

d International tariff peaks are defined as those exceeding 15%.

e Nuisance rates are those greater than zero, but less than or equal to 2%.

Note: Calculations exclude specific rates and include the *ad valorem* part of alternate rates. The 2003 tariff schedule is based on HS02 nomenclature, consisting of 6,225 tariff lines; the 2009 and 2010 tariff schedules are based on HS07 nomenclature, consisting, respectively, of 6,509 and 6,592 tariff lines.

Source: WTO calculations, based on data provided by the Sri Lankan authorities.



37. Sri Lanka's tariffs are higher for processed goods than for semi-manufactures or raw materials. This responds in part to the strategy of promoting the development of manufacturing activities, mainly textiles and clothing, and the furniture industry. This strategy is also reflected in the policy of granting import duty concessions for certain specific ends (see below). Imports of gold; jewellery; telecommunications, sports, and medical and dental equipment; agricultural seeds; and a range of machinery and equipment are also duty free.

38. Since 2003, the simple average tariff for agricultural goods (WTO definition) has increased from 21.3% to 25.4%, and remains substantially higher than for manufactured goods (Table III.3). Tobacco receives the highest protection, followed by beverages and spirits, fruits and vegetables, and live animals. Although the average tariff applied on tobacco products has remained the same, at 152.9%, protection for fruits and vegetables, grains, dairy products, live animals, and coffee and teas, has increased. Non-agricultural products face an average tariff of 9.1%, up from 7.9% in 2003. The rise in the average rate reflects an increase in the rates on all main industrial categories, particularly electrical machinery, transport equipment, wood, pulp and paper, and footwear (Table III.3).

**Table III.3**  
Summary analysis of Sri Lanka's MFN tariff, 2003 and 2010

	MFN 2003			MFN 2010 <sup>a</sup>		
	No. of lines	Average (%)	Range (%)	No. of lines	Average (%)	Range(%)
<b>Total</b>	<b>6,225</b>	<b>9.8</b>	<b>0-250</b>	<b>6,592</b>	<b>11.5</b>	<b>0-250</b>
HS 01-24	931	21.0	0-250	1,021	25.4	0-250
HS 25-97	5,294	7.9	0-25	5,571	9.1	0-30
<i>By WTO definition</i>						
Agricultural products	883	21.3	0-250	955	25.6	0-250
Live animals and products thereof	108	22.7	2-25	107	26.6	0-30
Dairy products	21	20.7	10-25	21	26.2	5-30
Coffee and tea, cocoa, sugar, etc.	180	21.6	2-25	239	26.9	0-30
Cut flowers and plants	49	9.8	0-25	47	12.2	0-30
Fruit and vegetables	213	23.9	0-25	225	28.5	0-30
Grains	18	13.0	0-25	18	18.2	0-30
Oils seeds, fats, oil and their products	86	16.1	0-25	88	22.5	0-30
Beverages and spirits	45	24.4	10-25	46	29.4	15-30
Tobacco	18	152.9	50-250	18	152.9	50-250
Other agricultural products, n.e.s.	145	8.0	0-25	147	9.9	0-30
Non-agricultural products (incl. petroleum)	5,342	8.0	0-25	5,637	9.2	0-30
Non-agricultural products (excl. petroleum)	5,324	8.0	0-25	5,619	9.2	0-30
Fish and fishery products	139	10.3	2-25	152	14.4	0-30
Mineral products, precious stones, etc.	368	10.9	0-25	386	13.3	0-30
Metals	675	7.7	2-25	674	9.1	0-30
Chemicals and photographic supplies	988	5.1	0-25	1,108	4.2	0-30
Leather, rubber, footwear, travel goods	193	14.9	2-25	193	18.6	0-30
Wood, pulp, paper and furniture	329	12.3	2-25	366	14.4	0-30
Textiles and clothing	891	5.2	0-25	866	7.4	0-30
Transport equipment	306	10.5	2-25	291	15.4	0-30
Non-electrical machinery	650	6.4	2-25	765	5.5	0-30
Electrical machinery	288	10.0	2-25	358	10.3	0-30
Non-agricultural products, n.e.s.	497	9.8	2-25	460	13.3	0-30
Petroleum	18	5.0	0-25	18	7.5	0-30

Table III.3 (cont'd)

	MFN 2003			MFN 2010 <sup>a</sup>		
	No. of lines	Average (%)	Range (%)	No. of lines	Average (%)	Range(%)
<b>By sector<sup>b</sup></b>						
Agriculture, forestry and fisheries	431	16.8	0-75	457	20.8	0-75
Mining	107	5.3	0-25	112	6.3	0-30
Manufacturing	5,686	9.3	0-250	6,022	10.9	0-250
Manufacturing excluding food processing	5,122	7.9	0-25	5,386	9.1	0-30
<b>By stage of processing</b>						
First stage of processing	796	12.5	0-75	876	15.7	0-75
Semi-processed products	1,941	4.4	0-25	2,021	4.1	0-30
Fully processed products	3,488	12.1	0-250	3,695	14.5	0-250

a As of June.

b ISIC Rev.2 classification. Electricity, gas, and water excluded (1 tariff line).

Note: Excluding specific rates. The *ad valorem* part of alternate rates are taken into account for the calculations. 2003 and 2010 tariffs are based on HS02 and HS07 nomenclatures, respectively.

Source: WTO calculations, based on data provided by the Sri Lankan authorities.

39. Import duty revenue totalled some Rs 64 billion (US\$570 million) in 2008 and Rs 79.6 billion (US\$710 million) in 2009. Despite the general increase in tariffs during the review period, import duty collection as a percentage of imports declined from 5.1% in 2004 to 4.2% in 2008 (Table III.4). However, they increased to 6.8% in 2009. Similarly, the share of import duty revenue to GDP decreased from 2% in 2004, to 1.5% in 2008, before increasing somewhat, to 1.6% of GDP in 2009. This was due to a faster increase of imports of intermediate goods, which carry lower duty, than of final goods. Also, there was a decline, particularly in 2008, in motor vehicle imports and slower growth in imports of other consumer durables, which carry higher duty rates. The decline of this share also reflects the implementation of a composite levy on essential commodities (the Special Commodity Levy, see below), for which rates were maintained below tariff and other import charges rates to ease price pressures in the domestic markets. Lower tariff collection also stems from the impact of the programme of concessionary vehicle imports by public servants; and an increase in the use of tariff waivers for essential commodities such as food items and petroleum products to control domestic price escalation. In 2008, the import restrictions imposed by Central Bank of Sri Lanka by way of required deposits had an impact on import duty revenue; these restrictions were eliminated in 2009.

**Table III.4**  
**Import duties collected, 2004-09**

	2004	2005	2006	2007	2008	2009
Import duty collected (Rs billion)	41.1	45.4	52.7	56.3	64.0	79.6
Imports (Rs billion)	811.1	891.4	1,066.7	1,250.4	1,516.7	1,163.0
Import duties as a % of imports	5.1	5.1	4.9	4.5	4.2	6.8
Import duties as a % of GDP	2.0	1.9	1.8	1.6	1.5	1.6

Source: WTO Secretariat, based on information provided by the Sri Lankan authorities.

(b) Bound tariff

40. Some 36.4% of all tariff lines are bound. Most bound rates are *ad valorem*: there is one specific bound tariff rate (HS 24.11.002) and 38 alternate rates (1.7% of total bound rates). Bound rates range from 0% to 75%; almost half of all bound tariffs are bound at 50%. The average bound tariff is 32.7%, compared with an average MFN tariff of 11.5%. The average bound tariff for agricultural products (WTO definition) is 50.1%, while the average bound rate for non-agricultural

products is 21.1%. Bound rates greatly exceed applied rates, and the difference between them provides the authorities with scope to raise applied tariffs: the average applied rate was 9.6% in 2004.

41. At the current applied levels, 103 HS tariff lines exceed their bound rates (Table AIII.2). The products affected are mostly tobacco products, textiles, carpets, ploughs, and switches.

(c) Tariff quotas

42. Sri Lanka does not apply tariff quotas.

(d) Variable levies and seasonal tariff

43. Sri Lanka does not apply variable levies or seasonal tariffs. However, agricultural tariffs and Special Commodity Levy rates are modified (or waived) in certain instances according to domestic supply; these tariff changes could have the same results as a seasonal tariff.

(e) Concessional entry and exemptions

44. Imported goods may be stored in a bonded warehouse exempt of duties for up to two years. If goods are taken out of the warehouse for domestic consumption, they are subject to duties.

45. Under the RPO No. 01/2008, a number of imported inputs and capital goods were eligible for a concessional duty rate of 2.5%; RPO No. 01/2010 reduced this to zero as of 1 June 2010. Under the terms and conditions approved by the Secretary of Treasury, export-oriented industries may import goods under concessional terms, contingent upon the quantity exported (section (3)(vii)). Import duty and tax exemptions may be granted under section 19(A) of the Customs Ordinance and the Excise Special Provisions Act. This covered, for example, the excise tax reductions granted for the importation of vehicles by public servants in 2007 and 2008.

46. Additionally, import duty waivers are granted throughout the year to specific products for specified periods, generally to face supply shortages. For instance, in 2009, waivers were granted on imports of wheat grain, maize, P.V.C. leather cloth, petrol and diesel, malt extract, and milk.

47. The overall value of the waivers on import duties and other import taxes in 2008, calculated as revenue forgone, is estimated at some Rs 52 billion (US\$465 million) or 1.2% of GDP (Table III.5). The total loss of taxes was Rs 83 billion (US\$740 million), or some 1.9% of GDP; this loss was partly offset by revenue from the Special Commodity Levy (SCL) (see below). The largest loss of revenue stems from lower excise duty collection due to exemptions granted for the importation of automobiles, and from the reduced import duty and other taxes collection for food items, in view of their replacement by the lower SCL.

(f) Tariff preferences

48. Preferential rates are granted for certain articles under multilateral (GSTP), regional (SAFTA and APTA), and bilateral agreements (India-Sri Lanka FTA, and Pakistan-Sri Lanka FTA). Preferences are granted mainly to Bangladesh, Bhutan, India, Laos, Maldives, Nepal, Pakistan; preferences under the GSTP are granted to only a few countries, and margins with respect to MFN rates are small. Only preferences under the ISFTA and the PSFTA, and to LDCs under SAFTA are significantly lower than the simple average applied MFN of 11.5% (Table III.6).

Table III.5

Loss of revenue due to granting of duty waivers on essential commodities, petroleum products and motor vehicles, 2008 (Rs million).

Item	CD	VAT	PAL	SRL	Surcharge	Cess	Excise duty	Total loss of taxes	Revenue from SCL	Revenue forgone
Sprats	168	168	84	3	25	0	0	448	443	5
Milk powder	4,578	915	68	0	0	0	0	5,561	406	5,155
Potatoes	2,110	258	80	32	0	0	0	2,480	1,727	753
B onion	2,966	351	106	44	0	0	0	3,467	2,965	502
Peas	469	366	51	8	70	0	0	964	324	640
Chick peas	287	125	57	5	43	0	0	517	294	223
Green gram	68	70	35	1	10	0	0	184	176	8
Lentils	235	1,590	276	3	0	0	0	2,104	378	1,726
Chillies	1,058	312	138	16	0	0	0	1,524	1,059	465
Canned fish	644	281	129	11	96	0	0	1,161	478	683
Coconut oil	148	150	0	2	22	0	0	322	0	322
Palm oil	1,360	1,428	24	213	0	0	0	3,025	0	3,025
Sunflower oil	13	13	0	0	2	0	0	28	0	28
Soya oil	5	6	0	0	1	0	0	12	0	12
Rice	1,286	0	0	19	0	0	0	1,305	0	1,305
Sugar	5,090	1,406	608	76	56	0	0	7,236	7,106	130
Food items	20,485	6,524	2,479	312	482	56	0	30,338	15,356	14,982
Petrol	5,499	0	0	0	0	0	0	5,499	0	5,499
Motor vehicles	2,694	2,837	0.6	349	0.6	0	11,094	16,975	0	16,975
<b>Total</b>	<b>49,163</b>	<b>16,800</b>	<b>4,135.6</b>	<b>1,094</b>	<b>807.6</b>	<b>56</b>	<b>11,094</b>	<b>83,150</b>	<b>30,712</b>	<b>52,438</b>

Note: CD: customs duties, VAT: Value added tax; PA: Ports and Airports Development Levy; SRL: Social Responsibility Levy; SCL: Special Commodity Levy.

Source: Ministry of Finance and Planning (2008), Department of Fiscal Policy, *Annual Report 2008*. Viewed at: <http://www.treasury.gov.lk/FPPFM/fpd/pdfdocs/annualreports/annualReport2008-eng.pdf>.

49. Estimates by the Ministry of Finance indicate that Sri Lanka's major four FTAs resulted in a loss in revenue of Rs 5,137 million (US\$46 million) in 2008 and Rs 5,963 million (US\$53 million) in 2009. ISFTA had, by far, the largest impact with an estimated loss, due to tariff concessions, of Rs 4,663 million (US\$42 million) in 2008 and Rs 5,342 million (US\$48 million) in 2009 (Table III.7).

Table III.6

Sri Lanka's preferential rates, 2010

	Number of preferential lines <sup>a</sup>	Total		WTO agriculture		WTO non-agriculture		Textiles and clothing	
		Average (%)	Dutiable rates (%)	Average (%)	Dutiable rates (%)	Average (%)	Dutiable rates (%)	Average (%)	Dutiable rates (%)
MFN		11.5	55.7	25.6	88.7	9.2	50.1	7.4	43.8
GSTP	76	11.4	55.7	25.6	88.7	9.2	50.1	7.4	43.8
APTA <sup>b</sup>	371	11.3	55.7	25.5	88.7	9.0	50.1	7.3	43.8
LDCs under APTA <sup>c</sup>	70	11.5	55.7	25.6	88.7	9.2	50.1	7.3	43.8
SAFTA <sup>d</sup>	2,022	10.2	55.7	24.4	88.7	7.9	50.1	6.2	43.8
LDCs under SAFTA <sup>e</sup>	2,059	7.7	55.6	22.3	88.6	5.3	50.0	3.3	43.8
SAARC <sup>f</sup>	6	11.5	55.7	25.5	88.7	9.2	50.1	7.4	43.8
Bangladesh preferential	22	11.5	55.7	25.6	88.7	9.2	50.1	7.4	43.8
Indo-Sri Lanka FTA (ISFTA)	1,850	6.9	27.6	22.7	74.3	4.3	19.7	1.6	6.0

Table III.6 (cont'd)

	Number of preferential lines <sup>a</sup>	Total		WTO agriculture		WTO non-agriculture		Textiles and clothing	
		Average (%)	Dutiable rates (%)	Average (%)	Dutiable rates (%)	Average (%)	Dutiable rates (%)	Average (%)	Dutiable rates (%)
Pakistan-Sri Lanka FTA (PSFTA)	2,529	5.8	54.1	12.4	86.2	4.8	48.7	2.4	43.0
Bangladesh <sup>b</sup>	2,184	7.6	55.6	22.3	88.6	5.2	50.0	3.3	43.8
India <sup>h</sup>	2,189	6.6	27.6	22.3	74.3	4.1	19.7	1.6	6.0
Laos <sup>i</sup>	432	11.3	55.7	25.5	88.7	9.0	50.1	7.2	43.8
Pakistan <sup>j</sup>	2,677	5.7	54.1	12.4	86.2	4.6	48.7	2.4	43.0
Bhutan, the Maldives, Nepal <sup>k</sup>	2,062	7.7	55.6	22.3	88.6	5.3	50.0	3.3	43.8

a The 2010 MFN tariff consists of 6,592 tariff lines, of which 2,923 lines are duty free. The number of preferential lines includes only lines on which the rates are lower than the corresponding MFN applied rate.

b Preferential rates under APTA are applicable to Bangladesh, China, India, Laos, and the Republic of Korea.

c Preferential rates for least developed countries under APTA are applicable to Bangladesh and Laos.

d Preferential rates under the SAFTA are applicable to Bangladesh, Bhutan, India, Nepal, Pakistan, and the Maldives.

e Preferential rates for LDCs under SAFTA are applicable to Bangladesh, Bhutan, Nepal, and the Maldives.

f Preferential rates under SAARC are applicable to Bangladesh, Bhutan, India, Nepal, Pakistan, and the Maldives.

g Including APTA, LDCs under APTA, SAFTA, LDCs under SAFTA, SAARC, and GSTP preferential rates.

h Including APTA, SAFTA, SAARC, ISFTA, and GSTP preferential rates.

i Including APTA and LDCs under APTA preferential rates.

j Including SAFTA, SAARC, PSFTA, and GSTP preferential rates.

k Including SAFTA, SAARC, and LDCs under SAFTA preferential rates.

Note: Calculations of averages exclude specific rates and include the *ad valorem* part of alternate rates.

Source: WTO Secretariat, based on data provided by the Sri Lankan authorities.

**Table III.7**  
Estimated revenue losses due to tariff concessions under Sri Lanka's main trade agreements, 2008 and 2009  
(Rs million)

Free trade agreement	CIF value of concessions		Estimated revenue loss	
	2008	2009	2008	2009
ISFTA	55,329	40,983	4,663	5,342
PSFTA	2,331	4593	353	518.
SAFTA	2,721	2,619	78	71
APTA	365	239	43	32

Source: Sri Lanka Department of Customs.

#### (iv) Other charges affecting imports

50. Imports are subject to several additional levies: excise duty, Cess (Export Development Board levy), VAT, Social Responsibility Levy, the Ports and Airports Development Levy (PAL), the Nation Building Tax, and port handling charges (Box III.1). These increase the cost of importing considerably, and in some cases by more than 100% (Table AIII.3). An import surcharge was applied until 1 June 2010. Tobacco products and motor vehicles face the highest overall import charges.

##### (a) Import surcharge

51. Most imports, with the exception of some basic goods, were subject to a 15% surcharge during the period under review, until 1 June 2010.<sup>12</sup> The surcharge was applied on the customs duty.

<sup>12</sup> Exempted goods include milk and cream (HS headings and subheadings: 0402.10, 0402.21, 0402.29, 0402.91 and 0402.99.90); potatoes (HS 0701.90); onions and shallots (HS 0703.10.10, 0703.10.20,

The list of exceptions was reviewed most recently in early 2010, when Amendments to the Surcharge Exempted List Duty Changes eliminated the surcharge for some plastics, and extended it for all other products except those contained in Gazette Notification No. 1,574/15 of 6 November 2008 until 30 June 2010. RPO 1/10 eliminated the import surcharge as of 1 June 2010.

**Box III.1: Computation formulas for the different taxes affecting imports**

Computation formulas for the different taxes affecting imported goods are as follows:

Customs Duty (d) = (c.i.f. value) x (Customs duty rate);

Tariff surcharge (s) = (Customs duty) x (Surcharge rate);

Cess Levy (c) = (c.i.f. value in rupees (v) + 10% of v) x (Cess levy rate), or (quantity) x (unit rate of Cess levy);

Port and Airport Development Levy (p) = (c.i.f. value) x (PAL rate);

Value Added Tax (t) = (v + 10% of v + d + s + c + p + e) x VAT rate (rt);

Excise (Special Provisions) Duty (e): two alternative formulas:

At value base: Excise (Special Provisions) Duty (e) = (v + 15% of v + d + s + c + p + t) x rate of excise duty, or:

At quantity base: Excise (Special Provisions) Duty (e) = (quantity) x (amount rate of excise duty);

Regional Infrastructure Development Levy (i) = (v + d + s + c + p + t + e + l) x RIDL rate;

Social responsibility Levy (l) = (d + s + e) x SRL rate.

The applicable formula for the NBT is:

Nation Building Tax (n) = (v + 0.10v + d + s + c + p + e) rn, where v = c.i.f. value in rupees

rn = Rate of Nation Building Tax

Source: Ministry of Finance and Planning online information. Viewed at: <http://www.treasury.gov.lk/index.htm>.

(b) Export Development Board (EDB) Levy (Cess)

52. Since November 2004, the Government has been charging a Cess on imports of a relatively large range of products, including fruits, vegetables, processed and unprocessed food, shoes, bags, rubber and plastic products, textile products (both apparel and fabric), consumer items such as toiletry and perfumes, ceramicware, glassware, pens, and electrical goods. The list has been expanded and taxes increased since its inception. In early 2010, the Cess was applied on over 3,500 tariff subheadings at the eight-digit level.<sup>13</sup>

53. The Cess tax is applied on the customs value calculated in rupees plus a 10% margin; it ranges from 1% to 35%. The Cess rate on automobiles was increased from 5% to 10% in 2008 and eliminated on 1 June 2010. Many items are subject to an *ad valorem* or a specific duty and the rate with higher tax incidence is applied when calculating the tax. The application of these taxes, together with other charges applicable on imports (see below), have increased Sri Lanka's overall border protection considerably. The authorities indicated that this was done for revenue purposes

0703.10.30 and 0703.10.90); dried leguminous vegetables (HS 0713.40.11, 0713.40.12, 0713.40.21 and 0713.40.22); chillies (HS 0904.20.11, and 0904.20.12); seeds (HS 0909.20, 0909.30 and 0909.50); mathe seeds (HS 0910.99.10); wheat or meslin flour (HS 10.01.10 and 10.01.90.10); rice (HS 10.06); sugar (HS 1701); infants' milk foods (HS 1901.10.01); infants' food (HS 2106.90.05); cement (HS 2523.21, 2523.29.30, 2523.30, and 2523.90); plastics, other plates, sheets, film, foil, and strip of (HS 3921.12 and 3921.13); paper and paper (HS 4802.54.90, 4802.55.90, 4802.56.90, and 4802.57.90); auto trishaws (HS 8703.21.51, 8703.21.52, 87.03.21.53, and 8703.21.54. *Gazette* Notification No. 1,574/15, 6 November 2008. Viewed at: [http://documents.gov.lk/Extgzt/2008/pdf/Nov/1574\\_15/1574\\_15E.pdf](http://documents.gov.lk/Extgzt/2008/pdf/Nov/1574_15/1574_15E.pdf).

<sup>13</sup> Including items from HS chapters 02 to 24, 26, 27, 30, 32, 33, 34, 38, 39, 40, 42, 43, 44, 46, 48, 49, 52, 54, 55, 57, 58, 59, 60-69, 70-76, 78, 79, 80, 83-85, 91, 92, and 94-97. The authorities note that the Cess on items in HS chapter 26 is about to be removed.

(Table III.8). With the elimination of the import surcharge and the reduction in tariffs in June 2010, overall protection should be lower than for 2009, albeit still significant for some products, in particular agricultural goods and transport equipment.

**Table III.8**  
**Summary analysis of Sri Lanka's charges on imports (excluding VAT), 2009**

	No. of lines	Custom duty (MFN)		Total duty rate, including extra charges <sup>a</sup>	
		Average (%)	Range (%)	Average (%)	Range (%)
<b>Total</b>	<b>6,509</b>	<b>12.0</b>	<b>0-250</b>	<b>31.0</b>	<b>2-342.9</b>
HS 01-24	968	24.2	0-250	52.2	8.5-342.9
HS 25-97	5,541	9.9	0-28	27.4	2-292.8
<b>By WTO definition</b>					
Agricultural products	902	24.3	0-250	53.3	8.5-342.9
Live animals and products thereof	107	25.4	0-28	60.6	8.5-76.2
Dairy products	21	22.8	6-28	54.7	24.1-76.1
Coffee and tea, cocoa, sugar, etc.	190	24.9	2.5-28	50.7	11.5-81.8
Cut flowers and plants	47	12.7	2.5-28	29.4	11.5-76.1
Fruit and vegetables	222	26.8	0-28	70.4	8.5-81.8
Grains	18	17.0	2.5-28	36.6	11.1-81.8
Oils seeds, fats, oil and their products	88	21.4	2.5-28	35.3	11.5-64.8
Beverages and spirits	45	27.5	15-28	78.0	26.5-81.8
Tobacco	18	152.9	50-250	226.2	102.5-342.9
Other agricultural products, n.e.s.	146	10.3	0-28	21.9	8.5-76.1
Non-agricultural products (incl. petroleum)	5,607	10.1	0-28	27.6	2-292.8
Non-agricultural products (excl. petroleum)	5,589	10.1	0-28	27.6	3.3-292.8
Fish and fishery products	152	14.5	2.5-28	27.0	11.5-76.1
Mineral products, precious stones, etc.	385	13.3	0-28	31.2	3.3-81.8
Metals	671	10.1	0-28	22.2	8.5-70.4
Chemicals and photographic supplies	1,095	5.9	0-28	18.1	3.3-81.8
Leather, rubber, footwear, travel goods	192	18.1	2.5-28	41.8	11.5-81.8
Wood, pulp, paper and furniture	362	14.4	0-28	29.2	8.5-76.1
Textiles and clothing	863	7.3	0-28	27.4	8.5-81.8
Transport equipment	290	15.7	0-28	68.2	8.5-292.8
Non-electric machinery	762	6.8	0-28	20.7	8.4-169.9
Electric machinery	357	12.2	0-28	30.5	8.5-79
Non-agricultural products, n.e.s.	460	14.8	0-28	32.0	8.5-87.2
Petroleum	18	7.5	0-28	16.2	2-37.7
<b>By sector<sup>b</sup></b>					
Agriculture, forestry and fisheries	442	19.9	0-75	42.2	3.3-132.6
Mining	112	7.3	0-28	16.9	2-42.1
Manufacturing	5,954	11.5	0-250	30.4	3.3-342.9
Manufacturing excluding food processing	5,356	9.9	0-28	27.7	3.3-292.8
<b>By stage of processing</b>					
First stage of processing	837	14.9	0-75	32.4	2-132.6
Semi-processed products	2,010	5.4	0-28	16.3	3.3-76.1
Fully processed products	3,662	14.9	0-250	38.7	3.3-342.9

a Calculation for averages with extra charges include: import surcharges, excise duties, Cess, the Ports and Airports Development Levy, Social and Responsibility Levy, Regional Infrastructure Development Levy and the National Building Tax.

b ISIC Rev.2 classification. Electricity, gas, and water is excluded (1 tariff line).

Note: Calculations exclude specific rates and include the *ad valorem* part of alternate rates. Calculations have been made by the Customs authorities and are based on the 2009 tariff, latest year for which the calculation was made (as at June 2010).

Source: WTO calculations, based on data provided by the Sri Lankan authorities and Sri Lanka Customs online information. Viewed at: <http://www.customs.gov.lk/> [26 January 2010].

54. The legal foundation of the EDB Cess on imports is Gazette Nos. 1,586/26, 30 January 2009; 1,589/31, 20 February 2009; 1,595/25, 2 April 2009; 1,609/07, 5 July 2009; and 1,612/31, 31 July 2009. The objectives of the Cess are to discourage imports of non-essential items, to protect local farmers and manufacturers, and to channel funds for research and development. The proceeds of the Cess are used as funds for the implementation of the Export Development Programme (see below). The Cess is not applicable when the goods are imported for the purpose of processing and re-export, for the manufacture of goods for export, for the production of drugs registered under the Cosmetic Devices and Drugs Act, and for Ayurvedic, Siddha, Unani raw prepared drugs, and medicinal plants as specified by the Director-General of Customs in consultation with the Ministry of Health.

55. A Cess on edible oils (soy oil, ground nut, olive oil, sunflower oil, palm oil, etc. and their fractions) was applied between 2006 and 2009, under regulations in Gazette No. 1,453/4 of 11 July 2006. The objective of this tax (Rs 6/per kg on imported edible oils) was to generate funds for launching programmes for a sustainable development of the coconut sector. The cess was removed by Order No. 1,586/26, 30 January 2009.

56. The Cess totalled Rs 23,383 million (US\$209 million) in 2008, a 36% increase over 2007, and Rs 28,521 million (US\$255 million) in 2009, 17% more than in 2008. Revenue from the Cess represented 0.6% of GDP and 2.4% of total imports in 2009, up from 0.2% of GDP and 0.6% of total imports in 2006. Over 60% of the Cess collected stems from vehicles, cement, alcoholic beverages, and ceramic tiles. Since 2008, almost all textile and clothing products have been subject to the Cess.<sup>14</sup>

(c) Excise duties

57. Excise duties are levied on tobacco products, oil products, aerated water, liquor, beer, motor vehicles, and certain household electrical items (Table AIII.4). Although locally manufactured products are also subject to excise duties, an imputed profit margin of 15% is added to the import price before calculation of the duty, and the duty is applied on the value including most other import duties (see Box III.1). Also, most goods included in the list are mainly imported.

58. Applied excise duty rates vary considerably; they can be *ad valorem* or specific or, in some cases, alternate. The highest rates are applied on automobiles and some machinery. The excise tax is up to 120% on certain types of vehicles (for example, those classified under HS headings 8703.31.30, 8703.32.30, 8703.33.30) and the rates on others range between 23% and 100%. However, under some specific conditions, subject to a resolution by the Ministry of Finance, certain types of vehicles may be subject to lower duty rates, or exempt. Television and radio receivers and other household electrical items are generally taxed at 15%, while cigarettes and tobacco are subject to specific duties. The list of goods subject to excise taxes is considerably more extensive than in 2003.

59. Mainly as a consequence of a contraction in proceeds from imported motor vehicles, due to a decline in the numbers imported, proceeds from excise taxes have declined as a share of fiscal receipts in recent years, falling from 3.2% of GDP in 2006 to 2.3% in 2008 and 2% in 2009 (Table III.9).

(d) Ports and Airports Development Levy (PAL)

60. Imports are also subject to the Ports and Airports Development Levy (PAL) at a rate of 5% or a concessionary rate for imports used solely for processing and re-export purposes. The PAL rate was increased from 3% to 5% as of 1 January 2009, and the PAL levied on imports used solely for processing and re-export was reduced from 0.75% to 0.5%. In addition, tobacco (HS 240110)

<sup>14</sup> Ministry of Finance and Planning (2008).



imported for processing and re-export has been exempted from the PAL. Revenue from the PAL totalled Rs 31,017 million (US\$277 million) in 2008, 20% above the 2007 level.

**Table III.9**  
**Excise tax performance, 2006-09**

Product	Revenue Rs million				Growth (%)		
	2006	2007	2008	2009	2007	2008	2009
Liquor	20,662	23,723	27,434	28,516	14.8	15.6	4.0
Cigarettes	30,099	31,447	37,288	37,601	4.5	18.6	0.8
Motor vehicles	20,731	17,415	11,067	3,192	-16.0	-36.5	-71.2
Petroleum and other	21,353	24,099	25,182	28,295	12.8	4.5	12.3
<b>Total</b>	<b>92,845</b>	<b>96,684</b>	<b>100,971</b>	<b>97,604</b>	<b>4.1</b>	<b>4.4</b>	<b>-3.3</b>
<b>GDP ratio (%)</b>	<b>3.2</b>	<b>2.7</b>	<b>2.3</b>	<b>2.0</b>			

Source: Ministry of Finance and Planning online information. Viewed at: <http://www.treasury.gov.lk/index.htm>.

(e) Nation Building Tax

61. Since early 2009, imports must pay the Nation Building Tax (NBT), governed by the NBT Tax Act No. 9 of 7 January 2009, which entered into effect on 1 February 2009. The NBT is payable on a self-assessment basis by importers, manufacturers, and service providers with a quarterly turnover exceeding Rs 650,000 (US\$5,800). Manufacturers and service providers must be registered with the Nation Building Tax (NBT) Unit of the Department of Inland Revenue of the Ministry of Finance. Importers are not required to register, since the NBT is charged at the border and is payable to the Customs Department.

62. The NBT rate was increased from 1%, charged from 1 February to 30 April 2009, to 3%. Sales of rice manufactured from locally procured paddy (but not from imported rice) is taxed at a reduced rate of 1.5%. Exports and imported parts and inputs to be used in the manufacture of articles for export are exempt from the NBT (Table III.10). The NBT on imports is applied on the customs value calculated in rupees plus a 10% margin, and including all other taxes applied on imports, except the VAT.

**Table III.10**  
**Nation Building Tax exceptions**

Any product exported by the manufacturer of such article
Products, other than plants, machinery or fixtures imported exclusively for use in the manufacture of any article for export
Products sold to any exporter showing a letter of credit opened in any bank in Sri Lanka in respect of the export of that product or other documentary evidence that such article has in fact been exported from Sri Lanka
Products imported for: display at an exhibition; temporary use in Sri Lanka in any article to be produced in Sri Lanka; for the purposes of repairs to be carried out in Sri Lanka; or to be re-shipped, within a one year from the date of importation
Products imported, which prior to its importation, were taken out of Sri Lanka for repairs, if proved to satisfaction
Cinematographic or television films produced in Sri Lanka for further processing or printing
Spare parts imported by airlines or shipping companies
Articles sold to the United Nations Organization or any specialized agency or diplomatic mission
Fertilizers; petroleum and petroleum products; LP gas; pharmaceuticals; tea supplied by the manufacturers
Articles used in any project approved by the Minister of Finance
Imports made considering the economic benefit to the country
Temporary imports for the use of projects on the condition of re-export
Articles imported for use in pharmaceutical manufacturing in Sri Lanka and packing material not manufactured in Sri Lanka

Table III.10 (cont'd)

Banking and financing; supply of electricity; medical services; supply of water; transport of goods or passengers; leasing of movable properties; construction services of contractors (buildings, roads, bridges, water supply, drainage or sewerage, harbour, air port or any infrastructure project in telecommunication or electricity); services provided to exporters of any article directly related to improve the quality and charter of such article; services provided for exporter of sewing garments; services provide by a freight forwarder, shipping agent or courier in respect of the export of any article from Sri Lanka; services provided by a public corporation in respect of the export of any article from Sri Lanka; operating a hotel, guest house, restaurant or other similar business registered with the Sri Lanka Tourist Board; services provide by an auctioneer, broker, insurance agent or commission agent of any local produce; services provided by a travel agent in respect of inbound tours registered with the Sri Lanka Tourist Board; software developed for the use wholly outside Sri Lanka for which the payment is received in foreign currency through a bank; services provided over the internet, using software built by a person in Sri Lanka to a person abroad for payment in foreign currency; client support services provided over the internet or telephone by an enterprise for the payment in foreign currency; life insurance business; distribution or production and supply of any cinematographic films primarily for exhibition in cinemas; exhibiting films in a cinema; services provided to the U.N. Organizations or any specialized agency or to the diplomatic mission; any service rendered in or outside Sri Lanka for foreign currency and if remitted to Sri Lanka through a bank; services of any 'General Sales Agent' registered under the Civil Aviation Authority of Sri Lanka; importation of air crafts or ships on leases or outright purchases; services obtained from any foreign consultancy under any foreign funded project

Exemptions granted by the Cabinet of Ministers

Importation of any article for use exclusively in manufacturing pharmaceuticals in Sri Lanka and for packing material used exclusively for pharmaceuticals manufactured in Sri Lanka;

Leases or outright purchases of aircraft and ships brought to Sri Lanka;

Articles subject to the Special Commodity Levy as specified by the Special Commodity Levy Act No. 48 of 2007, when sold after any value added in Sri Lanka

Plant, machinery and equipment imported for the use of projects on temporary basis on the condition of re-export after the completion of work;

Services obtained from foreign consultancies in respect of these projects;

Importation of machinery and equipment by the Ceylon Electricity Board (CEB) or by any other agency that entered into agreement with the CEB for electricity generating projects implemented to supply electricity to the national grid;

Importation of gold

Source: Sri Lanka Department of Fiscal Policy and Sri Lanka Customs. Viewed at: <http://www.customs.gov.lk/news/nbtexcmpt.pdf>.

63. Only manufacturers are entitled to an NBT credit; service providers and importers are not eligible. NBT collection reached Rs 27,203 million (US\$243 million) in 2009, of which Rs 14,630 million (US\$130 million) on imports.

(f) Special Commodity Levy

64. The Special Commodity Levy was introduced under the Special Commodities Act No. 48 of 2007 on 11 essential food commodities, including milk powder, dhal, sugar, potatoes, and onions. This single composite levy replaced the various duties and taxes applicable in respect of essential food commodities with a view to controlling price escalations of these products. Rates are adjusted periodically to reflect price and demand and supply development; adjustments may be general or limited to some products. Rates were adjusted five times in 2009, and again in early 2010 (Table III.11).

65. In 2008, the Special Commodity Levy generated Rs 15.38 billion (US\$137 million) in revenue, but the Government had to forego nearly Rs 10 billion (US\$89 million) as a result of the imposition of a single levy, in lieu of the regular taxes and duties that were applicable for the 11 essential food commodities concerned (Table III.12). In 2009, SCL receipts totalled Rs 18.06 billion (US\$161 million), while revenue forgone was Rs 5.13 billion (US\$46 million).

**Table III.11**  
**Special Commodity Levy, May 2010**

HS Heading	Product	Rate
0305.59.20	Sprats, dried, not salted	Rs 30/per kg
0701.90	Other - Potatoes	Rs 10/per kg
0703.10.10	Red onions	Rs 10/per kg
0703.10.20	B' onions	Rs 10/per kg
0703.20	Garlic	Rs 30/per kg
0713.10	Peas (Pisum sativum)	Rs 10/per kg
0713.20	Chickpeas	Rs 15/per kg
0713.31.10	Green gram (Moong)	Rs 15/per kg
0713.40.11	Masoor dhal (red lentils) - Whole	Rs 1/per kg
0713.40.12	Masoor dhal (red lentils) - Spilt	Rs 2/per kg
0713.40.12	Masoor dhal (Yellow lentils) - Whole	Rs 1/per kg
0713.40.22	Masoor dhal (Yellow lentils) - Spilt	Rs 2 /per kg
0904.20.11	Chillies - Neither crushed nor ground	Rs 20 /per kg
0904.20.12	Chillies - crushed or ground	Rs 25 /per kg
1604.11	Salmon	Rs 85/per kg
1604.12	Herrings	Rs 85/per kg
1604.13	Sardines, sardinella and brisling	Rs 85/per kg
1604.14	Tunas, skipjack and bonito	Rs 85/per kg
1604.15	Mackerel	Rs 85/per kg
1604.16	Anchovies	Rs 85/per kg
1604.19	Other	Rs 85/per kg
1604.20	Other prepared or preserved fish	Rs 85/per kg

Source: Sri Lanka Customs online information. Viewed at: <http://www.customs.gov.lk>.

**Table III.12**  
**Revenue loss due to the imposition of SCL, 2008 and 2009**  
(Rs million)

Commodity	c.i.f. value of imports		SCL revenue		Revenue if regular taxes/duties were in force		Revenue forgone	
	2008	2009	2008	2009	2008	2009	2008	2009
Sprats	2,796	3,724	443	795	448	861	5	66
Milk powder <sup>a</sup>	30,581	n.a.	429	n.a.	5,561	n.a.	5,155	n.a.
Potatoes	2,673	2,723	1,727	2,215	2,480	2,379	753	164
B' onions	3,545	4,838	2,965	3,198	3,467	3,491	502	293
Peas	1,676	1,801	324	780	964	881	640	101
Chick peas	1,750	2,064	294	528	517	686	223	158
Lentils	9,173	10,003	378	805	2,104	1,871	1,726	1,066
Green gram	1,168	1,276	176	217	184	279	8	62
Chillies	4,578	4,976	1,059	1,328	1,524	1,800	465	472
Canned fish	4,301	3,829	478	1,058	1,161	1,274	683	216
Sugar	20,258	28,579	7,106	7,136	7,236	9,687	130	2,531
Total	82,499	63,813	15,379	18,060	25,646	23,209	10,290	5,129

n.a. Not applicable.

a Regular duties/taxes were imposed on milk powder with effect from March 2009, removing it from the SCL.

Source: Ministry of Finance and Planning.

## (g) Value-Added Tax

66. Sri Lanka applies a VAT on sales by manufacturers, service providers, and importers. The VAT was introduced on 1 August 2002 to replace the Goods and Services Tax (GST) and the National Security Levy (NSL). The VAT is charged at 12% (standard rate), and 20% (luxury items).<sup>15</sup> Exports are zero-rated. Wholesale transactions are exempted from the VAT but are subject to a 1% Business Turnover Tax (BTT) imposed by Provincial Councils.

67. The standard VAT rate was reduced from 15% to 12% with effect from 1 January 2009. Some 465 goods, including basic food, fertilizers, and petroleum oil and gases, are exempt.<sup>16</sup> VAT is levied on the customs value of imports plus 10% plus the import duty, the import surcharge, the Cess, the PAL, and the excise duty. On domestically manufactured goods, the VAT is charged on the sale price excluding the VAT component; on services, it is charged on the final consumer price excluding the VAT component.

68. VAT is applicable on domestic manufacturers and service providers with a threshold equivalent to a turnover exceeding Rs 650,000 (US\$5,800) in any quarter or of Rs 2.5 million (US\$22,300) in any four successive quarters. There is no threshold for imports, all of which are subject to the VAT. Net revenue from VAT collection fell as a percentage of GDP between 2006 and 2009, to 3.6% (Table III.13). Some 47% of VAT collected in 2008 was levied on imports, down from 53% in 2006; this percentage fell further in 2009, to 43%, partly due to a decline in imports.

**Table III.13**  
Collection of value-added tax, 2006-09

	2006	2007	2008	2009
<b>Gross revenue (Rs million)</b>				
Domestic	82,508	95,843	112,682	105,503
Imports	93,221	101,813	100,831	73,997
<b>Total gross revenue</b>	<b>175,729</b>	<b>197,656</b>	<b>213,513</b>	<b>179,500</b>
Refunds	11,174	9,957	9,801	7,973
<b>Net revenue</b>	<b>164,555</b>	<b>187,699</b>	<b>203,712</b>	<b>171,527</b>
<b>Net revenue (as a % of GDP)</b>	<b>5.6</b>	<b>5.2</b>	<b>4.6</b>	<b>3.6</b>

Source: Ministry of Finance and Planning online information. Viewed at: <http://www.treasury.gov.lk/index.htm>.

## (h) Other charges

69. A Social Responsibility Levy is charged on imports. The rate is 1.5% assessed on the value of imports including tariffs, import surcharge and excise duties. The proceeds are used to fund the National Action Plan for Children.

70. Sri Lanka charges a 5% Regional Infrastructure Fee on imports of some automobiles.

<sup>15</sup> The luxury rate applies on: air conditioning machines, refrigerators, dish washers, washing machines, vacuum cleaners, floor polishers, kitchen waste disposers, watches/clocks, musical instruments, equipment for games, food grinders and mixers, liquor, ovens and cookers, hair dryers/hair dressing equipments, video players, cameras, radios, cassettes and music systems, televisions, jewellery, and aerated water. The luxury rate also applies to: motor vehicles other than three wheelers, passenger transport buses, lorries, trucks, motor bicycles and any other vehicle used for the transport of goods; the supply of services by hotels, guest houses, restaurants or similar institutions.

<sup>16</sup> For a complete list of these products at the HS eight-digit level see Sri Lanka Customs online information. Viewed at: <http://www.customs.gov.lk/slcnew/Articles/NewVat.htm>.

(v) **Import restrictions, and licensing**

(a) Import restrictions

71. Sri Lanka maintains import restrictions on a range of goods, mainly for health, safety, security, environment, and moral reasons. These include: appliances for discharging gas, crackers that contain explosives; firearms; toy pistols; counterfeited coins; fish, grain, and other articles unfit for human consumption; meat (fresh or frozen) derived from any warm-blooded animal, if it consists of offal, scraps, trimmings and other pieces in such condition as to afford insufficient means of identification with a definite part of a carcass, or from which certain glands have been removed; road vehicles, and agricultural and construction machinery, more than ten years old; guns designed to be disguised; weapons, ammunition, explosives, vehicles and equipment capable of being used by the armed forces, except by licence from the Ministry of Defence; jewellery or articles made out of ivory, and some medicaments and chemicals. The importation of articles and books that are obscene or may offend religious beliefs, and of narcotic drugs is prohibited.

72. The list of restricted imports may be amended by Parliament at any time. In October 2008, the Central Bank introduced limits on forward contracts for the sale and purchase of foreign exchange, prevented prepayments on import bills, and imposed a 100% deposit requirement on letters of credit for the import of non-essential items. The list includes confectionary, chocolates, personal care products, electrical items, tableware, apparel, footwear, lighting products, and watches. In the case of motor vehicle imports, the deposit requirement was 200% of the import value. These restrictions were removed in 2009.<sup>17</sup>

(b) Import licensing

73. Sri Lanka notified to the WTO its rules on import licensing procedures in May 2003.<sup>18</sup> The licensing system is regulated by the Imports and Exports (Control) Act No. 1 of 1969 and by Special Import Licence Regulation No. 1 of 1977, as amended, which establishes the list of goods subject to import licensing. The Special Import Licensing Scheme was introduced on grounds of national security, health and environment, as well as "economic" reasons, and is administered by the Department of Imports and Export Control. Products listed in the Regulation are subject to non-automatic licensing, as and when the country requires such importation, which is considered on a case-by-case basis. The system applies to goods originating in all countries. There is no automatic import licensing system. The authorities indicate that applications for licences are processed within two days. Licences are granted 30 days prior to the date of importation, if requested. However, applications for a licence may be made up to a week before importation and licences may be obtained within a shorter time-limit for goods arriving at the port without a licence. Certain licences may be issued only on the basis of past performance; for instance, block licences, valid for one year, are issued for importers who have imported drugs during the previous three-year period. In some cases, licences may be issued on condition that the goods are exported and not sold in the domestic market, for example used vehicles imported for reconditioning in Sri Lanka and subsequently re-exported. Imports by enterprises that have an agreement with the Board of Investment and are eligible to import/export goods free of restrictions, are not subject to import licensing restrictions for materials related to the project.

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<sup>17</sup> The deposit requirement against the opening of letters of credit for the importation of motor vehicles was increased from 100% to 200% in October 2008. These monetary policy measures were imposed to curb the pressure exerted on the exchange rate and the balance of payments by the expansion of money and credit aggregates. They were repealed in March and April 2009, in view of the reduction of inflation, the deceleration of monetary aggregate growth and a favourable outlook with respect to inflation expectations.

<sup>18</sup> WTO documents G/LIC/N/1/LKA/1, 20 May 2003 and G/LIC/N/3/LKA/1, 27 May 2003.

74. Any person, firm, or institution may apply for a licence, without registration. Importers must pay a licence fee equivalent to 0.2% of the c.i.f. value of imports, with a minimum fee of Rs 1,000. In case of refusal, the applicant has a right of appeal to the Minister concerned. A licence is valid for six months from the date of issue. The validity may be extended more than once, on request. There is no penalty for the non-use of a licence or a portion of it. Licences are not transferable between importers.

75. Products subject to non-automatic licences cover an array of goods including grains, chemicals, petroleum, and motor vehicles. In March 2010, 512 items at the eight-digit level were subject to import licensing, compared with 474 reported in the last Review. More than 25% of these lines corresponded to transport equipment, and a similar amount to chemicals.

**(vi) Contingency measures**

**(a) Anti-dumping and countervailing measures**

76. Sri Lanka has no laws or regulations governing anti-dumping or countervailing actions. In December 2009, Sri Lanka submitted a new notification to the WTO reaffirming that it had not established an authority competent to initiate and conduct an investigation within the meaning of Article 16.5 of the Agreement and thus had not, to date, taken any anti-dumping actions within the meaning of Article 16.4.<sup>19</sup> Sri Lanka also stated that it did not anticipate taking any anti-dumping actions for the foreseeable future.

77. A similar notification was made in respect to countervailing measures.<sup>20</sup>

**(b) Safeguard measures**

78. Sri Lanka currently has no laws or regulations relevant to safeguard measures. Two bills containing provisions on anti-dumping, countervailing duties, and safeguard measures were gazetted in October and November 2005, but as at June 2010, still awaited the approval of Parliament. The Department of Commerce will be in charge of implementing this legislation once parliamentary approval is obtained.<sup>21</sup>

**(vii) Technical regulations and standards**

**(a) Technical regulations**

79. The Sri Lanka Standards Institution (SLSI) is the National Standards Body of Sri Lanka, established under the Bureau of Ceylon Standards Act No. 38 of 1964 and the Sri Lanka Standards Institution Act No. 6 of 1984.<sup>22</sup> The SLSI is Sri Lanka's national authority for notifications and its National Enquiry Point.<sup>23</sup> The SLSI, under the Ministry of Technology and Research, is also responsible for the elaboration and dissemination of information on technical regulations (mandatory standards). The SLSI is a member of the International Organization for Standardization (ISO). The main piece of legislation is still the Sri Lanka Standards Institution Act No. 6 of 1984.

<sup>19</sup> WTO documents G/ADP/N/193/LKA, 23 December 2009; and G/ADP/N/1/LKA/1 – G/SCM/N/1/LKA/1, 26 April 1995.

<sup>20</sup> WTO document G/SCM/N/202/LKA, 23 December 2009.

<sup>21</sup> Sri Lanka Department of Commerce online information. Viewed at: <http://www.doc.gov.lk/web/traderemedies.php>.

<sup>22</sup> SLSI online information. Viewed at: <http://www.slsi.lk/about-us.php>.

<sup>23</sup> WTO document G/TBT/ENQ/36, 5 February 2010.

80. Since 1996, Sri Lanka has made 32 notifications to the Committee on Technical Barriers to Trade, 16 of which since 2004.<sup>24</sup> It has accepted the WTO TBT Code of Good Practice.<sup>25</sup>

81. According to the notifications submitted to the WTO, 103 trade-related technical regulations are in place (June 2010); the authorities indicated that all of these follow international standards. They are included in the Imports (Standardization and Quality Control) Regulations 2006, framed under the Imports and Exports (Control) Act, No. 1 of 1969 as amended by Act No. 28 of 1987, which specify a list of products that must conform to a Sri Lanka Standard (SLS) to be allowed to be imported.<sup>26</sup> These goods are subject to the Import Inspection Scheme (IIS) to ensure their conformity with the relevant SLS.<sup>27</sup> The authorities noted that, in the formulation of SLSs, the SLSI always takes into account the equivalent standards established by other countries as well as by international bodies such as the ISO, the IEC, the Codex Alimentarius. For inspection purposes, goods are classified under five categories of consignments. Goods classified under categories 1 to 4 carry some kind of certificate of compliance with the stipulated standard, issued by a body recognized by the Sri Lanka Standards Institution (SLSI).<sup>28</sup> However, for Category 4 goods, if the two standards are fully compatible, a quality certificate need not be submitted. The inspection of products in these categories is done through samples drawn from the consignments, which are subject to testing either randomly or when there is a reasonable doubt regarding the quality of the consignment. Category 5 consignments are sampled at the port, and will not be released until the test report is available, or where facilities are available, the SLSI may release the goods to a customs bonded warehouse, until clearance.

82. The categories of products specified in the 2006 Regulations include certain types of milk, milk powder, butter, certain vegetable oils, margarine, canned fish, brown sugar, biscuits, noodles, jams, fruit concentrates, some sauces, bottled water, cement, some toiletries, safety matches, some polyvinyl pipes, motor cycle and bicycle tyres, some types of thread, some steel products, aluminium utensils, some electrical appliances, batteries, fluorescent lamps, switches, plugs, cords, cables, umbrellas, tiles, and porcelain ware, among others (Table AIII.5). The list has been expanded since the previous review, when it included 84 items. The authorities notified this increase in the list to the WTO in 2006.<sup>29</sup> Most technical regulations notified to the TBT Committee cover items included in the Regulations.

83. The Sri Lanka Accreditation Board for Conformity Assessment (SLAB) is the National Accreditation Authority for Sri Lanka. The SLAB was established under Act No. 32 of 2005. The Board functions as an autonomous body under the purview of the Ministry of Technology and Research.<sup>30</sup>

<sup>24</sup> WTO documents G/TBT/N/LKA- series.

<sup>25</sup> WTO document G/TBT/CS/N/76, 7 August 1997.

<sup>26</sup> For the complete list of these items and the technical regulations applicable see: <http://www.customs.gov.lk/docs/25835.pdf>.

<sup>27</sup> SLSI online information. Viewed at: <http://www.slsi.lk/about-us.php>.

<sup>28</sup> Category 1 consignments are accompanied by a quality certificate from an accredited overseas laboratory or an inspection agency with which SLSI has signed a Memorandum of Understanding. Category 2 consignments are accompanied by a quality certificate from the National Standards body of the exporting country. Consignments in Category 3 are imported from a manufacturer registered with the SLSI, and are accompanied by a quality certificate from the manufacturer. Consignments under Category 4 comprise products carrying the "Certification Mark" of the National Standards Body of the exporting country where the national standard of the exporting country is compatible with the corresponding Sri Lanka Standard. Consignments that do not fall into categories 1-4 are classified under Category 5.

<sup>29</sup> WTO document G/TBT/N/LKA/31, 31 July 2006.

<sup>30</sup> SLAB online information. Viewed at: <http://www.slab.lk/#->.

84. The SLAB conducts four accreditation schemes. Their purpose is to allow public and private sector bodies, once they have been assessed for competence and credibility by the SLAB, to perform the necessary conformity assessment for the different regulatory authorities. The accreditation scheme for testing and calibration laboratories is based on ISO/IEC 17025. All types of laboratories covering chemical testing, biological testing, physical and mechanical testing, and calibration are included under this scheme. The accreditation scheme for medical/clinical laboratories is based on ISO 15189, and covers clinical pathology, clinical biochemistry, haematology, microbiology and serology, histopathology, immunology, molecular biology, pharmacology and nuclear medicine. The accreditation scheme for inspection bodies, based on ISO/IEC 17020, provides formal recognition to organizations required to conduct various types of inspections for regulatory purposes.

85. The scheme most relevant for international trade is the accreditation scheme for Certification Bodies (CBs), which covers systems and product certification, and is based on ISO/IEC 17021, and on ISO/IEC Guide 65. The certification provided by these CBs includes certification of Quality Management Systems (QMS), Environmental Management Systems (EMS), Food Safety Management Systems, and Occupational Health and Safety Management Systems.

86. There are currently ten laboratories and institutions accredited for chemical testing, two for mechanical testing, six for biological testing, and two for calibration, all operating from Sri Lanka.<sup>31</sup>

87. Sri Lanka has not notified to the WTO any mutual recognition agreements (MRAs) with third countries on issues related to technical regulations, standards, or conformity assessment procedures. The authorities indicated that no such agreements are in place but that they are in the process of renewing an agreement with the Bureau of Indian Standards and are envisaging entering into new agreements.

88. The SLAB is a full member of the Asia Pacific Laboratory Accreditation Corporation (APLAC) and is a signatory to the APLAC's MRA (since December 2009), which covers testing laboratories (ISO 17025) and medical laboratories (ISO 15189). The APLAC is a cooperation of accreditation bodies in the Asia-Pacific region that accredit laboratories, inspection bodies, and reference material producers. Accreditation bodies in 24 economies in the region are members of APLAC. The SLAB is also a full member of the International Laboratory Accreditation Cooperation (ILAC), and a signatory to ILAC's MRA (also since December 2009). The ILAC MRA covers testing laboratories including medical testing laboratories. The SLAB also has full membership status in the Pacific Accreditation Council (PAC), an association of accreditation bodies whose objective is to facilitate trade and commerce among economies in the Asia Pacific region by promoting the international acceptance of the accreditations granted by its members. The SLAB is seeking membership of the International Accreditation Forum (IAF). It also has a technical cooperation programme with the Swedish Board for Accreditation and Conformity Assessment (SWEDAC). Technical assistance for development of SLAB accreditation activities is provided by SWEDAC and funded by the Swedish International Development Agency (Sida).

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<sup>31</sup> They are: (a) chemical testing: Geocycle Analytical Laboratory, Bamber and Bruece Ltd - Chemical Laboratory, SGS Lanka Laboratory Services - Chemical Laboratory, Industrial Technology Institute - Chemical and Microbiology Laboratory, Lindel Industrial Laboratories, Ceylon Tobacco Company, Sri Lanka Standards Institute (Chemical Laboratory), Atomic Energy Authority, MJF Holdings (Pvt) Ltd, and Sri Lanka Standards Institution (Food Laboratory); (b) mechanical testing: Industrial Technology Institute, Ceylon Tobacco Company; (c) biological testing: Bamber and Bruece Ltd - Chemical Laboratory, SGS Lanka Laboratory Services, Sri Lanka Standards Institute, Industrial Technology Institute, National Aquatic Resources Research and Development Agency (NARA), and Astron Limited; (d) calibration: Atomic Energy Authority Secondary Dosimetry Laboratory, and Sri Lanka Standards Institute - Metrology Division.



89. Technical regulations from trading partners are accepted as equivalent after evaluation of a declaration of conformity and a technical dossier. The certificates, tests, and inspection reports issued by conformity assessment bodies that are not accredited by SLAB may be recognized based on the equivalence of accreditation procedures, and on the basis of the technical soundness and capability of the bodies issuing the certificates.

90. Testing and/or inspection are carried out by SLSI or laboratories and institutions in accordance with national or international standards; some of those laboratories and institutions have been accredited by SLAB.

(b) Standards and certification

91. The Sri Lanka Standards Institution is in charge of formulating national standards, and provides services such as certifying products and systems, inspection of imports and exports, and providing laboratory services such as industrial measurement and calibration and testing services.<sup>32</sup> SLSI national standards are developed through a committee and consultative process; interested parties representing consumers, producers, users, public institutions, and independent technical organizations may be involved. The SLSI generally appoints technical committees to advise in the preparation of standards. The SLSI's policy is to follow international standards to the extent possible; international standards are adopted as Sri Lanka Standards whenever feasible.<sup>33</sup> The authorities noted that priority is given to standards that facilitate internal and external trade and enhance the international competitiveness of Sri Lanka.

92. There are over 1,250 Sri Lanka standards relating to products, commodities, materials, processes and practices<sup>34</sup>; the authorities indicate that the majority are in line with international standards. Standards are revised periodically to take into account the developments of new materials, processes, and technologies. Sri Lanka Standards are voluntary unless made compulsory under the provisions of the Sri Lanka Standards Institution Act or by specific reference to standards in other acts and regulations.

93. The "SLS Marks Scheme", Sri Lanka's product certification scheme, enables the SLSI, under the provisions of the Sri Lanka Standards Institution Act, to grant permits to eligible local and foreign manufacturers to use the "SLS" mark on their products.<sup>35</sup> The SLS mark certifies that the product has been manufactured in accordance with the relevant Sri Lanka Standards specification and verified by regular inspections and tests by the SLSI. Although product certification is essentially voluntary, the certification of 31 locally manufactured or produced products is mandatory under the Directions issued by the Consumer Affairs Authority. Permits are valid for three years and may be renewed; they may be revoked if production stops, if fees are not paid or if the product does not conform.<sup>36</sup>

94. Apart from the SLSI, the Telecommunication Regulatory Commission (TRC) sets quality regulations and technical specifications for equipment and quality of service (QAS) standards. Telecommunications equipment, including imports, requires type approval from the TRC. Provisional type approval based on sample test results is initially granted for six months and may be extended for another six months. Subject to satisfactory performance (including after-sales service), full type approval is issued, generally for five years.

<sup>32</sup> SLSI online information. Viewed at: <http://www.slsi.lk>.

<sup>33</sup> SLSI online information. Viewed at: <http://www.slsi.lk>.

<sup>34</sup> SLSI online information. Viewed at: <http://www.slsi.lk>.

<sup>35</sup> SLSI online information. Viewed at: <http://www.slsi.lk>.

<sup>36</sup> A fee of Rs 100 plus 20% VAT is charged for each application form, as well as a processing fee of Rs 1,000 plus 20% VAT per application.

**(viii) Sanitary and phytosanitary measures**

95. The Ministry of Healthcare and Nutrition is Sri Lanka's enquiry point on SPS matters.<sup>37</sup> Sri Lanka is a member of the Codex Alimentarius Commission and the World Organization for Animal Health (OIE), and a contracting party to the International Plant Protection Convention (IPPC).

96. Sri Lanka has made 18 notifications to the Committee on Sanitary and Phytosanitary Measures, covering measures on foodstuffs covered by SLSI standards; shelf-life of imported foods; wood packaging material; food packaging materials and articles; meat and meat products; milk and milk products; plants, plant products, organisms, soil, and other culture media; food colouring substances; tea, coffee, cocoa and their products; vinegar; irradiated foods; bottled or packaged drinking water; iodized salt; melamine in food products; and genetically modified food. One emergency measure was notified, concerning live domestic and wild birds, hatching eggs, table eggs, etc.

97. Sri Lanka has not made any notifications to the WTO regarding the recognition of equivalence of other countries' SPS measures. The authorities indicate that no such agreements have been reached.

98. No specific trade concerns have been raised against Sri Lanka in recent years in the Committee on Sanitary and Phytosanitary Measures, and Sri Lanka has raised only one specific trade concern against another WTO Member, which was subsequently resolved.<sup>38</sup>

99. Food imports are regulated by the Food Control Act No. 2 of 1950 and the Food Act No. 26 of 1980, and their amendments. The SLSI operates a generalized hazard analysis critical control point (HACCP) certification scheme to ensure food safety.<sup>39</sup> A certificate holder develops and maintains its food safety assurance programme based on the internationally accepted principles of ISO 22000. Other legislation covering SPS issues include Plant Protection Act No. 35 of 1999, and Animal Diseases Act No. 59 of 1992.

100. Under Animal Diseases Act No. 59, the importation of any animal, animal product, veterinary drug or veterinary biological products, animal semen or embryo requires a permit issued by the Director-General of the Department of Animal Production and Health (DAPH), in the Ministry of Health. To obtain a permit for animal products, the importer must produce a certificate from the Chief Veterinary Officer of the country of origin, stating that the product is free from any infective substance likely to cause disease in animals as well as zoonotic diseases. For live animals, a certificate is required from the Chief Veterinary Surgeon or authorized veterinary surgeon of the country of origin. The certificate must set out: the country of origin of the animal; that the animal is and has been free from disease and has not been in contact with diseased animals for three months prior to its exportation; that the place of origin of the animal has been free from disease for 3-12 months (depending on the type of animal) prior to the date of the departure of the vessel carrying the animal from the port of exit; and that the animal has been immunized against the specified diseases. Imports of meat or meat products must be accompanied by a certificate issued by a competent authority in the country of origin warranting that they are fit for human consumption and free from any infective substance likely to cause disease in animals. Animal products to be imported into Sri Lanka must be slaughtered and processed in establishments registered with the veterinary authority in the country of origin. Imports of live animals for human consumption are prohibited.

<sup>37</sup> WTO documents G/SPS/ENQ/25, 15 October 2009, and G/SPS/NNA/15, 15 October 2009.

<sup>38</sup> Restrictions on cinnamon by the European Union. Raised in October 2005 and reported as solved in October 2006. WTO online information at: <http://spsims.wto.org/web/pages/search/stc/Search.aspx>.

<sup>39</sup> SLSI online information at: <http://www.slsi.lk/systems-certification-haccp.php>.

101. All animals imported into Sri Lanka are subject to quarantine for a minimum of 30 days. The DAPH is responsible for enforcing Sri Lanka's quarantine legislation with respect to live animals and related products, which has the stated purpose of ensuring that exotic diseases are not introduced through the importation of livestock and livestock products.<sup>40</sup>

102. Imports of veterinary drugs or veterinary biological products require a safety certificate from the Chief Veterinary Surgeon (or a veterinary surgeon authorized by him/her) in the country of origin. The manufacture of veterinary drugs and veterinary biological products requires a licence valid for a period of one year from the date of issue.

103. The National Plant Quarantine Service in the Department of Agriculture is the body in charge of plant health issues; it is responsible for implementation of the Plant Protection Act No. 35 of 1999 and its regulations in relation to plant quarantine activities. Plant imports must be accompanied by a permit, granted by the Deputy Director of Plant Quarantine or the Director of Seed Certification and Plant Protection. Permits are issued immediately for vegetable seeds that are included in an approved list, which is published in newspapers periodically. Consignments must be accompanied by: a phytosanitary certificate issued within 14 days prior to dispatch; a declaration stating that the consignment is free of soil; and a certificate of origin. Importers of fresh fruits and vegetables for human consumption must produce a certificate from the plant protection authority of the country of origin stating that the fruit has been in cold storage for more than two weeks; no certificates are accepted from countries where there are fruit flies. Upon arrival in Sri Lanka, the consignment is inspected by a Plant Quarantine Officer and/or a representative from the Seed Certification and Plant Protection Centre of the Department of Agriculture.

104. The importation of certain plants is prohibited, except for research.<sup>41</sup> Imports of any plant, plant material, plant product or seed from "Tropical America" are prohibited to prevent the introduction of the "South American Leaf blight pathogen of rubber". Imports of soil and living modified organisms (LMOs) are prohibited. Imports of some live fish are also banned.

105. Since 1999, imports of animals and animal products of ruminant origin are allowed only from countries officially declared as "BSE Provisional Free Status" by the OIE. Imports from a number of countries were specifically forbidden, under the regulations gazetted under the Import and Export Control Act.<sup>42</sup>

106. In 2001, Sri Lanka notified the SPS Committee of restrictions on imports of 21 genetically modified categories of products on the grounds that safety for human consumption is not known.<sup>43</sup> Sri Lanka banned the importation of genetically modified (GM) food products on 1 September 2001. However, this was amended in 2002 and currently, imports of GM foods require prior approval from the Chief Food Authority in the Ministry of Health; a technical recommendation is provided by the Department of Animal Production and Health in that Ministry.

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<sup>40</sup> Animal Diseases Act No. 59 of 1992.

<sup>41</sup> Regulations made under the Plant Protection Act (*Gazette* Extraordinary of the Democratic Socialist Republic of Sri Lanka, No. 165/2, 20 November 1981) list prohibited and restricted plants. This list was not provided to the Secretariat.

<sup>42</sup> Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Israel, Italy, Japan, Liechtenstein, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Switzerland, United Kingdom, and United States.

<sup>43</sup> WTO document G/SPS/N/LKA/1, 19 July 2001.

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**(3) MEASURES DIRECTLY AFFECTING EXPORTS****(i) Procedures**

107. Sri Lanka Customs has a division dealing exclusively with export activities. Export regulations are contained in the Customs Ordinance, and a number of other laws.<sup>44</sup>

108. Export documentation is processed electronically. Exporters must submit a goods declaration to the Director-General of Customs for statistical purposes, specifying the quantity, quality, and value of the goods. The following documents are needed to prepare an export goods declaration: customs declaration (CUSDEC) in four copies; licences and permits if required; shipping note (containing details of the cargo) or airway bill; invoice; packing list and other supporting documents, as and when necessary. Export control permits are required for some items (see below). Exported cargo may be put in the green or red channel. The Chief Export Officer decides the type of examination required for cargo placed in the red channel.

109. Exporters must be registered with Customs. Quarantine or veterinary certificates, issued by the Department of Agriculture or the Department of Animal Production and Health are necessary for plants and animals, respectively, if requested by the buyer. All consignments of animals and animal products exported from Sri Lanka are subjected to quarantine inspection.

**(ii) Export taxes and other charges**

110. Sri Lanka imposes border charges on certain exports. Sri Lanka's legislation allows the use of export duties and cesses to ensure the availability of raw materials for higher-value-added industries and to promote further processing of local materials; finance export promotion activities; and protect national security, archaeological items, and the environment. It also allows imposition of export duties in case of variations in world market prices. Section 10(a) of the Customs Ordinance provides for the levying of export duties, and Section 10(c) provides for any royalty or cess leviable on the exportation of such goods under any written law other than Customs Ordinance.

111. Currently, export duties are levied only on value-added vein quartz (HS 2506.10.90), and raw vein quartz (HS 2506.10.10). Export duties applied on silica quartz are vary according to the price, from zero if the price exceeds US\$300 per tonne, to 14% of the f.o.b. value if the price is below that threshold. These duties have replaced the system of minimum prices of US\$300 per tonne, applied previously, and reported in the previous Review.

112. Under the Export Development Board (EDB) Act No. 4 of 1979 an export cess is currently levied on cashew nuts, raw hides, and metal scrap, at the rates specific to the relevant HS code (Table III.14). The stated objective of these charges varies according to the product, ranging from: discouraging exports in raw form (cashew nuts); ensuring local supplies for manufacture and encouraging export of high-value-added products (raw hides); and ensuring continuous supply for the local industry at competitive prices (metal scrap); However, the use of these levies on exports of locally produced inputs may also act as an incentive to the domestic industry, as it diverts supply towards the domestic market and lowers domestic prices by penalizing exports. A cess falling outside the scope of the EDB Act is applied on exports of a number of coconut products, natural rubber, and tea.

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<sup>44</sup> These include the Revenue Protection Act, the Export and Exchange Controls Act, the Rubber Control Act, The Tea Board Act, The Coconut Development Authority Act, the Fauna and Flora Protection Act, the Animal Disease Act, the Antiquities Act, the Forest Act, the Wild Life Act, the Fire Arms Act, the Opium and Dangerous Drugs Act, the Export Development Board Act, the Sri Lanka Standards Institute Act, the Textiles Act, the Minerals and Mineral Sands Act, the Excise Act, and the Fisheries and Aquatic Resources Act.

**Table III.14**  
**Export Cess and other export levies, 2010**

Product	Rate
<b>Export Cess</b>	
<b>Cess on Tea Exports</b>	
Tea Board Cess	Rs 4.50 per kg
<b>Coconut Development Authority Cess</b>	
Fresh coconut	Rs 750 per 1,000 nuts
Desiccated coconut	Rs 2,000 per 1,000 nuts
Copra	Rs 900 per tonne
Coconut oil	Rs 400 per tonne
Poonac, defatted coconut, coconut shell charcoal	Rs 250 per tonne
Coconut cream/milk powder, coconut shell activated carbon	Rs 450 per tonne
Coconut flour/pieces	Rs 200 per tonne
Coconut ekels	Rs 100 per tonne
Mattress/twisted/bristle fibres	Rs 250 per tonne
Coir yarn/rope	Rs 100 per tonne
Coir twine	Rs 200 per tonne
Coconut based liquor	Rs 3 per litre
Thawashi brushes	Rs 50 per 1,000 pieces
Other brushes	Rs 100 per 1,000 pieces
Coir mats/rugs	Rs 250 per 1,000 pieces
Coir matting	Rs 500 per 1,000 square metres
Pads/mattresses for bedding	Rs 5 per piece
Rubberized coir pads (below 60 mm. thickness)	Rs 0.50 per square meter
<b>Other</b>	
Natural rubber	Rs 4 per kg
<b>EDB Cesses on exports</b>	
<b>Raw cashew nuts with shell</b>	200% of f.o.b. value
<b>Raw hides and skins</b>	
Bovine or equine animals (raw)	50% of f.o.b. value or Rs 100 per kg, whichever is higher
Other (raw)	50% of f.o.b. value or Rs 300 per kg, whichever is higher
Semi tanned	25% of f.o.b. value or Rs 40 per square foot, whichever is higher
<b>Metal Scrap</b>	
Non ferrous metal scrap	25% of f.o.b. value (50% for copper waste)
Ferrous scrap	10% of f.o.b. value
<b>Export taxes</b>	
<b>Quartz</b>	
HS 2506.10.90 value-added vein quartz	20% of f.o.b. value 14% if price US\$140-190 f.o.b./tonne; 9% if US\$191-240 f.o.b./tonne; 3% if US\$241-299 f.o.b./tonne; zero if price exceeds US\$300 f.o.b./tonne
HS 2506.10.10 raw vein quartz	20% up to US\$139 f.o.b. per tonne

Source: Government of Sri Lanka.

### (iii) Export restrictions and licensing

113. Export prohibitions are applied mainly for public health reasons, and to protect endangered species or the environment. Some export restrictions are maintained in accordance with UN sanctions or international conventions (e.g. CITES).

114. The exportation of explosives is prohibited under the Explosives Ordinance (Chap. 633). Exports of dangerous drugs (poppy plant, hemp plant or seeds, pods leaves, flowers or any part of

such plants, raw or prepared opium) are forbidden under the Poisons Opium and Dangerous Drugs Ordinance (Chap. 549). The exportation of ivory or jewellery made with ivory is also forbidden.

115. The exportation of protected plants specified in Schedule V of the Fauna and Flora Protection Ordinance is allowed only for scientific purposes and requires a licence. Exports of flora and fauna listed in Appendices I, II, and III of the CITES are restricted: items in Appendix I are prohibited; items in Appendix II may be permitted on licence issued by the Director of Wild Life Conservation if the species is not threatened in Sri Lanka; export of items in Appendix III may be permitted on licence issued by the Director of Wild Life Conservation. Exports of Cinchona bark in any form, are prohibited under Schedule "B" of the Customs Ordinance. The exportation of ebony in any form (except handicraft made with it) is prohibited. Exports of tea need a Tea Permit issued by the Tea Controller under the Tea Board Act.

116. Exports of any mammal, bird, reptile, amphibian, fish, coral or invertebrate whether dead or alive or the eggs, feathers, or plumage of any bird, horns, antlers, skin or hide of any mammal or reptile or any part of any mammal, bird, reptile amphibian, fish, coral or invertebrate, need a permit from the Wild Life Department. A permit from the Ministry of Fisheries and Aquatic Resources is required for restricted domestic fish species. Permits are issued generally only to promote scientific knowledge.<sup>45</sup>

117. Exports of antiques require an Archaeological Certificate from the Archaeological Department; exports of furniture, old or new, require a recommendation by the Department. Exports of registered vehicles require a certificate from the Registrar of Motor Vehicles. The exportation of firearms requires a licence issued by the Ministry of Defense. Exporters of gems must obtain a Gem Dealers Licence (renewable yearly) from the National Gem and Jewellery Authority (NGJA); all exports of gems must be channelled through the NGJA.

118. Exports of certain minerals are prohibited under Mines and Minerals Act No. 33 of 1992.<sup>46</sup> Under Mining (Licensing) Regulation No. 1 of 1993, the Geological Survey and Mines Bureau is the sole licensing authority for the exploration, mining, transport, trading, processing, and export of minerals.

119. The following products require an export licence issued by the Controller of Imports and Exports under Import and Export Control Act No. 1 of 1969: timber (including logs and sawn timber) classified under HS chapter 44, excluding coconut shell charcoal (HS 44.02), household utensils of wood (HS 44.24) and manufactured articles of wood (HS 44.27); ivory and ivory products (HS 05.10, 38.02, 95.03); passenger motor vehicles first registered in Sri Lanka prior to 1 January 1945 (HS 87.02); and scrap metals listed under Extraordinary Gazette Notification No. 1627/2 of 9 November 2009.

#### **(iv) Export support**

##### **(a) Export subsidies and assistance**

120. Sri Lanka notified the WTO that during 1995-97 it did not provide export subsidies to agricultural products. Sri Lanka also notified that a scheme covered by Article 9.1(d) and (e) of the

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<sup>45</sup> Sri Lanka Export Development Board online information. Viewed at: <http://www.srilankabusiness.com/tradepolicy/products.htm>.

<sup>46</sup> Brick/tile/cement-clay, sand, gravel, laterite, shale, stone aggregate coral, shell, ball clay, kaolin, feldspar, sedimentary limestone, glass sand, calcite, dolomite (marble), silica quartz (vein quartz), garnet, mica, fluor spar, serpent ignite, magnetite, green marble, radioactive minerals, apatite, dimension stone in raw form.

Agreement on Agriculture had been implemented with effect from 15 August 1997. The programme was to subsidize the cost of international transport/freight covering goods such as fresh fruit, fresh vegetables, foliage, live plants and preparatory materials, gherkins, cut flowers, floricultural products, and betel leaves.<sup>47</sup> Sri Lanka has not submitted any further notifications with respect to export subsidies in agriculture. However, in the context of the current review, the authorities noted that this programme is no longer in place.

121. Sri Lanka notified in 1997, that the Export Development Board is authorized to provide subsidized loans and grants to direct, indirect, and potential exporters for up to Rs 1 million (US\$8,900) per project. Funds may be used to develop viable export ventures or to increase export capacity and export volume or as working capital.<sup>48</sup> However, in the context of the last Trade Policy Review of Sri Lanka, the authorities indicated that the EDB was not granting any assistance, due to lack of funds. The situation remains the same.

(b) Duty and tax concessions

122. Sri Lanka implements a number of incentive schemes aimed at promoting exports through the enhanced competitiveness of export production. At present three main schemes are being handled by Sri Lanka Customs: a drawback scheme, a temporary importation for export processing scheme (TIEP), and the manufacture-in-bond scheme.<sup>49</sup>

*Duty Rebate Scheme (Drawback)*

123. Sri Lanka implements a duty rebate scheme, through which duties paid on imported raw materials and intermediate inputs used in the manufacture of products for export may be partially or fully rebated or refunded once the final good is exported. The authorities consider that the Duty Rebate Scheme does not function as an incentive scheme. Exporters who incur fiscal levies on imported inputs and use these items to manufacture products for export directly or indirectly are eligible. Exporters who intend to use the scheme must register with the Duty Rebate Unit of the Sri Lanka Customs Export Division. Registration is required for each export shipment, and must be accompanied by an export invoice, receipt/airway bill, and parties' copy of the export shipment.

124. Under the duty rebate scheme, only customs duties and the import surcharge are rebatable; the Cess, excise duties, the PAL, and other duties levied on imports are not included. Likewise, the VAT does not qualify for payment of duty rebate. Locally purchased imported items that have been used for manufacture of export products are considered for duty rebate. Exporters must submit a claim to the commercial bank that received the remittance for the exported products, along with relevant export documents. The rate of rebate, a percentage of the f.o.b. value, is determined by the Director-General of Customs, based on the cost statements submitted and approved by the Deputy Secretary to the Treasury. Products eligible for duty rebates approved by the Minister of Finance are gazetted periodically. Exporters dissatisfied with a decision may appeal within 30 days. The rebate can be claimed within six months from the date of export.

*Temporary Importation for Export Processing Scheme (TIEP)*

125. The Temporary Importation for Export Processing (TIEP) Scheme allows direct and indirect (manufacturers who produce inputs to produce exportable goods) exporters to import inputs without

<sup>47</sup> WTO document G/AG/N/LKA/1, 20 May 1999.

<sup>48</sup> WTO document G/SCM/N/3/LKA, 17 January 1997.

<sup>49</sup> Sri Lanka Customs online information. Viewed at: [http://www.customs.gov.lk/exp\\_promo.htm#bond](http://www.customs.gov.lk/exp_promo.htm#bond).

payment of fiscal levies. The aim of the scheme is to enhance the competitiveness of export production and encourage the expansion of production capacity and exports.

126. The TIEP scheme has two sub-schemes: TIEP1 and TIEP4. TIEP1 allows for the importation of raw materials, components, parts and packaging materials, exempt of duties. Exporters must apply to the Director-General of Customs for approval to operate under the scheme. Exporters using the scheme to manufacture any product for export are not entitled to operate under the Scheme for Customs Duty Rebate, the Scheme for Manufacturer-in-Bond for Export or any other Scheme for the Temporary Importation of Inputs for manufacture and export in respect of an identical product. Beneficiaries must make a declaration to that effect on the prescribed form TIEP1.

127. The benefits under the TIEP1 are granted annually. New exporters must furnish a bank guarantee to Customs, equal to the full value of the duties and taxes payable for the approval period (one year). Existing exporters, with 1 to 3 years of proven track record, may furnish a bank guarantee equal to 25% and a personal/company guarantee for the remaining 75%. Exporters operating under the scheme for over three years, may submit a personal/company guarantee equal to the full value of the duties and taxes payable.

128. Exporters operating under this scheme can obtain supplies from another beneficiary of the scheme or from manufacturers/exporters benefiting from the Manufacturer-in-Bond Scheme.

129. The TIEP4 scheme covers the importation of capital goods, appliances, spare parts, intermediate materials (excluding raw materials), transport and handling equipment, and breeding stock (for agricultural projects), which are eligible for whole or partial exemption of customs duties, import surcharge, EDB Cess, and excise tax. The amount of the duty and tax exemption granted depends upon the amount exported: 100% for exporters who export 50% or more of their output, and indirect exporters who supply 50% or more of their output to direct exporters; and 50% for exporters who export between 25% and 50% of their output, and indirect exporters who supply 25% to 50% of their output to direct exporters.<sup>50</sup>

130. General approval (for several importations within one year) or specific approval (for a single importation) may be granted. A guarantee for the full amount of the duties due is required in all cases; the type of guarantee varies according to the proven track of the exporter, as in the case of TIEP1. Exporters must give a written undertaking that the items imported under this scheme will not be sold, hired, leased, disposed of or used for any purpose other than that for which they were imported, within three years without the prior approval of the Ministry of Finance or the Director-General of Customs.

#### *Manufacture-in-bond scheme*

131. Any manufacturer who exports may apply to the Customs Department for approval to establish a manufacturing-in-bond warehouse. Through this scheme, these manufacturers do not have to pay duties and taxes at the time of importation. Any kind of production process, including mixing and assembling, may be undertaken in in-bond warehouses. Imported goods may be stored for up to six months without payment of duties and taxes, extendable for up to two years. Further extension is possible, under exceptional circumstances. The manufacturer must furnish a bank guarantee equal to the full value of the duty and taxes payable. The manufacturer must also obtain an annual licence for the bonded warehouse.

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<sup>50</sup> Sri Lanka Customs online information. Viewed at: [http://www.customs.gov.lk/exp\\_promo.htm#bond](http://www.customs.gov.lk/exp_promo.htm#bond).



*Export Processing Zones (EPZs)*

132. Sri Lanka has 13 free-trade zones (called export processing zones), administered by the Board of Investment (BOI). There are some 268 enterprises operating in the EPZs, employing over 117,000 persons.<sup>51</sup> Data on exports are not complete, but their estimated value was some Rs 575 billion (US\$5.1 billion) in 2009.<sup>52</sup> The largest EPZ, Katunayake, is mainly devoted to the production of garments. It employs over 40,000 people, has Sri Lanka, United States, United Kingdom, and Hong Kong, China investment, and exported over Rs 128 billion (US\$1.1 billion) in 2009. Other important EPZs are Biyagama (surgical gloves, knitted fabrics, electronic circuits, tobacco processing, garments, tyres, with investors from Australia, Sri Lanka, the United Kingdom, the United States, the Netherlands, Germany, and Hong Kong, China), and Horana (confectionery, polymers, with mostly domestic investment).

133. Enterprises located in an EPZ are entitled to tax holidays and duty-free imports. However, under current government policies, foreign investors may establish factories in almost any part of the country and receive tax incentives. These schemes include duty exemptions and refunds of duties and other fiscal levies on imported inputs used in the manufacture of exports.

*Other Export Incentive Schemes*

134. Exporters of non-traditional goods or services qualifying for concessions under Section 17 of the Board of Investment (BOI) Act enjoy a number of tax concessions. These include a tax holiday based on the amount of the investment, and a preferential 10% income tax rate on profits for the first two years of operation following the tax holiday period, and of 15% thereafter.<sup>53</sup>

135. New investments in non-traditional export industries and export-oriented services benefit from a full tax holiday for three to seven years, depending on the value of the investment (Table AIII.6); they also enjoy import duty exemptions on capital goods and raw materials. These companies are required to export at least 80% of goods production or 70% in the case of services.

136. Incentives are also available, under the Inland Revenue Act, to exporters not benefiting from Section 17 of the BOI Act. These include a tax holiday, a preferential 10% income tax rate on profits for the first two years of operation following the tax holiday period, and of 15% thereafter. They are applicable until 1 April 2014. Declared dividends are subject to 10% tax rate. Enterprises that supply to export operations also benefit from a 15% tax on the profits of such sales until 1 April 2014, and their dividends are taxed at 15%. Manufactured items supplied to an exporter are exempt from turnover tax.

137. Agricultural and fisheries companies are entitled to a five-year tax holiday on profits and income, whether established under the BOI Act or the Inland Revenue Act. Tax incentives for the setting up of export trading houses for the rural sector consist of a preferential 10% income tax rate on profits for the first two years of operation and of 15% thereafter.

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<sup>51</sup> Information provided by the authorities; and BOI online information. Viewed at: [http://www.boi.lk/2009/free\\_trade\\_zones\\_industrial\\_parks.asp](http://www.boi.lk/2009/free_trade_zones_industrial_parks.asp).

<sup>52</sup> BOI online information. Viewed at: [http://www.boi.lk/2009/free\\_trade\\_zones\\_industrial\\_parks.asp](http://www.boi.lk/2009/free_trade_zones_industrial_parks.asp).

<sup>53</sup> Under Section 17 of the BOI Act, the Board may enter into agreements with any enterprise to grant exemptions from any law referred to in Schedule B of the Act, or to modify its application; the Inland Revenue Act is included in the Schedule. An enterprise with which the BOI has reached an agreement is called a BOI enterprise or company.

138. Companies that export gems and jewellery receive an open-ended exemption from income tax on their profits and income. Companies that operate and maintain facilities for the storage of specified goods brought into Sri Lanka for re-export or operate yachts and pleasure craft registered with the Director of Merchant Shipping are exempt from taxes on profits and income.

(v) **Export finance, insurance, and guarantees**

(a) Export finance

139. There is no state agency or bank that provides loans or equity finance to exporters; the Export Development Board ceased to provide them in 1996. Until June 2006, the Sri Lanka Export Credit Insurance Corporation (SLECIC) provided post-shipment financing to small exporters (with a turnover of less than Rs 5 million per year) unable to obtain a loan from a bank, through the SLECIC Export Finance scheme. Loans were not product specific and were provided at market rates.

140. To assist exporters during the global financial crisis, the Government introduced an Export Development Reward Scheme (EDRS) for tea, rubber, cinnamon, garment, and leather exporters (see Chapter IV(2)). The Government also implemented a Simplified Value Added Tax Scheme (SVAT) to help direct and indirect exporters overcome cash flow difficulties. Sri Lanka has taken the initiative to establish an Exim Bank to provide financial assistance to exporters and importers, and to promote international trade in goods, services, and capital, and thereby enhance growth, employment and real income. The proposed Exim Bank is expected to take on a product-oriented approach during the formative years and gradually evolve into a more customer-oriented approach. The bank would also help exporters to develop export markets and to expand export production capacity through a variety of short-term financing products.<sup>54</sup>

(b) Export insurance and guarantees

141. The Sri Lanka Export Credit Insurance Corporation (SLECIC), incorporated under Act No. 15 of 1978, is the accredited Export Credit Agency of the Government of Sri Lanka; it functions under the Ministry of Finance and Planning. SLECIC is the only agency that insures exporters in Sri Lanka. The SLECIC insures exporters of goods and services against non-receipt or delayed receipt of payments resulting from commercial and non-commercial risks. It also issues guarantees to banks and other financial institutions to facilitate the granting of pre-shipment and post-shipment finance. SLECIC also offers pre-shipment credit guarantees and export performance guarantees.<sup>55</sup>

142. There are several types of insurance: the most used is the seller's risk policy, through which SLECIC covers both commercial and non-commercial risks.<sup>56</sup> The policy covers goods dispatched or services rendered by an exporter on credit terms. However, SLECIC fixes a maximum liability limit under the policy. Also, commercial risks are subject to a credit limit approved by SLECIC, which limits exposure to individual buyers; the exporter must apply for a credit limit in respect of each buyer. SLECIC establishes the credit limit based on each buyer's creditworthiness. Once approved, the credit limit is valid generally for one year, or until it is cancelled or auto suspended. The policy is

<sup>54</sup> Central Bank of Sri Lanka (2009a)

<sup>55</sup> See Sri Lanka Export Credit Insurance Corporation online information. Viewed at: [http://www.slecic.lk/About\\_slecic/Who\\_we\\_are.html](http://www.slecic.lk/About_slecic/Who_we_are.html).

<sup>56</sup> Commercial risks include: risk of insolvency or payments default of the buyer, default, and refusal or failure of the buyer to accept the goods or services. Among non-commercial risks, it covers: risk of war, civil war, natural disaster, moratorium, political event or economic difficulties affecting the payment, changes in laws, import bans, failure or refusal to fulfil the terms of contract by the buyer, increased shipping and handling costs due to interruption or diversion of voyage, etc.

issued against a minimum prepaid premium of Rs 10,000 (US\$89), which is adjusted against the actual premium payable on the value of the goods dispatched or services rendered.

143. Other types of insurance include the Seller's Risk for Services scheme, designed to protect Sri Lankan exporters against payment risks associated with rendering services to foreign buyers; it covers services such as software, tourism, freight forwarding, telecom and construction work undertaken abroad. The Seller's Risk for Entrepot Trade scheme is designed to facilitate entrepot trade.

144. The Seller's Risk policy scheme has been operating at a surplus. In the 2001-05, last period for which information is available, it ran a net surplus of Rs 228 million (US\$2 million), posting profits in every year. Insured exports under the scheme totalled Rs 31.7 billion. They more than tripled between 2001 and 2005, from Rs 3 billion (US\$27 million) to Rs 10.9 billion (US\$97 million)<sup>57</sup>; and rose to Rs 13.4 billion (US\$120 million) in 2009.

145. SLECIC's Pre-shipment Credit Guarantee helps exporters to obtain pre-shipment finance to purchase raw materials, undertake manufacturing and processing of goods and packaging for export. It guarantees the lending bank/financial institution up to 66.6% of losses incurred in case of default by the borrower. The Post-Shipment Credit Guarantee aims to help exporters obtain financing at the post-shipment stage to continue their export activities; it operates from the date of shipment until realization of export proceeds. The Guarantee covers losses incurred by the bank/financial institution for up to 75% of the credit. The Whole-turnover Pre/Post Shipment Credit Guarantee covers advances by financial institutions to exporters and indirect exporters with a higher coverage. The Export Production Credit Guarantee, for indirect exporters, guarantees up to 75% of a credit granted to them. The Export Performance Guarantee covers commercial banks issuing guarantees for exporters; the bank/financial institution is covered up to 75% of losses incurred. The Export Performance Credit Guarantee for Freight Forwarders covers banks that issue guarantees to airlines that extend credit facilities to freight forwarders. The ATA Carnet System is a 100% guarantee issued directly by SLECIC to the International Chamber of Commerce of Sri Lanka to enable exporters (especially of gems and jewellery) to obtain the ATA Carnet without collateral security.<sup>58</sup> The scheme was recently modified to reduce the minimum guarantee period from one year to six months, to facilitate exporters' participation in international fairs.

**(vi) Export promotion and marketing assistance**

146. The Sri Lanka Export Development Board (EDB), is the state body responsible for the promotion and development of exports. The EDB was established under Sri Lanka Export Development Act No. 40 of 1979, and now functions under the Ministry of Industry and Commerce. The EDB's role is to assist producers and exporters of goods and services to identify and penetrate new markets, to enhance the competitiveness of their exports, as well as to develop goods and services that will meet market demands. The EDB also offers export marketing support through market research identifying marketing opportunities as well as advice on international marketing and trade negotiations. There is also a Special Project for Regional SME Development.<sup>59</sup>

147. The EDB is financed mainly by public funds, but also by the Export Development Cess.

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<sup>57</sup> SLECIC (2005).

<sup>58</sup> The ATA Carnet, a customs document, allows goods and commercial samples exported for use in trade fairs, exhibitions, and for trade promotional purposes, to be imported duty free.

<sup>59</sup> EDB online information. Viewed at: <http://www.srilankabusiness.com/aboutus/index.htm>.

**(4) MEASURES AFFECTING PRODUCTION AND TRADE****(i) Business environment and taxation**

148. The Companies Act (No. 7 of 2007) contains the rules, procedures, accounting and reporting requirements for companies incorporated or registered in Sri Lanka. Company registration, as well as the filing of accounts and annual returns are with the Registrar of Companies. Businesses require a business commencement certificate to start operating.

149. Companies may be established as private or public companies. A private company must consist of at least two and not more than 50 members, one director, and may not invite public subscription for its shares. Public companies must have at least seven members (no upper limit) and at least two directors. Public companies may invite public subscriptions for their shares or debentures and other securities, and may be listed on the stock exchange. A company registered within or outside Sri Lanka may register in Sri Lanka as an offshore company to carry on any business outside Sri Lanka.

150. Foreign companies may operate through subsidiaries or branches. Following incorporation, a subsidiary in Sri Lanka must comply with all the statutory requirements imposed on domestic companies. Branches must also be registered with the Registrar of Companies; the liability of a branch extends to its foreign assets. A company incorporated abroad may maintain a presence in Sri Lanka through a representative office, which has a similar status to that of a branch office, but is prohibited from engaging in any trading or investment activity or accruing any turnover in Sri Lanka. Joint ventures may be established with other Sri Lankan companies or with foreign entities. A joint venture may be incorporated or carried on as an unincorporated business similar to that of a partnership.<sup>60</sup>

151. Sri Lanka has signed several double taxation relief agreements.<sup>61</sup> These provide for reduced tax rates on dividends, interest, and royalties. The agreements signed more recently include special provisions to ensure foreign investors national treatment for tax incentives.

152. Resident and non-resident companies, with the exception of BOI companies (see section iv(b)) and of enterprises that qualify for special concessions under the Inland Revenue Law, are liable to a corporate income tax of 35%. Non-resident companies pay an additional tax equivalent to 10% of their remittances abroad. Remittances exclude dividends for this purpose. BOI companies that meet specific criteria, such as size of total investment, type, and location of investment, qualify for tax holidays ranging from 3 to 15 years, and may benefit, after the tax holiday, from a concessionary income tax rate of 10% for two years and 15% thereafter, if applicable (otherwise the rate is 20%). Dividends declared out of tax-exempt profits during the tax holiday period and one year thereafter, are tax free for companies that entered into an agreement with BOI prior to 6 November 2002. However, dividends paid after 1 April 2004 by companies whose agreement with the BOI was signed after 6 November 2002 are liable to a withholding dividend tax of 10%; this tax applies to all companies other than quoted public companies.

153. Resident individuals pay personal income tax on a sliding rate scale up to a maximum of 35%. The first Rs 300,000 (US\$2,700) of income per annum is exempt from income tax.

<sup>60</sup> Board of Investment of Sri Lanka online information. Viewed at: [http://www.boi.lk/2009/registration\\_of\\_a\\_company.asp](http://www.boi.lk/2009/registration_of_a_company.asp).

<sup>61</sup> Australia, Bangladesh, Belgium, Canada, China, Denmark, Egypt, France, Finland, Germany, Hong Kong China, India, Italy, Indonesia, Iran, Japan, Jordan, Korea, Kuwait, Malaysia, Mauritius, Nepal, Netherlands, Norway, Oman, Pakistan, Poland, Philippines, Romania, Russia, Saudi Arabia, Singapore, Sweden, Switzerland, Thailand, United Arab Emirates, United Kingdom, United States, Yugoslavia (Serbia).

Non-citizens of Sri Lanka who are employed in qualifying BOI companies paid tax at a concessionary rate of 15% of their Sri Lankan source income until 31 March 2008; their income is now taxed at the normal rate. However, employment income of expatriates brought to Sri Lanka by a company that entered into an agreement with the BOI before 31 December 1994, is exempt from the tax during the holiday period granted to the company.

154. Under Value Added Tax Act, No. 14 of 2002 a VAT is applied on goods and services supplied in Sri Lanka or imported into Sri Lanka. The tax is levied at the time of supply, on every taxable supply of goods or services, made in a taxable period, by a registered person in the course of the carrying on, or carrying out of a taxable activity in Sri Lanka; or upon importation of the goods into Sri Lanka (section (iii)(other duties)). Most goods and services are taxed at 12%. Direct exports of goods and designated services receiving payments in foreign currency are zero rated. A rate of 5% applied on sugar, rice, dhal, milk powder, dried fish, chillies, and onion was abolished with effect 1 January 2009. A rate of 20% is applied on a list of, mostly, luxury goods. BOI companies are not specifically exempt from the VAT or other indirect taxes.

155. Sri Lanka was ranked 105<sup>th</sup> out of 181 in the World Bank's Ease of Doing Business ranking for 2010, down from 97<sup>th</sup> in 2009. Sri Lanka fared relatively well with respect to ease of starting a business (41<sup>st</sup>); ease of closing a business (45<sup>th</sup>); trading across borders (65<sup>th</sup>); getting credit (71<sup>st</sup>); and protecting investors (73<sup>rd</sup>). It fared less well, however, with respect to dealing with construction permits (168<sup>th</sup>); paying taxes (166<sup>th</sup>); registering property (148<sup>th</sup>); and enforcing contracts (137<sup>th</sup>).<sup>62</sup>

## **(ii) Competition policy and price regulation**

### **(a) Competition policy**

156. There is no comprehensive single law on competition in Sri Lanka that outlaws practices per se; the competition body is geared mainly to dealing with the effect of unfair practices on consumers. Investigations on the effects of mergers are done only for utilities, which are under the purview of the Public Utilities Commission. Draft competition legislation is currently being analysed. The new legislation would increase the powers of the competition authority (Consumer Affairs Authority) and introduce rules to make pre-merger notification analysis mandatory.

157. The Consumer Affairs Authority Act (CAA Act No. 9 of 2003) is the main law regulating competition policy in Sri Lanka.<sup>63</sup> The Act, which entered into force in March 2003, repealed the Fair Trading Commission Act No. 1 of 1987, the Consumer Protection Act No. 1 of 1979, and the Control of Prices Act (Cap 173). It covers competition policy, price regulation, and consumer protection.

158. The CAA Act created the Consumer Affairs Authority (CAA), which replaced the Fair Trading Commission (FTC) and the Department of Internal Trade (DIT) in their respective competences. The CAA is under the Ministry of Trade, Commerce, Consumer Affairs and Marketing Development. The law applies to all undertakings dealing with goods and services, and to the sale and supply of public utilities (electricity, water, gas, and telecommunications). Other competition aspects for public utilities are covered by their own specific legislation. Although the CAA Act covers both competition and consumer affairs, it is more comprehensive with respect to the latter, and the competition provisions of the Act are limited.

<sup>62</sup> World Bank online information. Viewed at: <http://www.doingbusiness.org/ExploreEconomies/?economyid=174>.

<sup>63</sup> Consumer Affairs Authority Act No. 9 of 2003. Viewed at: <http://www.consumeraffairs.gov.lk/images/ACT.pdf>.

159. The CAA comprises an investigative authority and an adjudicative body, the Consumer Affairs Council (CAC). The CAA is mandated to protect consumers against unfair trade practices and against the marketing of goods or the provision of services that are hazardous to the life and property of consumers. The CAA is also mandated to protect consumers' interest, and to ensure that wherever possible consumers have adequate access to goods and services at competitive prices. The CAA's functions include controlling or eliminating: restrictive trade agreements among enterprises; arrangements amongst enterprises with regard to prices; abuse of a dominant position; or any other restraint of competition adversely affecting domestic or international trade or economic development. The CAA has investigative powers into anti-competitive practices and abuse of a dominant position.<sup>64</sup> It hears and determines all applications made under the law, and may issue orders to, among other things, cease the anti-competitive practice, if it is satisfied that the practice operates against the public interest. It has the authority to issue an order in response to a complaint of an anti-competitive practice received from the Authority, any other person, or association of traders. It also has the power to issue notices to witnesses, and to procure evidence.

160. Although the CAA may investigate the effects of anti-competitive practices, Sri Lanka's legislation does not confer on either the CAA or the CAC power to conduct investigations on the existence of monopolies *per se* or to examine mergers or acquisitions. Anti-competitive practices relating to monopolies and mergers, and acquisitions are not covered by the CAA Act. Moreover, section 71 of the CAA Act exempts any "institution or body that has been granted the exclusive right to supply such goods or services" from the provisions of the law relating to anti-competitive practices. Also, adequate monitoring and enforcement mechanisms seem to be somewhat lacking in Sri Lanka. In its policy implementation, the CAA must coordinate with regulatory authorities such as the Public Utilities Commission, the Telecommunication Regulatory Commission (TRC) and the National Transport Commission (NTC). The authorities note that the CAA has proposed certain amendments to the existing Act where it has been proposed to extend the CAA's powers to conduct investigations and to issue orders on the prevalence of any monopoly and on merger situations, if the monopoly situation or merger operates against the public interest.

161. Important elements of competition policy are contained in the Public Utilities Commission of Sri Lanka Act (No. 35 of 2002), which applies only to regulated industries (electricity, petroleum, and water). Section 24 of this Act grants the Public Utilities Commission competition enforcement powers, as well as power to authorize mergers of entities within its jurisdiction. The Act authorizes the Commission to carry out merger investigations. If the Commission finds that an anti-competitive practice or merger situation exists but does not operate or is not likely to operate against the public interest, the Commission must authorize the practice or merger situation, subject to the conditions it may consider necessary. The Commission may conduct investigations with respect to abuse of a dominant position; and may order the termination of the practice or allow continuation of the activity subject to supervision. Sri Lankan legislation does not prohibit holding a dominant position *per se*, only the abuse of this position. In investigations with respect to mergers, the Commission may prohibit the merger only if it has not yet taken place, and when the merger is likely to operate against the public interest.<sup>65</sup> However, pre-merger notification is not mandatory, so, in practice, this situation is very unlikely to arise. If the Commission proves that a merger operates against the public interest, it may order a de-merger. Under the Securities and Exchange Commission Act No. 36 of 1987, the

<sup>64</sup> Consumer Affairs online information. Viewed at: <http://www.consumeraffairs.gov.lk/aboutus.php>.

<sup>65</sup> The law mandates that, in determining whether an anti-competitive practice or merger situation operates or is likely to operate against the public interest, the Commission take into account the desirability of: (a) maintaining and promoting effective competition between regulated entities; and (b) promoting the interests of consumers in relation to the market in which the anti-competitive practice or merger situation operates, or is likely to operate.

Securities and Exchange Commission may investigate mergers with respect to companies listed in the Colombo Stock Exchange.

162. The CAA has the right to take necessary action to protect consumers against manufacturers and traders in respect of labelling, price marking, packaging, sale or manufacture of any goods, and may issue general directions on these areas. The CAA may also determine standards and specifications relating to the production, manufacture, supply, transport, and sale of any goods and to the supply of any services, for the purpose of protecting consumers and ensuring the quality of the goods or services provided. In this respect, the CAA may adopt standards and specifications prescribed by the Sri Lanka Standard Institution (SLSI) as standards and specifications determined under the CAA Act. It may also determine the "specific goods" that are essential for the living, and place such goods under price regulation for the wellbeing of consumers (see below).

163. The CAA may carry out investigations with regard to the prevalence of any anti-competitive practices that prevent, restrict or distort competition, in the sale of goods or provision of any services. In this regard, it has the powers of a District Court. Between July 2003 and December 2009, the Authority conducted 29 investigations on complaints of anti-competitive practices. It also conducted and concluded investigations on price fixing, abuse of dominant position, unfair trade practices, misleading advertisements, and false representations, among others.

164. The denial of goods in possession and imposing conditions on the consumer upon purchase are considered offences under the CAA Act, as well as: refusing to sell goods; manufacturing and selling goods that fail to comply with the stipulated standards and quality; sale of goods above the maximum price where prices have been fixed or marked; altering, obliterating, erasing or defacing a label or description of any goods and producing such a good for sale; the violation of the directives relative to manufacturing, importing, marketing, sorting, selling and stocking goods; engaging in a conduct that is misleading or deceptive; failure to produce documents or records or to answer any question asked by the CAA relating to a matter under investigation.

165. The CAA may issue general and special directions under the section 10 of the Act. General directions may address labelling, price marking, or sale or manufacture of any goods, while special directions are apply to specified manufacturers or traders with specifications on time and place of sale, and conditions on manufacturing, importing, marketing, storing, selling, and stocking goods. The CAA may issue Orders under Section 20(5) of the Act, fixing the maximum retail price (MRP) of any goods or services. Every order or direction is published in the *Gazette* and in newspapers in Sinhala, Tamil, and English. As at February 2010, the CAA had issued four orders and 18 directions.<sup>66</sup> The Authority is mandated to enter into written agreements with any manufacturer or trader or associations of manufacturers or traders on the maximum price for goods, on the standards and specifications of any goods, or in respect of conditions of import, supply, storage, distribution, transportation, marketing, labelling or sale of goods. These agreements concern mostly wholesale prices. The authorities indicated that seven such agreements have been entered, for example, on milk powder.

(b) Price regulation

166. In accordance with Section 18 of the CAA Act, any item of goods or services may be "specified" as an essential commodity by the Minister of Cooperatives and Internal Trade in consultation with the Consumer Affairs Authority. Once an item is specified no importer, manufacturer or trader may increase the price of the product without the CAA's prior written

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<sup>66</sup> The directions relate to standards for LPG, price marking of certain foodstuffs and toiletries, warranty periods for electrical appliances; labelling of manufactured goods; and mandatory use of certification marks.

approval. The Authority has 30 days to examine an application and convey the decision to the manufacturer or trader. The objective is to ensure that prices are not increased indiscriminately and that every increase is reasonable and justifiable. The authorities do not consider that their regulation of prices is a form of price control, which was terminated when the Control of Prices Act (Cap 173) was repealed.

167. The CAA examines the cost structure pertaining to an application for a price revision by making reference to supportive documentary evidence furnished by the applicant, and makes recommendations to the CAA Board for the approval of prices. Prices approved by the CAA may vary from brand to brand depending on the cost incurred by each applicant. These prices are fixed on the recommendations of the CAC subsequent to investigations being conducted by the CAC on references made to it by the CAA that goods are being sold or services are being provided at an excessive prices, or in the case of the existence of any market manipulation or other market imperfection in respect of such goods or services. As mentioned above, the CAA has also from time to time entered into written agreements with traders and trader associations on the maximum retail and wholesale prices of goods prescribed as specified goods.

168. The Ministry of Cooperatives and Internal Trade is consulted prior to introducing fiscal measures, such as import duty changes, subsidies, rebates, etc. so that these changes in taxation do not lead to an escalation in prices. However, the CAA may obtain certain fiscal concessions on certain products. For example, it was instrumental in obtaining a waiver of the VAT on liquefied petroleum gas (LPG) after LPG became a specified item under Section 18 of the Act to facilitate its sale to consumers at a reasonable price.

169. Products currently subject to price regulation included: chicken meat, some dairy products, rice, chicken, wheat flour, white sugar, dried chillies, some types of onions, dhal, dried sprats, gram, green moong, canned fish, cement, and LPG (Table III.15). These products are subject to price regulation indefinitely. The authorities indicated that the 15 specified products are not all subject to price regulation.

170. The Tea Board has statutory authority to regulate the price of green leaf paid by factories (since 1968); bus fares are also set using a formula.

**Table III.15**  
**Products subject to price regulation, May 2010**

Product description or district	Maximum retail price (Rs)
<b>Description</b>	
Chicken meat, frozen; broiler chicken meat with skin	35.00 per 100 g
Ordinary portland cement SLS 107	750.00
Portland limestone cement SLS 1253	750.00
Masonry cement SLS 515	700.00
Full cream milk powder 400 g	225.00
Full cream milk powder 1 kg	550.00
All other pack sizes of full cream milk powder	56.25 per 100 g
Samba rice, cleared (excluding Keeri Samba and Suduru Samba) 1 kg	70.00
Nadu rice 1 kg	60.00
Red and white raw rice 1 kg	60.00
LP gas	..

Table III.15 (cont'd)



Product description or district	Maximum retail price (Rs)		
	<i>Laugfs gas</i> 12.5 kg cylinder	<i>Shell gas</i>	
		12.5 kg cylinder	2.3 kg cylinder
District			
Colombo	1,744	1,769	325
Gampaha	1,752	1,777	337
Kalutara	1,757	1,781	337
Putlam	1,781	1,794	339
Kegalle	1,775	1,796	340
Kurunegala	1,771	1,796	340
Galle	1,772	1,797	340
Ratnapura	1,774	1,799	340
Kandy	1,781	1,806	341
Matara	1,781	1,805	341
Matale	1,784	1,808	342
Trincomalee	1,807	1,820	343
Anuradhapura	1,797	1,821	343
Polonnaruwa	1,797	1,821	343
Vavuniya	1,842	1,836	344
Mannar	1,852	1,856	345
Hambantota	1,801	1,825	345
Monaragala	1,820	1,843	345
Badulla	1,816	1,837	345
Ampara	1,822	1,845	345
Nuwaraeliya	1,816	1,837	345
Batticaloa	1,832	1,845	304
Jaffna	1,950	1,930	348

.. Not available.

Source: Consumer Affairs Authority online information. Viewed at: [http://www.consumeraffairs.gov.lk/Price\\_Regulation.php](http://www.consumeraffairs.gov.lk/Price_Regulation.php).

### (iii) Incentives

#### (a) Tax incentives

171. Sri Lanka offers a wide range of tax incentives, notably tax holidays, primarily for investment purposes. In 2002, Sri Lanka notified a list of tax incentives available equally to national and foreign enterprises investing in Sri Lanka.<sup>67</sup> Most of these are still in place. The 2002 notification highlights two main investment incentive regimes: (a) granted to Board of Investment (BOI) companies (under Section 17 of the Board of Investment (BOI) Act), which enjoy tax benefits under BOI Regulation No. 2 of 2006; and (b) granted under the Inland Revenue Act No. 10 of 2006, and amendments up to the Inland Revenue (Amendment) Act No. 19 of 2009. The first regime of incentives is managed by the BOI, while the second is run by the Inland Revenue Department (IRD) of the Ministry of Finance. In the last Review, it was mentioned that there appear to be moves to eliminate this distinction, but this has not happened.

172. Sri Lanka's current system of tax incentives may result in duplication and overlap of beneficiaries if not of benefits. This hinders transparency and causes confusion, which may effect the desired outcome. Effective tax rates may therefore vary substantially by firm and sector, and on average fall short of the statutory corporate tax rate of 20%. Also, very substantial use of investment schemes risks distorting the allocation of resources and creating competition for rent appropriation,

<sup>67</sup> WTO document G/SCM/N/74/LKA, 7 January 2002.

since in many cases, the incentive may not be needed to allow the investor to operate profitably. There is no estimate available of revenue forgone due to these incentives schemes; however, income tax receipts, although they have increased in recent years, remain low. At 2.9% of GDP, they account for a much lower percentage than taxes on goods and services (7.4%), and are lower even than taxes on international trade (3.1%).<sup>68</sup>

173. Investments under the BOI Act scheme are subject to a number of requirements, including export performance and minimum export requirements. Manufacturers of non-traditional goods for export, including deemed exports, with an investment of at least US\$250,000 and a minimum export content of 80%, are granted a full tax holiday of three to seven years, depending on the amount invested. The income tax rate is at 10% for two years following the fiscal holiday, and 15% thereafter. Export-oriented services industries with investment of at least US\$500,000, and exporting at least 70% of turnover enjoy a five-year full tax holiday and an income tax rate of 10% for two years following the fiscal holiday, and 15% thereafter. The same treatment is granted to manufacturers of industrial tools and/or machinery investing at least US\$150,000, except that after two years they are subject to the normal income tax rate of 20%. Two-year full tax holidays are extended to IT-related industries, and a three-year tax break is granted for the establishment of companies' regional headquarters in Sri Lanka; in the latter case, there is also a permanent income tax rebate to a rate of 15% (Table AIII.6).

174. Tax advantages are also offered to investors for expanding a company in the hotel industry (3 star and above). Investors in research and development with an investment of at least US\$100,000 are granted a five-year full tax holiday, and are taxed at 15% thereafter if the resulting activity is export oriented; similar benefits are granted to investors in agriculture and/or agri-processing with an investment of at least US\$150,000; these are also granted a lifetime exemption on import duties on capital goods if export oriented, and in raw materials if exports are equal to or more than 70% of production. Tax breaks for the establishment of industrial estates (developing and managing industrial estates/special economic zones) depend on the size of the investment, ranging from 3 years for investment of US\$500,000 to 15 years for investments of US\$75 million and more.

175. Under the IRD incentives regime, income tax exemptions are provided usually for five years; in some cases for three years (Table AIII.7). Companies engaged in agriculture, agri-processing; industrial and machine tool manufacturing; electronics; the exportation of non-traditional goods; and information technology and allied services with a minimum investment of Rs 10 million (US\$97,000) if incorporated on or after 1 April 2002, and Rs 50 million (US\$485,000) if incorporated before that date, may benefit from income tax exemption for five years from the year in which the company starts making profits or no later than two years from the date that the company starts operations, whichever is earlier. Benefits are for three years for companies for which the period starts after 31 March 2008. Agricultural undertakings may choose to be exempt from income tax for five years commencing on 1 April 2006, instead. Companies engaged in infrastructure development projects carrying on "specified" undertakings with a minimum investment of Rs 1 billion (US\$9.7 million) are tax-exempted for not less than 6 years, but no more than 12 years from 31 March 2009, or the start of the year of assessment in which the undertaking starts to make profits. Certain small-scale infrastructure facilities with investment of Rs 10-50 million within one year of commencement of the undertaking, may enjoy a tax exemption of up to five years.

176. Also under the Inland Revenue Act, investments in "pioneer" industries enjoy tax exemption for five to ten years, depending on the amount of the investment, and a 15% rate of income tax thereafter. The Act also offers tax incentives to new industrial undertakings, for research and

<sup>68</sup> Ministry of Finance and Planning (2008).

development and for regional purposes, to foster investment in areas other than the administrative districts of Colombo and Gampaha and in the Eastern part of the island.

177. Incentives are available, under the Inland Revenue Law, to exporters who do not qualify for concessions under Section 17 of the BOI Act. These include a preferential 15% income tax rate on profits sourced from the export of non-traditional goods. These concessions are currently applicable until 1 April 2014. Also, declared dividends are subject to 10% tax rate. Enterprises that supply to export operations also benefit from a 10% tax on the profits of such sales, and their dividends are also taxed at 15%.

178. In 1997, Sri Lanka notified a list of subsidies, granted by the Sri Lanka Export Development Board (EDB) and the Board of Investment of Sri Lanka, most of which were tax incentives contingent on export performance.<sup>69</sup> Most of these schemes are still in place, with the exception of those provided by the EDB (e.g. the assistance scheme for manufactured exports of rubber and the "200 Garment Factory Programme").

(b) Non-tax incentives

179. The National Development Bank (NDB) grants credit at preferential conditions to small and medium-size enterprises (SMEs) under several schemes: the Small and Micro Industries Leader and Entrepreneur Promotion Project (SMILE II), implemented in 2001; the SMILE III, the Dasuna Revolving scheme; and the E - Friends (Revolving) Fund scheme. These schemes are funded mostly by international donors.

180. The SMILE II Revolving scheme provides financial facilities to SMEs in industrial manufacturing and in all service subsectors; the scheme may also finance the construction of commercial buildings, but these must be located outside of the municipal and urban limits of the Colombo and Gampaha districts. The project size, excluding land and buildings, may not exceed Rs 20 million (US\$194,000). The maximum amount of loans under the scheme is Rs 10 million (US\$97,000). The interest rate is the Average Weighted Deposit Rate (AWDR) + 5%; the repayment period is up to 6 years, including a grace period of 24 months.<sup>70</sup> The programme is funded by the Japanese International Cooperation Agency (JICA). The SMILE III is also geared towards financing industrial manufacturing and service subsectors, and commercial buildings with the exception of hotels and guest houses. The project must not exceed Rs 20 million; loans are up to Rs 10 million, at an interest rate of 9%, and a repayment period of up to 10 years including a grace period of 24 months. The programme is funded by the Asian Development Bank (ADB).

181. The DASUNA Revolving scheme provides financial facilities to micro-industries under the Southern Province Rural Economic Advancement Project (SPREAP). The objective is to promote the development of industries in the Southern Province; all manufacturing industries and selected service subsectors are eligible. The projects must be small: the total investment in fixed assets, excluding the land and buildings, should not exceed Rs 3 million (US\$27,000) on completion of the project; the maximum loan amount is Rs 1 million. Credits are granted at an interest rate of 10.5% per annum, which is below the market rate for comparable credit in other banks; the repayment period is up to seven years including a grace period of two years. The scheme is run with funds from the ADB.

182. The Small and Medium Enterprise Regional Development Project (SMERDP) scheme offers credits to SMEs outside the Western Province, with between 5 and 150 employees, an annual turnover of not more than Rs 300 million (US\$2.7 million), and fixed assets (excluding land and building) not

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<sup>69</sup> WTO document G/SCM/N/3/LKA, 17 January 1997.

<sup>70</sup> NDB online information. Viewed at: [http://www.ndbbank.com/sme\\_serv/smile\\_ii.jsp](http://www.ndbbank.com/sme_serv/smile_ii.jsp).

exceeding Rs 100 million (US\$890,000) before the start of the project. The maximum amount of the loan is Rs 20 million (US\$179,000); the interest rate charged is the market rate, but with a repayment period of four to ten years with a maximum grace period of three years. The scheme is funded by the ADB. The E-Friends (Revolving) Fund aims at providing low cost loans to help industrial enterprises find solutions to their environmental problems, such as industrial pollution, waste minimization, resource recovery and savings, and pollution control and abatement. Loans are also for up to Rs 20 million, at an interest rate of 8.5% per annum, and with a repayment period of up to five years including a maximum grace period of two years. The scheme is funded by JICA.

**(iv) State-trading, state-owned enterprises and privatization**

183. Sri Lanka has made no notifications to the WTO with respect to state-trading enterprises within the meaning of Article XVII of the GATT 1994.

184. Sri Lanka launched a programme of public enterprise reform and privatization in 1990, as part of the process of liberalization and deregulation of the economy. The process was reinforced with the establishment, in 1996, of the Public Enterprises Reform Commission (PERC), a statutory body responsible for implementing of the privatization programme and restructuring loss-making state-owned enterprises. The PERC completed some 50 privatization operations transactions for a total of Rs 57 billion (US\$508 million).

185. The Government's current policy is not to privatize public enterprises, but to restructure and improve their performance. In July 2007, the Cabinet of Ministers decided to close down the PERC, repealing the Public Enterprises Reform Commission Act No. 1 of 1996. Hence, no new privatizations will be carried out. The current policy is to invite the private sector to invest in non-functional public enterprises to make them profitable, while retaining government ownership of at least 51%.

186. The Department of Public Enterprises (PED) in the Ministry of Finance is in charge of monitoring public enterprises, and devising the policies to manage them. In 2007, the Government assigned all the work handled by the PERC, including post privatization monitoring, to the PED. All state-owned enterprises (SOEs) are expected to be profitable or not rely on the Treasury for funding; to monitor this, they are required to enter into performance contracts with the Treasury. The Government's development strategy therefore focuses on increasing productivity and efficiency of public enterprises. Public enterprises are also expected to provide competition to their counterparts in the private sector while safeguarding the national interest and consumer welfare.<sup>71</sup>

187. In line with this policy, the PED issued instructions to all public enterprises to improve their performance through management reforms by concentrating on the core business activities to become commercially viable entities. They are required to emphasize procurement efficiency, while ensuring transparency and accountability, as well as implementing the required pricing reforms and management improvement. The PED conducts a yearly performance review of public enterprises to ensure efficiency and effective utilization of resources.

188. The Government also established new public enterprises in 2007 to meet specific gaps in the economy: the State Trading (Cooperative Wholesale) Company Limited, the Paddy Marketing Board, the Sri Lanka Savings Bank, the Lankaputhra Development Bank, the National Insurance Trust Fund and Mihin Lanka (Pvt) Limited.

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<sup>71</sup> Department of Public Enterprises (2007).

189. The authorities noted that the Government has been successful in attracting private investors for Higurana Sugar Industries Ltd (HSIL) and Kantale Sugar Industries Ltd (KSIL). The authorities have also put in place a policy of concessions for infrastructure-related activities. In this respect, the development and operation of the Queen Elizabeth Quay of the Colombo Port was granted to a private consortium under a build-operate-transfer (BOT) agreement. The authorities indicated that the Government is currently working on a similar arrangement for the construction and management of the Colombo South Harbour terminal (Chapter IV).

190. Public enterprises are categorized by share of government ownership: fully owned government companies; companies in which the Government owns more than 50% of shares and has controlling power; companies with less than 50% government holding; and plantation companies with less than 50% government holding. Public enterprises collectively make a significant contribution to Sri Lanka's economy, since Government ownership is present in most economic areas. There are 218 commercial public enterprises, including 107 that are fully government-owned in which the Government has the controlling interest, 23 regional plantation companies, 19 minority shareholding companies, 52 subsidiary companies and 20 associate companies. Due to recent reforms to make them more profitable and market-oriented, public enterprises have shown improved performance in terms of dividends and levies paid towards the consolidated fund. Total levy and dividend income from public enterprises was Rs 4.71 billion (US\$42 million) in 2007, compared with Rs 4.77 billion (US\$43 million) in 2006.<sup>72</sup> It rose to Rs 7.3 billion (US\$65 million) in 2008 and, to Rs 11.9 billion (US\$110 million) in 2009. Outstanding on-lending to public enterprises by the Government amounted to Rs 231 billion (US\$2.1 billion) at end 2008, of which Rs 26.4 billion (US\$236 million) in 2008.

191. Public enterprises in the banking sector include two licensed commercial banks: the Bank of Ceylon (BOC), and People's Bank (PB); and seven specialized banks: the National Savings Bank (NSB), the State Mortgage & Investment Bank (SMIB), HDFC Bank, Lankaputhra Development Bank (LDB), Regional Development Banks (RDBs) and the Sri Lanka Savings Bank Ltd (SLSBL). These institutions have a total of 1,325 main branches and 21,777 employees. At end 2008, state-owned banks had assets totalling Rs 1.24 billion (US\$11 million), and outstanding loans and advances of Rs 616 million (US\$5.5 million).

192. Public enterprises play a significant role in providing infrastructure facilities such as electricity, transport, port services, water supply, and communications services. The Government's policy in this area has been to mobilize foreign funds to on-lend to public enterprises to undertake earmarked investment activities. The main state-owned infrastructure companies include: the Ceylon Electricity Board, the Sri Lanka Ports Authority, the Ceylon Petroleum Corporation (CPC), the National Water Supply and Drainage Board, Airport and Aviation Services (Sri Lanka) Limited (AASL), and the Sri Lanka Transport Board (SLTB).

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<sup>72</sup> Levies are charged on companies established under a specific Act of Parliament, while dividends are produced by companies established commercially under the Companies Act. In accordance with Section 9(2) of the Finance Act No. 38 of 1971, a levy may be imposed based on the surplus/profit after tax, while under the Companies Act, a dividend is based on the estimated profit before tax. The level of estimated dividend/levy is set by the Treasury. In determining the levy/dividend, the Treasury also takes into account the profitability as well as the liquidity of the public enterprise. Special consideration is given if the public enterprises have made a commitment to invest in any development project in line with their corporate plans and the Government's public investment strategy.

193. Major public enterprises involved in trading include the State Timber Corporation (STC), Lanka Sathosa Limited (LSL) and Cey-Nor Foundation Ltd.<sup>73</sup> The main public enterprises in agriculture are the Ceylon Fertilizer Co. Ltd (CFC), the Colombo Commercial Fertilizer Co. Ltd, Milk Industries Lanka Company (Pvt) Ltd. (MILCO), and the National Livestock Development Board (NLDB).<sup>74</sup> In the plantation subsector, public enterprises comprise 23 regional plantation companies (RPCs), the Sri Lanka State Plantation Corporation, the Janatha Estate Development Board, the Kantale Sugar Industries Ltd., the Hingurana Sugar Industries Ltd., the Cashew Corporation, and the Palmyra Development Board.<sup>75</sup>

194. In 2010, there were 12 public enterprises carrying out industrial functions; their net worth in 2008 (latest year available) was Rs 4.64 billion (US\$41 million). Eight were profitable while four incurred in losses in 2008. Public services enterprises include the Sri Lanka Broadcasting Corporation (SLBC), with a turnover of Rs 712 million (US\$6.4 million) in 2008, the Sri Lanka Rupavahini Corporation, with Rs 1.64 billion (US\$14.6 million), and the State Printing Corporation (SPC) with Rs 966 million (US\$8.6 million). Public enterprises in the health care sector engage in manufacturing and trading pharmaceutical drugs and Ayurvedic medicines. Their total net worth at end 2008 was Rs 7.77 billion (US\$69.4 million). Most of these enterprises were profitable in 2008.

#### (v) Government procurement

195. There are no specific figures for government procurement, as this is done by decentralized agencies, but the value of government expenditure in goods, services, and works represented some 9% of GDP in 2008. Some Rs 121.2 billion (US\$1.08 billion) or 2.7% of GDP was expenditure on goods and services and Rs 263.9 billion (US\$2.36 billion) or 6% of GDP on public infrastructure works.<sup>76</sup>

196. Government procurement in Sri Lanka continues to be an important instrument of economic policy, to promote domestic suppliers and products. However, procurement guidelines have been streamlined and clarified to make the process more efficient and transparent. Sri Lanka does not participate in the WTO Plurilateral Agreement on Government Procurement (GPA); and, in the context of this Review, the authorities indicated that they are not currently considering participating.

197. From 2004 to March 2008, the National Procurement Agency (NPA) was the principal authority for formulating and amending the procurement guidelines; issuing manuals, evaluation methodologies, standard contracts, and specifications.<sup>77</sup> Since March 2008, these functions have been assumed by the Department of Public Finance in the Ministry of Finance and Planning.<sup>78</sup> The

<sup>73</sup> STC's turnover was Rs 2.7 billion in 2008, through the extraction, export, and purchase of timber, and production of sawn timber and furniture. LSL's turnover was Rs 3.6 billion, and the Cey-Nor Foundation Ltd recorded a turnover of Rs 277 million through production and sales of fiberglass fishing boats and nylon fishing nets.

<sup>74</sup> In 2008, CFC's turnover was Rs 1.9 billion; its main business is importing, blending, and distributing fertilizers. The Colombo Commercial Fertilizer Co. Ltd had a turnover of Rs 950 million. MILCO, with core businesses of milk collection, processing, and marketing, and which purchases about 48% of all milk collected recorded a turnover of Rs 3.2 billion in 2008. The NLDB, which engages in breeding of livestock, establishment and maintenance of marketing outlets, and sale of fresh cow milk to the public, recorded a turnover of Rs 957 million in 2008.

<sup>75</sup> The Janatha Estate Development Board (JEDB) and the Sri Lanka State Plantation Corporation (SLSPC) made losses for several years. They were both subject to restructuring in 2008. The JEDB posted a loss of Rs 19 million in 2008, while the SLSPC made a loss of Rs 4.3 million.

<sup>76</sup> Ministry of Finance and Planning of Sri Lanka (2008).

<sup>77</sup> The NPA replaced the Procurement Support Bureau (PSB) established in 1999 in the Ministry of Finance and Planning.

<sup>78</sup> NPA online information. Viewed at: <http://www.npa.gov.lk/circulars/PF429.pdf>.

Department of Public Finance also acts as a reference point for providing procurement information, technical expertise, and training to streamline and improve procurement procedures, and is in charge of monitoring the tendering process. The Department oversees and services all government entities; however, it is a facilitating body not a central procurement agency. Procurement has been decentralized since 1996 when the central procurement office was closed. Responsibility for procurement is vested in the Secretaries and Heads of Departments of the respective line ministries, who act as their Chief Accounting Officers/Accounting Officers. For each procurement, the Department of Public Finance appoint a Procurement Committee (PC) and a Technical Evaluation Committees (TEC), as well as Cabinet level committees; other committees are appointed by the line ministries. These different committees are responsible for the procurement process. Procuring entities are requested to carry out initial an environmental examination (IEE), an environmental impact assessment (EIA), and a social impact assessment (SIA) before appointing a procurement committee.

198. The main regulations on the procurement process are contained in the Procurement Guidelines and the Procurement Manual, which must be followed by ministries and departments, as well as by state-owned enterprises, statutory boards, and all other government institutions and agencies, including provincial councils and local authorities.<sup>79</sup> The Government issued new procurement guidelines for goods and works in January 2006, with the approval of the Cabinet of Ministers. The stated aim of these guidelines, is to enhance transparency, speed up the implementation of development programmes, both with public and foreign financing, and to obtain the most financially advantageous and best quality services and supplies.<sup>80</sup> The new guidelines, which were drafted in consultation with the World Bank, the Asian Development Bank, and the Japan Bank for International Cooperation, and a manual became effective on 1 February 2006 for all procurements of goods, works and services, other than the selection and employment of consultants, for which a separate manual and guidelines were issued in 2007 but are still in the draft form.

199. The guidelines contain provisions to ensure confidentiality, prevent corruption and deal with situations where there may be conflicts of interest. They explicitly mandate: (a) maximizing economy, timeliness and quality, resulting in least cost together with high quality; (b) adhering to prescribed standards, specifications, rules, regulations, and good governance; (c) providing fair, equal, and maximum opportunity for eligible interested parties to participate in procurement; (d) the expeditious execution of works and delivery of goods and services; (e) compliance with local laws and regulations and international obligations; (f) ensuring transparency and consistency in the evaluation and selection procedure; and (g) retaining confidentiality of information provided by bidders. The guidelines are applicable to all procurement, irrespective of the source of funding. However, in the case of a foreign-funded project, if the funding agency mandates the use of its own procurement guidelines, these will prevail over the national guidelines to the extent applicable.

200. The officer-in-charge of a procurement action is responsible for: maintaining communication with stakeholders; preparing an invitation for pre-qualification and its submission to the TEC for review and approval; preparation of the draft bidding documents, including the specifications, and the submission of these to the TECs for review and approval; preparation of data and information prior to the evaluation report. PCs and TECs make the procurement decisions, with respect to documentation, review, and choice and approval of bids. TECs consist of specialists in the area and are appointed by the Head of Department/Project Director. Procuring Committees may be appointed at the project

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<sup>79</sup> Procurement Guidelines viewed at: [http://www.treasury.gov.lk/FPPFM/pfd/publications/ProcurementGuidelines2006\\_amed12June.pdf](http://www.treasury.gov.lk/FPPFM/pfd/publications/ProcurementGuidelines2006_amed12June.pdf); and Procurement Manual viewed at: <http://www.treasury.gov.lk/FPPFM/pfd/publications/guidelines.html#ProcurementManual>.

<sup>80</sup> National Procurement Agency (2006).

(PPC), department (DPC) or ministry (MPC) level, according to the value of the procurement.<sup>81</sup> In the case of high-value procurement, a Cabinet Appointed Procurement Committee (CAPC) may be appointed. A Standing Cabinet Appointed Procurement Committee (SCAPC) may be appointed in the case of high value procurement that needs expeditious action.<sup>82</sup> In the latter case, the procurement procedures may be simplified. Mixed infrastructure projects where both the Government and the private sector are involved are regulated by the Government Tender Procedures.

201. The tendering evaluation process starts with the determination of bidder compliance with the qualifications laid down in the bid documents. Subsequently, the TEC examines the bid and prepares a bid evaluation report and submit it to the relevant PC. The PC recommends the lowest evaluated bid. Awards are published on the Department of Public Finance's website. Once the award is announced, other bidders may appeal the decision. Appeals should be lodged within a week of the award determination (see below).

202. Sri Lanka grants price preferences to locally manufactured goods as determined by the Treasury and included in the procurement guidelines. The stated goal of these preferences is to promote value added to local raw materials and domestic bidders, thereby promoting national industry and enterprise. The preference is granted when evaluating the bid. In the case of works and contracts, the margin of preference is 7.5% for contracts funded by the World Bank and the Asian Development Bank, and 10% for contracts funded by the Government of Sri Lanka. The margins of preference apply to: (a) Sri Lankan individuals/sole proprietors; (b) partnerships where more than 50% of the members are Sri Lankans; (c) individual firms registered in Sri Lanka, that have more than 50% ownership by Sri Lankans and do not sub-contract more than 10% of the contract price.

203. Preferences for domestically manufactured goods are granted at 15% for contracts funded by the World Bank and the Asian Development Bank, and 20% for contracts funded by the Government. To benefit from the preferential margin, the bidder must satisfy the PC that labour, raw materials, and components from within Sri Lanka account for 30% of the ex-works price of the product offered, and that their production facility has been manufacturing/assembling such goods at least since the time of bid submission. In addition, in government-funded projects, the bidder must satisfy national proprietorship requirements.

204. In accordance with the procurement guidelines, calls for tenders must be given the widest possible publicity. The tender notice must be published in an abridged form in local newspapers and at least once in the *Government Gazette*. In the case of international tenders, the procuring entity (PE) is required to give international publicity to the procurement notice in various media to ensure maximum competition. This includes advertising in one widely circulated national newspaper and relevant websites where possible, as well as in international procurement gateways. The PE is also expected to transmit invitations to tender to embassies and trade representatives of countries from which suppliers and contractors are likely to participate, and post them on the relevant websites.

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<sup>81</sup> In accordance with Supplement 16 to the Procurement Manual, DPCs and PPCs may decide on projects of up to Rs 25 million; MPCs on tendering up to Rs 100 million; and a Cabinet-appointed Tender Board on projects with a value above Rs 100 million. See Ministry of Finance and Planning (2008), Department of Public Finance, *Supplement – 16 to the Procurement Manual*, 11 April. Viewed at: <http://www.treasury.gov.lk>.

<sup>82</sup> According to the guidelines, the use of a SCAPC may be justified where: (a) expeditious processing of procurement is necessary; (b) extraordinary speedy decisions have to be taken; (c) supplies are immediately required to avoid acute shortages in the market; (d) bids have a very short validity period; (e) the prices of goods fluctuate frequently; (f) items need to be purchased very frequently without significant changes in specifications; (g) security consideration warrants; and (h) a project contains a large number of bid packages over a long time span.



205. The Government has started implementing a system for electronic tendering (e-procurement). In early 2010, certain aspects of the procurement process were being carried out online, such as, the general advertising process, the publication of procurement invitations, or the inspection of pre-qualification applications and bidding documents. However, the electronic submission of bids is not allowed.

206. The procurement guidelines specify 13 types of procurement method, depending on the threshold and the type of goods/service or work procured (Table III.16). Works, services, and supplies must, as far as possible, be procured through the open competitive procedure. However, exceptions from this procedure may occur under specific circumstances. Exceptions, as specified in the procurement methods listed below, include: entrusting contracts to "approved societies"; emergency purchases; or procurement below certain thresholds.

**Table III.16**  
**Government procurement: methods for the selection of bids, 2010**

Method	
International Competitive Bidding (ICB)	<p>ICB is used: (a) when the capacity of the domestic contractors, suppliers and service providers is limited and the advantage of ICB is evident; (b) for foreign-funded projects, when the foreign funding agency agreement requires the PE to resort to ICB procedures.</p> <p>However, in the case of works contract, to promote the development of the domestic construction industry, there is the possibility of slicing the contract and following a slice and package approach to suit domestic contractors.</p> <ul style="list-style-type: none"> <li>- Domestic preference criteria apply.</li> <li>- All other conditions including currencies, taxes, and other statutory levies, except domestic preference consideration, are applicable equally to foreign and domestic bidders.</li> <li>- International publicity is required to ensure maximum competition. The PE is required to: <ul style="list-style-type: none"> <li>(i) advertise in one widely circulated national newspaper and relevant websites where possible;</li> <li>(ii) internationally, such as in UNDB and Development Gateway's dg Market; and</li> <li>(iii) transmit invitations to embassies and trade representatives of countries from which suppliers and contractors are likely to participate, and post them on the relevant websites.</li> </ul> </li> </ul>
National Competitive Bidding (NCB)	<p>NCB is used for most government-funded projects.</p> <ul style="list-style-type: none"> <li>- It must be advertised at least in one widely circulated national newspaper, the NPA website, and other relevant websites where possible.</li> <li>- It is open to all bidders.</li> <li>- Contractors/suppliers/service providers are allowed to purchase the bidding document up to a day prior to the bid.</li> <li>- In the case of contract for works, to be eligible for contract award, the domestic contractors must have valid and appropriate registration at the time of submitting the bid, under the National Registration System of Institute for Construction, Training and Development (ICTAD).</li> <li>- NCB use in foreign-funded projects requires the agreement of the foreign funding agency; in this case, foreign contractors or suppliers are allowed to bid on the same terms with the domestic contractors or suppliers, and no domestic preference is granted.</li> </ul>
Limited / Restricted International Competitive Bidding (LIB)	<p>The invitation to bid is addressed directly to a pre-selected list of international suppliers or contractors.</p> <ul style="list-style-type: none"> <li>- The procedure is chosen when only a few sources are available.</li> <li>- All procedures followed under ICB apply except the requirements for advertising and domestic preference.</li> </ul>
Limited/Restricted National Competitive Bidding (LNB)	<p>The invitation to bid is addressed directly to a pre-selected list of national suppliers or contractors.</p> <ul style="list-style-type: none"> <li>- The procedure is chosen when only a few sources are available.</li> <li>- Procedures followed under NCB apply except the requirements for advertising and domestic preference.</li> </ul>
Shopping	<p>Method used for procuring: (i) readily available off-the-shelf goods of small value; (ii) small value commodities for which specifications are standard; and (iii) small value works or services.</p> <ul style="list-style-type: none"> <li>- The selection is based on comparison of price quotations obtained from several invited bidders.</li> <li>- Limits of Rs 5 million (US\$44,600) for works, and Rs 2 million (US\$17,800) for goods and services in government-funded projects, or Rs 3 million (US\$26,700) if funded by an international agency.</li> <li>- Requests for quotations are addressed only to individuals/firms on a register of suppliers/contractors</li> <li>- The comparison of quotations follows NCB principles wherever applicable.</li> </ul>

**Table III.16 (cont'd)**

Method	
Registration of suppliers	<p>The issue of tender notices may be confined to a list of suppliers registered with a specific Department. This procedure is used for procurement of items of small value or for purchases of items of items used frequently, for which advertising may be uneconomical on a continuous basis.</p> <ul style="list-style-type: none"> <li>- The PE may: (i) publish a notice for registration of suppliers; and (ii) prepare a list comprising names of suppliers who are able to supply particular categories of goods and services (e.g. stationery, electrical items, periodicals, and publications).</li> <li>- The PE must confine shopping to names appearing on the list, which must be updated at least once a year.</li> </ul>
Direct Contracting	<p>Procurement of goods or services or works from a single supplier source is used only under exceptional circumstances, including when: (i) the prices or rates are fixed pursuant to legislation by regulatory bodies; (ii) standardization of equipment, for compatibility with existing equipment, may justify additional purchases of the same type of goods; (iii) the required equipment is proprietary and obtainable only from one source (e.g., software, text books, spare parts, defence items); and (iv) the process design requires the purchase of critical items from a particular supplier as a condition of a performance guarantee.</p> <ul style="list-style-type: none"> <li>- In purchases under (ii): (a) the number of items to be procured must generally be less than 50% of the existing number; (b) the price must be reasonable, and (c) the advantages of another make or source of equipment must have been considered.</li> <li>- The upper limit is Rs 250,000 (US\$2,200) for works, and Rs 100,000 (US\$890) for goods and services.</li> </ul>
Repeat Orders	<p>Repeat orders (placed with the original supplier over a short period for the supply of the same goods) may be authorized only in exceptional circumstances, up to a limit of 50% of the original contract value, provided that no more than six months have lapsed from the date of award of the original contract, and the PE certifies that: (a) the necessity for additional requirement was not foreseen and when the original invitation to bid was issued; (b) it is not economical to follow the bidding procedure again; (c) the price of the goods has not dropped since the original order; and (d) the appropriate PC has no objection to such repeat order.</p> <ul style="list-style-type: none"> <li>- Prior to the placement of repeat orders, the PC is mandated to use its best endeavours to negotiate with the supplier to obtain more favourable terms and conditions.</li> </ul>
Force Account	<p>Force Account implies the execution of works by using the procuring entity's own personnel and equipment.</p> <ul style="list-style-type: none"> <li>- This method is used if the PE determines that it has the required workforce to execute of such works, and: (a) when quantities are difficult to define in advance; (b) contractors are unlikely to bid at reasonable prices; (c) work should be carried out without interrupting the ongoing work; and (d) in emergency situations that need urgent attention.</li> </ul>
Emergency Procurement	<p>May be used (i) in exceptional circumstances, such as man-made or natural disasters; (ii) to meet unforeseen social obligations and other similar situations declared by the Government as being an emergency situation.</p> <ul style="list-style-type: none"> <li>- To initiate procurements exceeding the shopping method thresholds, a formal approval must be obtained from the relevant authorities.</li> <li>- For works not exceeding Rs 25 million (US\$220,000), the PE may use any of the following provisions to meet the emergency requirements: (a) the bidding document will contain an itemized, priced, Bill of Quantity based on the Engineer's/Consultant's estimate; (b) bidders are allowed to bid a percentage above or below the Engineer's/Consultant's estimate. The lowest bid price is selected.</li> <li>- The bidding period may be reduced to three days in the case of limited bidding by invitation and seven days when open advertisement is used.</li> <li>- Purchases from government institutions must be given preference.</li> </ul>
Community Participation in Procurement	<p>This method is applied in the interest of project sustainability, or to achieve certain specific social objectives, such as creating employment opportunities in an identified geographical area, it consists in calling for the participation of local-community-based organizations (CBO).</p> <ul style="list-style-type: none"> <li>- Direct contracting may be awarded to communities on government or foreign-funded projects.</li> <li>- The value of the contract must not exceed Rs 2 million (US\$17,800).</li> <li>- CBOs must be registered as a society at least two years prior to the date of contract award; they must be registered with ICTAD under the National Registration system, and included in the Procurement Manual. The works should be within the area of authority and purview of the society, and must not be subcontracted.</li> </ul>
Two-Stage Bidding	<p>This method is used for turnkey contracts or contracts for large complex plant/equipment or information technology systems or works of a special nature, all of which require innovative approaches, or where the problem of technically unequal bids are likely to be encountered.</p> <ul style="list-style-type: none"> <li>- Use of this method requires Cabinet approval.</li> <li>- In the first stage un-priced technical proposals are invited on the basis of a conceptual design or performance specifications. Subject to clarification on technical and commercial issues and adjustments, if any, amended bidding documents are prepared for the second stage.</li> <li>- During the second stage, there is an invitation for final technical proposals and priced bids. Any of previous methods may then be selected.</li> </ul>

Table III.16 (cont'd)

Method	
Two Envelope System	<p>This method may be used in circumstances such as: (i) "turnkey", "design and build" or "supply and installation" contracts, and (ii) where alternate types of technical proposals are possible.</p> <ul style="list-style-type: none"> <li>- Bidders are required to submit their technical and financial proposals simultaneously, but in two separate envelopes.</li> <li>- Technical proposals are opened first and reviewed to determine their response to specifications, and the financial proposal is opened in public.</li> </ul>
Pre-qualification of bidders	<p>Pre-qualification is generally required where the high cost of preparing detailed bids by potential bidders could discourage competition, such as procurements involving large or complex works contracts, i.e. turnkey, design and build, or management contracts; or custom-designed equipment, industrial plant, specialized services.</p> <ul style="list-style-type: none"> <li>- Invitations to bid are confined to those who have adequate capacity and resources.</li> <li>- Pre-qualification must be carried out giving wide publicity and calling for information in a given format.</li> <li>- A clear statement of the scope of the contract and the criteria for selection must be sent to all firms who have expressed an interest in being considered for pre-qualification.</li> <li>- All applicants who fulfil the pre-qualification requirements specified are pre-qualified.</li> </ul> <p>Pre-qualification criteria include: (i) experience and past performance on similar contracts; (ii) resources available in regard to personnel, equipment, and construction or manufacturing facilities; and (iii) the necessary financial resources.</p>

Source: *Guidelines for Government Procurement, Procurement Manual*, and Supplement – 16 to the Procurement Manual.

207. In accordance with the procurement guidelines, the basic principle for selection is the lowest evaluated bid. However, bids may be evaluated on the basis of other factors, which must be specified in the bid documentation. These include: technical factors such as the efficiency and reliability of the equipment; the construction method to be used; the time of completion or delivery; and the availability of after-sales service and spare parts. The operating cost may also be taken into account. Preferences are applied to domestic enterprises and products (see below). Procurement procedures leave some room for discretion.

208. The guidelines stipulate that national competitive bidding (NCB) should be used for most government-funded tendering; under this method, tendering is open to all parties, including foreigners, and no preferences apply for domestic suppliers and products. However, the procurement notice is advertised only locally, in at least one widely circulated national newspaper, although it is also posted on the Department of Public Finance website and other relevant websites. International competitive bidding (ICB) is used only when domestic providers may not have the capacity required and the advantage of ICB is evident; for foreign-funded projects; or for works contracts. Domestic preference criteria are applicable in ICB procurement.

209. A number of selective tendering procedures may be used in different circumstances, and under certain thresholds. The shopping method is used mainly for procuring readily available off-the-shelf goods of small value, small value commodities for which specifications are standard, and small value works or services. Selection is based on comparison of price quotations obtained from several invited bidders. The selection criteria should be the lowest cost, when feasible. The registration of suppliers procedure may also be used for low value procurement, where advertising is deemed uneconomical. Quotations are invited from a list of registered suppliers, and selection is generally based on the lowest cost. Direct contracting, from a single supplier, is used where prices or rates are fixed pursuant to legislation by regulatory bodies; or additional standardized equipment or equipment obtainable only from one source, needs to be purchased. In this case, the price must be "reasonable" (compared to the previous price paid or a comparable market price), and the advantages of using another supplier must have been considered. Repeat orders may be authorized in exceptional circumstances, for example when it is not economical to follow the bidding procedure again; other conditions also apply (Table III.16).

210. Emergency procurement, with a shorter bidding period, may be used in exceptional circumstances for works not exceeding Rs 25 million (US\$220,000). It may take the form of open tendering or limited bidding by invitation. The bidding period may be reduced to three days for limited bidding by invitation and seven days when open advertisement is used. According to the guidelines, the lowest bid price must be selected. Lump-sum contracts must be used wherever possible, and purchases from government institutions must be given preference.

211. Sri Lankan procurement regulations allow for some set-aside schemes, such as the Community Participation in Procurement scheme to achieve specific social objectives, such as creating employment opportunities in an identified geographical area. It is considered desirable to call for the participation of local community-based organizations (CBOs), to which direct contracting is granted. The limit for this type of procurement scheme is Rs 2 million (US\$17,800).

212. In the case of turnkey or large or complex projects, the Guidelines recommend the use of two-stage bidding, the two envelope system, or pre-qualification of contractors. The idea is to separate technical from price considerations. Once the PC is satisfied that the technical qualifications are met by the bidder, it examines the bid from an economic or cost-effective point of view.

213. Special procurement procedures may apply for goods like commodities, pharmaceutical products, and information technology equipment. For procurement of commodities that require multiple purchases of partial quantities, a list of pre-qualified bidders may be drawn up and periodic invitations issued. Bidders may be invited to quote prices linked to the market price at the time of or prior to the shipments. To take advantage of favourable market conditions, bid validities are as short as possible, and a single currency, in which the commodity is usually priced in the market, may be used for bidding and payment. Bidding documents may permit electronic, telexed or faxed bids. Special guidelines are used for procurement of pharmaceuticals (Guidelines for the Procurement of Pharmaceuticals). Specialized bidding documents may be used for the procurement of information technology equipment. No statistical information available on the use of the different kinds of procurement methods for 2004-09.

214. A performance security of not less than 5% of the estimated contract sum is required in works procurement, to safeguard the PE in case of breach of contract by the contractor. The need for performance security for supply of goods depends on the market conditions and commercial practice for the particular goods; it is normally not less than 10% of the estimated contract sum and may also cover warranty obligations.

215. Complaints with respect to procurement are dealt with by the Procurement Appeal Board (PAB), established in August 2005 under the Presidential Secretariat. The PAB is mandated to review complaints regarding awards recommended by the CAPC or PCs. The Secretary of the line ministry must inform the unsuccessful bidders in writing within one week of being informed of the recommendation of the CAPC. These bidders may then, within one week, appeal against the recommendation of the CAPC to the PAB. The bidders are requested to deposit a non-refundable fee of Rs 50,000 (US\$4,400) in a deposit account maintained at the Presidential Secretariat.<sup>83</sup> The PAB conducts an investigation and submits its report to the Cabinet of Ministers, with copy to the Secretary of the line ministry. The authorities indicate that nine appeals had been received up to end of 2009 concerning procurement at Cabinet level.

216. A study conducted by the World Bank in 2003 note that although Sri Lanka's procurement system seemed to have served its purposes, a strengthening of the rules would be desirable. The study noted that, although the Guidelines prescribed the procedures, which have the force of Law on

<sup>83</sup> NPA online information. Viewed at: <http://www.npa.gov.lk/guidelines/AppealBoardAppoint.pdf>.

Procurement Issues, they were easily amendable by the Ministry of Finance without going through Parliament. The study considered that since the Guidelines have some inbuilt flexibility and discretionary provisions, which may result in abuses, a Procurement Act and Rules to govern public procurement would substantially improve transparency, reduce possible abuses and malpractices, and enhance public confidence in the system.<sup>84</sup>

217. The report made a number of other recommendations for the improvement of the procurement system, including the progressive introduction of electronic tendering procedures to increase transparency and efficiency; the termination of the repeat orders system, which could lead to unhealthy practices; and the introduction of a computerized monitoring system to track the various procurement actions, and an up-to-date computerized contractor performance database.

**(vi) Intellectual property rights**

**(a) Overview**

218. Sri Lanka is a party to the Convention Establishing the World Intellectual Property Organization (WIPO) and to other international conventions on intellectual property.<sup>85</sup> It has not acceded to the WIPO Performances and Phonograms Treaty (WPPT); the WIPO Copyright Treaty (WCT); or the WTO Information Technology Agreement. In 1991, Sri Lanka signed a bilateral agreement with the United States to protect intellectual property rights.

219. Sri Lanka introduced new intellectual property legislation through the Intellectual Property Act, No. 36 of 2003, which was certified on 12 November 2003. The new law introduced important changes to Sri Lanka's regime, aimed, in particular, at ensuring compliance with the WTO TRIPS Agreement. The Act covers: copyright and related rights; industrial designs; patents; marks and trade names; layout designs of integrated circuits; unfair competition and undisclosed information; and geographical indications.<sup>86</sup> The Act's regulations, Intellectual Property Regulations No. 1 of 2006 entered into force in May 2006.

220. Sri Lanka's intellectual property legislation was reviewed by the Council for TRIPS in November 2001. Sri Lanka's contact point for intellectual property purposes is the Registry of Patents and Trade Marks of Sri Lanka.<sup>87</sup> The authorities indicated that legislation on plant varieties is in the process of being drafted.

221. The National Intellectual Property Office (NIPO) of Sri Lanka, established under Intellectual Property Act No. 36 of 2003, administers the intellectual property system in Sri Lanka. The NIPO's administrative duties include registration and post registration of marks, patents, industrial designs, layout designs of integrated circuits, and collective societies. The NIPO is also responsible for collecting and disseminating intellectual property information; fulfilling Sri Lanka's international obligations relating to intellectual property; promoting international and regional cooperation on intellectual property; proposing IP policies; facilitating the enforcement of IP rights, including dispute resolution in copyright and related rights.

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<sup>84</sup> World Bank (2003).

<sup>85</sup> These include: the Patent Cooperation Treaty; the Berne Convention for the Protection of Literary and Artistic Work; the Paris Convention for the Protection of Industrial Property; the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods; the Nairobi Treaty; the Universal Copyright Convention; the Convention establishing the World Intellectual Property Organization (WIPO); and the International Convention for the Protection of Performers (WIPO).

<sup>86</sup> NIPO online information. Viewed at: <http://www.nipo.gov.lk/act.htm>.

<sup>87</sup> WTO document IP/N/3/Rev.10, 16 May 2008.

222. The NIPO, the Customs Department, the police, and the Attorney General's Department are responsible for enforcing intellectual property rights in Sri Lanka.

223. Intellectual Property Act No. 36 of 2003 created an Advisory Commission for matters relating to copyright, industrial designs, marks, patents, unfair competition and any other area or subject of intellectual property.

(b) Copyright and related rights

224. Copyright and related rights are protected by the Intellectual Property Act and its regulations. Copyright protection is provided for original literary, artistic, and scientific works. These include, *inter alia*, books, pamphlets, articles, dramatic, musical, choreographic and audiovisual works, stage productions, computer programs, drawings, paintings, sculptures, works of architecture, works of applied art, expressions of folklore and photography. Translations and other adaptations of the work are also protected, as well as collections of works and databases. The law grants the owner of the copyright of a work exclusive rights with respect to the reproduction, translation, adaptation, public distribution (sale, rental, or export), importation, public display, broadcasting or public performance of the work. In the case of an audiovisual work, a sound recording, a computer program, a database or a musical work, the right includes the rental of the original or a copy. The "fair use" of a work, including by reproduction in copies for purposes such as criticism, comment, news reporting, teaching, scholarship or research, is not considered an infringement of copyright. This right does not extend to works of architecture, databases or computer programs.<sup>88</sup> The expression of folklore is protected under a *sui generis* set of provisions.

225. The Act extended copyright protection from life of the author plus 50 years to life plus 70 years. In the case of work of applied art, the economic and moral rights are protected for 25 years from the date of the making of the work. The owner of a copyright may grant a licence to a physical person or legal entity to carry out all or any of the acts relating to his/her economic rights, or assign or transfer in whole or any part of an economic right.

226. The Act also contains provisions for the protection of related rights, in particular with respect to the protection of rights of performers, producers of sound recordings, and broadcasting organizations.

227. Copyrights do not need to be registered to be protected.

(c) Patents

228. Patents are protected by the 2003 Intellectual Property Act and its regulations. An invention is patentable if it is new, involves an inventive step and is industrially applicable. An invention is considered to be new if it is not anticipated by prior art. Inventions may be or relate to a product or a process. Patent applications must be accompanied by a novelty search report. Certain inventions are not patentable in Sri Lanka.<sup>89</sup>

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<sup>88</sup> The Act allows the reproduction in a single copy or the adaptation of a computer program by the lawful owner of a copy of that computer program without the authorization of the owner of copyright, provided that the copy or adaptation is necessary: (i) for use of the computer program for the purpose and extent for which the computer program has been obtained; (ii) for archival purposes and for replacement of the lawfully owned copy of the computer program in the event that the said copy of the computer program is lost, destroyed or rendered unusable.

<sup>89</sup> These include: discoveries, scientific theories, and mathematical methods; plants, animals, and other micro-organisms other than transgenic ones; essentially biological process for the production of plants

229. The right to the patent belongs to the inventor. The owner of a patent has the exclusive right to exploit the patented invention; assign or transmit the patent; and conclude licence contracts.<sup>90</sup> Patents are recorded in the Register of Patents and published in the *Gazette* once the Director-General of Intellectual Property considers that the necessary conditions for granting a patent have been satisfied; the Register also contains any change in the ownership of a patent application or patent, the amendment or division of a patent application, the assignment or transmission of a patent application or patent, any valid claim to priority, the surrender or revocation of a patent and other matters relating to patents. The Register is public.

230. Patents are valid for 20 years after the date of application for registration but must be renewed annually through the payment of a fee. The term may not be extended beyond 20 years. The patent will expire if, after a grace period of six months, the corresponding annual fee has not been paid. An application for invalidation of a patent may be made in the court if, for instance, the invention is not considered to be new, the invention is not patentable, or if it is industrially not applicable.

231. The law allows the Government to grant compulsory licences to manufacture certain patented products in situations such as a national emergency. A compulsory licence may also be granted in case of lack of commercial exploitation of the patent. Applications must be made to the Director-General of the NIPO with evidence that the applicant has made efforts to obtain approval from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. The issuance of a licence is non-exclusive and subject to the payment of adequate remuneration to the owner of the patent taking into consideration the economic value as determined by the NIPO, and where applicable, the need to correct anti-competitive practices. Licences for the exploitation of a patent (the second patent) that cannot be exploited without infringing another patent (the first patent) may be granted if: (i) the invention claimed in the second patent involves an important technical advance of considerable economic significance in relation to the invention claimed in the first patent; (ii) the owner of the first patent is entitled to a cross licence on reasonable terms to exploit the invention claimed in the second patent; and (iii) the exploitation authorized in respect of the first patent may only occur with the assignment of the second patent.

232. Licences may also be granted voluntarily, through contracts, which must be recorded in the Register. This licence may be exclusive or not. Licences may not include restrictions concerning the scope, extent or duration of exploitation of the patented invention, or on geographical area or the quality or quantity resulting products.

233. If a judicial or administrative body has determined that the manner of exploitation of a patent by its owner or its licensee is anti-competitive, the Director-General may authorize any person, body of persons, government departments or statutory body to exploit the patent without a licence of the owner of the patent. The Act also contemplates rights derived from the previous manufacture of the product. If, at the filing date or where applicable the priority date of the patent application, a person was in good faith making the product in Sri Lanka or using the process that is the subject of the invention claimed in the application, or making preparations in this respect, she/he has the right, despite the grant of the patent, to exploit the patented invention.

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and animals other than non-biological and microbiological processes; schemes, rules, or methods for doing business, performing purely mental acts or playing games; methods for the treatment of the human or animal body by surgery or therapy, and diagnostic methods practiced on the human or animal body; inventions used in the utilization of special nuclear material or atomic energy in an atomic weapon; any invention attempting against public order, morality, the protection of human, animal or plant life or health, or the environment.

<sup>90</sup> Exploitation of a patent granted in respect of a product means making, importing, stocking, selling, and using the product. Exploitation of a process means using it; and importing, stocking, selling, and using a product manufactured by use of the patented process.

234. The Act also allows parallel imports of pharmaceutical products; parallel imports will allow the import of a branded drug from an alternative source.

235. According to the authorities, obtaining a patent in Sri Lanka takes a few weeks; a longer period might be needed if the application is not properly prepared. Some 1,256 patents were granted between 2003 and 2009 (Table III.17).

**Table III.17**  
**Industrial property statistics, 2003-09**

Year	Applications			Registrations		
	Resident	Non-resident	Total	Resident	Non-resident	Total
<b>Marks</b>						
2003	3,623	2,139	5,762	359	601	960
2004	2,343	3,600	5,943	853	975	1,828
2005	4,587	1,900	6,487	544	992	1,536
2006	4,821	2,392	7,213	741	901	1,642
2007	3,382	2,835	6,217	212	499	711
2008	2,895	3,012	5,907	907	1,001	1,908
2009	3,018	1,909	4,927	1,004	1,189	2,293
<b>Patents</b>						
2003	95	189	284	63	52	115
2004	120	195	315	103	85	188
2005	149	211	360	64	116	180
2006	153	270	423	68	69	137
2007	151	279	430	54	37	91
2008	209	241	450	89	70	159
2009	203	200	403	111	255	366
<b>Industrial designs</b>						
2003	386	42	428	365	23	388
2004	254	50	304	224	40	264
2005	257	47	304	269	88	357
2006	477	39	516	422	45	467
2007	328	24	352	8	6	14
2008	333	56	389	85	4	89
2009	273	40	313	234	30	264

Source: NIPO online information. Viewed at: <http://www.nipo.gov.lk/satistic.htm>.

(d) Industrial designs

236. Industrial designs are protected under Intellectual Property Act No. 36 of 2003. Before that, they could be protected as a copyright with no registration required. Since protection under the previous copyright law was life plus 50 years, designs granted this protection may still enjoy this protection period. Under the Intellectual Property Act, the period of registration (and hence protection) of an industrial design is five years from the date of receipt of the application for registration, renewable for two consecutive periods of five years each, on payment of the prescribed fee. The new law provides protection to new industrial designs with the exception of anything in the industrial design that serves only to obtain a technical result.<sup>91</sup>

<sup>91</sup> An industrial design is defined in Intellectual Property Act No. 36 of 2003 as any composition of lines or colours or any three dimensional form that gives a special appearance to an industrial product or handicraft and may be used as pattern.



237. An industrial design is new if it has not been made available to the public (through description, use or in any other way) prior to the date of application for registration or before the valid priority date claimed. The creator (the person who makes the first application for registration or who first claims the earliest priority for registration), owns the right to protection. Certain exceptions to this rule are set out in the Act, including the right to obtain protection when two or more persons jointly created the design, or when the creation happened during the performance of a contract of employment. Also, the ownership of an industrial design created under any contract of employment or for the execution of work accrues to the employer, or the person who commissioned the work. If the industrial design acquires an economic value much greater than the parties could reasonably have foreseen at the time of concluding the contract of employment or for the execution of work, the creator is entitled to equitable remuneration, which may be fixed in court.

238. Registration is required for protection. The registered owner of an industrial design has the exclusive rights to: (a) reproduce and embody such industrial design in making a product; (b) import, offer for sale, sell or use a product embodying such industrial design; (c) stock for the purpose of offering for sale, selling or using, a product embodying such industrial design; (d) assign or transmit the registration of the industrial design; and (e) conclude licence contracts. Licences are not exclusive, unless so provided in the contract, and must be registered. There are no provisions for compulsory licensing. The Director-General of the NIPO, following consultation with the Governor of the Central Bank, may cancel the registration of a licence if he has cause to believe that any licence contract that involves the payment of royalties abroad is detrimental to the economic development of Sri Lanka. The authorities indicated that no such event has so far occurred.

239. Design applications are published for opposition before registration. Any person is entitled to apply to the Commercial High Court to have the registration declared null and void on grounds specified in the Act.

(e) Trade marks

240. Under the 2003 Intellectual Property Act, marks and trade names are protected through registration. Protection is also extended to certification marks and collective marks and to well known marks not registered in Sri Lanka. Registration of a mark may be granted to the person who is the first to fulfil the conditions of a valid application or is the first to make a valid claim of priority for his application. A mark may consist of, *inter alia*, designations, names, pseudonyms, geographical names, slogans, letters, numbers, emblems, and combinations or arrangements of colours, and shapes of goods or containers.

241. Registration of a mark is granted to the person who has first provided a valid application or who is the first to claim priority for his application. The Registrar examines the application for registration and if the mark is considered admissible the applicant is notified. All marks to be registered are published in the *Gazette*; any person may oppose the registration within three months of its publication. If no notice of opposition is received by the Registrar, he will register the mark. Registration expires after ten years but may be renewed for consecutive periods of ten years each on payment of the prescribed fee. Renewal of registration of a mark may not be subject to any further examination of the mark. The owner of a mark has the exclusive right to use it; to assign or transmit the registration of the mark; and to conclude licence contracts.

242. A registration may be cancelled if the owner has failed to use the mark within Sri Lanka without valid grounds, for five consecutive years, or has transformed the mark into a generic name so that in the eyes of the public the significance of the mark has been lost. No marks have been removed from the Register during the period under review.

(f) Geographical indications

243. The Intellectual Property Act introduced specific legislation on geographical indications (GIs). Any interested party may prevent the use of any means in the designation or presentation of goods that indicates or suggests that the goods, including an agricultural product, food, wine or spirit originate in a geographical area other than the true place of origin in a manner that misleads the public as to the geographical origin of goods. The Act also precludes the use of a GI that constitutes an act of unfair competition, and the use of a GI identifying goods not originating in the place indicated, even where the true origin of the goods is indicated or the GI is used in translation or accompanied by expression such as kind, type, style or imitation or the like.

244. In the case of homonymous GIs, protection is accorded to each indication. The Act gives courts the power and jurisdiction to grant an injunction and any other relief deemed appropriate to prevent any inappropriate use of a GI. Sri Lanka is an advocate of extending the protection of geographical indications to products other than wines and spirits.<sup>92</sup>

(g) Unfair competition and undisclosed information

245. Intellectual Property Act, No. 36 of 2003 has a chapter on unfair competition and undisclosed information. The Act defines unfair competition as any act or practice carried out or engaged in, in the course of industrial or commercial activities, that is contrary to honest practices, and/or causes, or is likely to cause, confusion with respect to another's enterprise or its activities or the products or services offered by such enterprise, or that may damage its reputation. This may include confusion or damage resulting from the dilution of the reputation of a mark, a trade name or any other business identifier, the appearance of a product, or the presentation of products or services.

246. Acts or practices that mislead the public or discredit an enterprise or its activities or its products or services, are also considered an unfair practice. Misleading practices may arise out of advertising and may occur with respect to the manufacturing process of a product, or the quality, quantity, suitability, GI, price, or offering conditions of a product or service.

247. The Act also forbids any act or practice that results in the disclosure, acquisition or use by others of undisclosed information without the consent of the person lawfully in control of that information and in a manner contrary to honest commercial practices. These acts are also considered acts of unfair competition. The disclosure, acquisition or use of undisclosed information by others without the consent of the rightful holder may, in particular, result from: (i) industrial or commercial espionage; (ii) breach of contract; (iii) breach of confidence; (iv) inducement to commit any of the acts referred to before; (v) acquisition of undisclosed information by a third party who knew or was negligent in failing to know that acts referred to previously were involved in the acquisition.

248. The Act defines "undisclosed information" as information that: (a) is not, wholly or partly, generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question; (b) has actual or potential commercial value because it is secret; and (c) has been subject to reasonable steps under the circumstances by the rightful holder to keep it secret. The Act considers that an unfair commercial use of secret test or other data, the origination of which involves considerable effort is an act of unfair competition; so is the disclosure of such data, except where necessary to protect the public. The undisclosed information specifically protected under the Act includes technical information related to the manufacture of goods or the provision of services, and business information, which includes the internal information that an enterprise has developed so as to be used within the enterprise.

<sup>92</sup> WTO document IP/C/W/353, 24 June 2002.

249. Parties affected by unfair competition or undisclosed information may institute proceedings in court to prohibit the continuance of the act or practice and obtain damages for losses. The wilful disclosure of any undisclosed information without lawful authority is an offence under the Act, liable to a fine of up to Rs 500,000 (US\$4,400) and/or to imprisonment for a term not exceeding six months.

(h) Layout designs of integrated circuits

250. The Intellectual Property Act of 2003 deals with protection of layout designs of integrated circuits. The right to protection of a layout design belongs to the creator. To be protected, designs must be original. The owner of a design has the exclusive right to authorize its reproduction, importation, sale, and distribution. However, layout designs may be reproduced to be used for evaluations, analysis, research or teaching. Protection of a layout design lasts for ten years, non-renewable, starting on the date of the first commercial exploitation in or outside Sri Lanka or on the filing date accorded to the application for the registration of the layout design filed by the right holder if the design has not been previously exploited commercially. Any application for registration must be made within two years from the starting date of exploitation. Registrations are published in the *Gazette*. The right holder may grant a licence to another person or enterprise authorizing it to exploit the design; the licence contract must be registered to be valid.

(i) Enforcement

251. Infringement of IPRs is punishable under both criminal and civil law. Penalties include prison of up to six months and fines of up to Rs 500,000. Penalties can be doubled for a second offence. Aggrieved parties may seek redress through the courts. The Sri Lanka Custom is authorized to prohibit the exportation and importation of goods in violation of intellectual property rights. The Director-General of the NIPO conducts dispute resolutions involving copyright and related rights.

252. The NIPO has no data regarding infringement of intellectual property rights and related losses. However, according to some reports, enforcement remains a problem, although there has been some improvement during the review period. For example, it has been reported that, Sri Lanka has slowly begun to enforce its provisions of the 2003 law. It has also been reported that counterfeit goods continue to be widely available in Sri Lanka; several offenders have been charged or convicted by courts, but the small damages and suspended sentences imposed suggest that the court system still fails to recognize the significance of intellectual property rights.<sup>93</sup>

253. Enforcement against piracy, in particular of computer software, has been reinforced through the provisions in the Intellectual Property Act of 2003, the Computer Crimes Act of 2007 and the Companies Act of 2007. In August 2008, the Business Software Alliance (BSA), an institution that fights piracy against computer software and addresses intellectual property rights issues, appointed an attorney-at-law to support action against piracy in the software market in Sri Lanka, where it estimated that 90% of programs were unlicensed. Software piracy in Sri Lanka was rated sixth highest in the world in 2007 and, according to BSA estimates, cost US\$93 million in 2008.<sup>94</sup> The Sri Lankan authorities challenge the correctness of this evaluation. They also noted that they are making every effort to enforce intellectual property rights by strengthening enforcement agencies, training officers, and building public awareness.

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<sup>93</sup> U.S. Department of Commerce (2010).

<sup>94</sup> Lanka Business online information. Viewed at: <http://www.lankabusinessonline.com/fullstory.php?nid=961363446>.