

INSIGHTS AND FINDINGS ON THE SRI LANKA THAILAND FREE TRADE AGREEMENT

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Introduction

The negotiations between Sri Lanka and Thailand Free Trade Agreement (SLTFTA) commenced in 2018 and after the extensive negotiations between two countries, SLTFTA was signed on the 03rd of February 2024. This comprehensive agreement, encompassing 14 chapters and accompanying annexes, will come into effect upon the exchange of diplomatic notes.

Recognizing the potential economic impact from the SLTFTA, particularly its ability to boost domestic trade, this article analyses its key features and their anticipated implications.

As a first step, the article examines the three main key chapters out of the fourteen (14) chapters in the SLTFTA. Those titled (1) Trade in Goods (with an in-depth look at the Rules of Origin), (2) Trade in Services and (3) Investment. This trade brief provides key summary findings in Part 1, 2 and 3 by delving into the facts and analysis of the three key chapters referred to above. Finally, Part 5 will give a summary of the other important chapters of the Agreement.

Part 01: Key Insights on SLTFTA

The SLTFTA is an important step towards driving Sri Lanka's growth in Trade in Goods, Services and Investment.

This Agreement is seen positively in the context of enhancing Sri Lanka's trade initiatives and deepening its current relations with the economies in the Association of Southeast Asian Nations (ASEAN). Together with the Singapore FTA it presents opportunities for Sri Lanka to diversify its export basket, attract Foreign Direct Investment (FDI), and integrate into regional value chains within ASEAN.

Considering that the Agreement is comprehensive in its coverage, there exists opportunities for Sri Lankan businesses to derive benefits from this Agreement by leveraging on the synergies it is expected to bring between trade, investment and services. It is worthy to note that consequent to the signing of the Agreement, there have been delegations that have visited the country from Thailand to explore potential investment opportunities. According to the government sources there are 10 commercial investment projects from Thailand operating in Sri Lanka at present providing over 600 employment opportunities.

Benefits from early market access, products in which already have a competitive advantage

Some products from Sri Lanka can enter Thailand without any taxes if they are within a certain limit. The Trade Liberalisation Program will provide Sri Lanka with early market access for some of its key products, such as tea, apparel, coconut and rubber products, fish and fishery products, and cinnamon. These products will enjoy zero or reduced customs duties at early stages of entering into force of the agreement, either within the global quota or without any

quota restrictions. The products that will gain early market access for Sri Lanka are mostly value-added products that have high export potential and demand in the Thai market. In addition, Sri Lanka will also be able to import intermediary and industry inputs from Thailand and these inputs will help Sri Lanka to improve its domestic production capacity and competitiveness in various sectors.

Government expects investments to Sri Lanka from the Thailand through the SLTFTA

The provisions in the agreement encourage investments from Thailand especially in manufacturing areas such as Electrical and Electronic, Auto Components, Processed Food, Apparel, and Pharmaceuticals. Additionally, service sectors such as Tourism, IT, and Logistics could see growth. This will also encourage investments from other countries into Sri Lanka, providing the country with access to a larger market.

The importance of a more structured consultation process for stakeholders

The Chamber played an active role in stakeholder participation, joining consultations and meetings convened by the Department of Commerce, Ministry of Finance, Department of Trade and Investment Policies, and negotiations led by the Office for International Trade.

During the consultation process led by the government, we observed a lack of participation from industry stakeholders. Furthermore, when requesting certain input, it's important to have clear timelines and allow sufficient time for industry stakeholders to respond.

A strategic movement to boost the Trade and competitiveness of Sri Lanka in the long run.

The SLTFTA is a crucial agreement which not only beneficial for the bilateral relations between Sri Lanka and Thailand, but also for the integration into the regional and global economy. The SLTFTA will help Sri Lanka join the RCEP more easily and access a larger market of 2.2 billion people.

Part 02: Trade in Goods

What are the key elements of the Tariff Liberalisation Program (TLP) under the SLFTA?

The TLP gives details on products that will be subject to an elimination of imports duty. Sri Lanka and Thailand have committed to a comprehensive Tariff Liberalisation Program spanning a 16-year time (refer table 01 for more details).

- 80% of the HS Codes will undergo tariff liberalisation over 15 years in sequential stages.
- 5% of HS Codes will undergo partial liberalisation, with a single point removal at the onset of the 16th year from the date of the implementation.
- The remaining 15% of HS Codes, specified in Sri Lanka's Negative Schedule.

The tariff classification numbers used in the schedule for Thailand are based on the 2022 version of the ASEAN Harmonised Tariff Nomenclature (AHTN)¹ where in the schedule for Sri

¹ <https://asean.org/harmonisation-of-tariff-nomenclature-customs-valuation-and-procedures/>

Lanka is based on the 2022 version of the World Customs Organisation².

Certain tariff lines marked with a quota, means that the customs duty rate applied to goods from Sri Lanka, imported within the quota quantity under the Tariff Rate Quota (TRQ) committed by Thailand under the WTO Agreement, will be zero percent from the agreement's entry into force.

Sri Lanka's customs duties base rate includes the Commodity Export Support Scheme Levy (CESS), Ports and Airports Development Levy (PAL), and the Customs Import Duty (CID). Any HS Code listed in the Tariff Concessions in the Schedule of Tariff Commitments would not be subject to the Special Commodity Levy (SCL).

Table 01: SLTFTA Tariff Liberalisation Program (TLP)³.

Phase	Liberalisation Process	Thailand Offer		Sri Lanka Offer	
		No of HS Codes	%	No of HS Codes	%
1	Elimination of Customs Duties at the date of entry into force (EIF)	5701	50	4078	50
		9 (within WTO quota)	0	0	0
2	Elimination of Customs Duties in 5 annual equal installments (stage I: 1st - 5th year of the Agreement)	1138	10	815	10
3	Elimination of Customs Duties in 5 annual equal installments (stage II: 6th - 10th year of the Agreement)	1128	10	815	10
4	Elimination of Customs Duties in 5 annual equal installments (stage III: 11th - 15th year of the Agreement)	1163	10	816	10
5	Reduction of Customs Duties by 50% of the applicable Customs Duties (at the onset of the	567	5	409	5

² <https://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs-nomenclature-2022-edition.aspx>

³ <https://doc.gov.lk/images/2024/thailandfta/chapter2/2A/3.-ANNEX-2A-FINAL-SCHEDULE-OF-TARIFF-COMMITMENTS-OF-THAILAND---Copy.pdf> <https://doc.gov.lk/images/2024/thailandfta/chapter2/2B/5.-ANNEX-2B-FINAL-SCHEDULE-OF-TARIFF-COMMITMENTS-OF-SRI-LANKA.pdf>

	16 th year)				
6	Exclusion List/ Unbound / Not subject to TLP	1708	15	1224	15
Total Tariff Lines		11414	100	8157	100

What are the products that will receive early market access for Sri Lanka?

Early market access for Sri Lanka will initially focus on key products like tea, apparel, coconut and rubber products, fish and fishery products, and cinnamon available in phase 1, 2 and 3 of the agreement.

Table 02: Products that get early market access for Sri Lanka

Phase	HS Code	Product Description	Comment
1 (within WTO quota ⁴)	0902	Tea	Zero duty access within the global quota ⁵ at early stage of TLP.
1 (within WTO quota ⁶)	0801	Desiccated Coconut	Zero duty access within the global quota ⁷ at early stage of TLP.
1 (No quota)	0906	Cinnamon	Zero duty access in the early stage of the TLP ⁸ .
2	6116.10.90 6210.10.11 6211.32.10 6211.33.10 6211.33.20 6211.33.30 6211.39.10 6211.39.20 6211.39.30 6211.42.10 6211.43.40 6211.43.50 6212.10.19 6212.10.99 6217.10.10	Apparel Products	Zero duty access in the early stage of the TLP ⁹ .
3	6103.42.00 6103.49.00		

⁴ within the Thailand global quota of 625 T

⁵ Currently this product has 30% of Customs/MFN duty

⁶ within the Thailand global quota of 2427 T

⁷ Currently this product has 20% of Customs/MFN duty

⁸ Currently this product has 20% of Customs/MFN duty

⁹ <https://www.dtn.go.th/file/get/file/1.2022040152b29f6eb10ef4e23b181f5989196694114534.pdf>

	6104.42.00 6104.69.00 6107.12.00 6108.29.00 6114.20.00 6115.10.10 6115.96.00 6210.20.20 6210.20.30 6210.30.20 6210.30.30 6210.40.10 6210.40.20 6210.50.10 6210.50.20 6211.49.10 6211.49.20		
1, 2, 3 (%)	40	Rubber Products	Zero duty access in the early stage of the TLP ¹⁰ .
	39	Plastic Products	
1, 2, 3	03	Fisheries Products	
	04	Processed Food	

Plastic, rubber, fisheries and processed food which will gain early market access for Sri Lanka, consist mainly of value-added products.

Sri Lanka also has given duty free access for intermediary & industry inputs from Thailand. such as Chemical, pigment/textile, dyes, clothing preparations plastic raw forms, rubber latex, paper boards, fabric, yarn, elastic.

What are the Rules of Origin under SLTFTA?

This subject needs to be addressed by an understanding of the purpose of the Rules of Origin (ROO) criteria. ROO are the criteria that are used to determine the national source of a product. ROOs serve several purposes in the context of an FTA that goes beyond determining the qualifying criteria for products to be eligible for preferential duty claims.

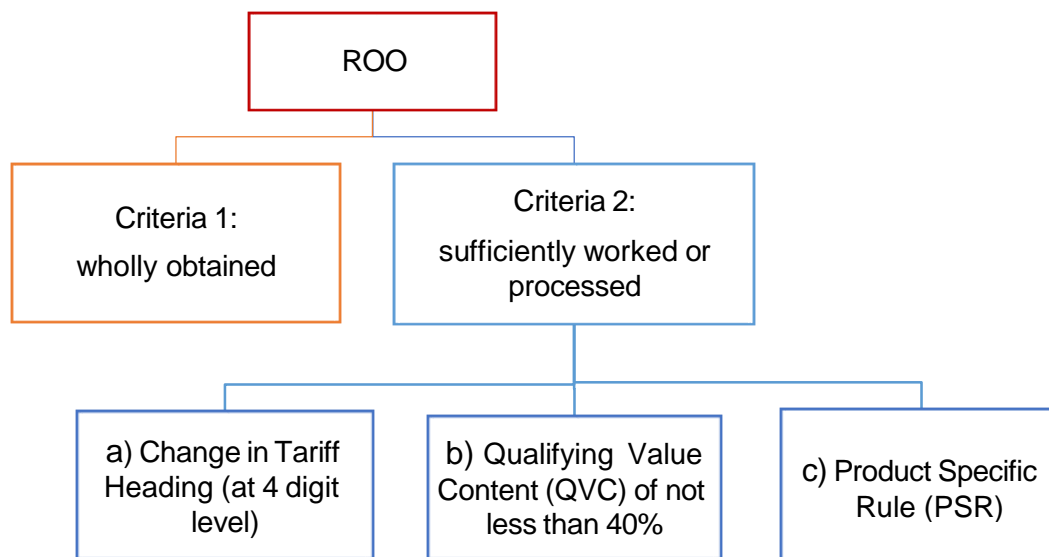
ROOs are also used;

- for actioning trade remedy instruments such as anti-dumping duties and safeguard measures;
- for compiling trade statistics;
- for the application of labelling and marking requirements; and
- for government procurement

The Agreement's TLP will lower customs duty, but products must meet Rule of Origin Criteria to get duty concessions.

¹⁰ <https://www.dtn.go.th/file/get/file/1.2022040152b29f6eb10ef4e23b181f5989196694114534.pdf>

Exhibit 01: ROO Criteria under SLTFTA



The Criterion for non-originating materials is based on either General Rule¹¹ which requires a qualifying value content of at least 40 percent or change in tariff classification at the four-digit level of the HS Code. Some products have a product specific criterion that both countries agreed on as mutually beneficial.

What are the selected products that have Product Specific Rules (PSR) under SLTFTA?

There are 202 HS codes at the 6-digit level that have PSRs where the General Rule of ROO does not apply (refer table 03 for more details).

Table 3: Product Specific Rules (PSRs)

Type of PSR	Number of HS Codes at 6 Digit Level
CC ¹²	53
CC except from Chapter 01	02
QVC40 ¹³ or CC	22
CTH ¹⁴	01
CTSH ¹⁵	02
QVC40 or CTSH	04
QVC 40	12

¹¹ General Rule = QVC 40% or CTH

¹² CC means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the two-digit level

¹³ QVCXX means that the good must have a qualifying value content of not less than XX percent as calculated under Article 3.5 (Qualifying Value Content (QVC) i.e. QVC40

¹⁴ CTH means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the four-digit level

¹⁵ CTSH means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the six-digit level

QVC35 and CTS	29
QVC35 or CTH	03
QVC25 or CTS	54
QVC28 and CTS	04
QVC28 or CTH	06
QVC40 or CTH except from subheading 7208.10	03
QVC40 or CTH except from subheading 72.19	02
QVC35 or CTH except 7219.31 to 7219.90	02
QVC40 or CTH except 72.25	02
QVC35 or CTH except 72.25	01
Total	202

Part 03: Services

What are the Services sectors covered under SLTFTA?

Under the Service Liberalisation Program Sri Lanka gains market access opportunities to various sectors subject to specific sectors and specific conditions. On the other hand, Thailand gains market access to service sectors under conditions broadly linked to Investment.

The Services Classification is based on the 12 main categories of the WTO services sectoral classification list¹⁶ with further breakdown being provided through CPC classification¹⁷. The coverage of services in SLTFTA schedule is given below in Table 04.

Table 04: Core Service Sectors under WTO classification

Core Service Sectors		Listed in services schedule	
		Sri Lanka	Thailand
1	Business services (including professional services and computer services)	√	√
2	Communication services including Audiovisual Services ¹⁸	√	√
3	Construction and related engineering services	√	√
4	Distribution services	√	√
5	Educational services	√	√
6	Environmental services	√	√
7	Financial services (including insurance and banking)		
8	Health-related and social services		
9	Tourism and travel-related services	√	√
10	Recreational, cultural and sporting services		
11	Transport services	√	√

¹⁶ https://www.wto.org/english/tratop_e/serv_e/serv_sectors_e.htm

¹⁷ https://unstats.un.org/unsd/publication/SeriesM/SeriesM_77ver1_1E.pdf

¹⁸ Telecommunications Services is listed by Sri Lanka but not by Thailand

12	Other services not included elsewhere		
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The definition of services" includes any service in any sector except services supplied in the exercise of governmental authority¹⁹.

Both Sri Lanka and Thailand schedule of Services commitments have 70% coverage of 12 broad service sectors of the WTO classification. It is important to note that under the agreement, independent professionals would not have unrestricted movement between the countries. Nonetheless, a specific number of categories of contractual suppliers and corporate transferees, particularly those in high-level professional categories linked to Thai investment, will be permitted entry into Sri Lanka. These categories include managers, executives, and specialists, with additional limitations on the scope.

In terms of Professional Services, Sri Lanka has listed only 03 Professional Services for Thailand. For these Services, Mode 3 (Commercial Presence) and Mode 4 (Movement of Natural Persons) are closed for Thailand Nationals. The resultant position is that Thailand firms cannot provide these Professional Services in Sri Lanka and bring down any Thailand Nationals to work as corporate transferees.

Part 04: Investment

What are the key elements of the Investment Chapter of the SLTFTA?

As outlined in Annex 9A²⁰ (The Schedule of Reservations and Non-Conforming Measures for Investment in Thailand) pertains specifically to Chapter 9 (Investment) and does not include commitments related to Chapter 8 (Trade in Services). The liberalization under Chapter 9 applies to investment in non-service sectors such as manufacturing, agriculture, fisheries, forestry, and mining and quarrying.

In both Schedules there's a two-list approach, List A and List B. With List A focusing on existing non-conforming measures and List B providing policy flexibility. Both countries have the flexibility to add, withdraw, or modify reservations in List A within 24 months from the agreement's entry into force, with notification to the country. Each entry in List A includes elements such as sector, subsector, industry classification, level of government, type of obligation, description of measure, and source of measure. The Description of Measure element takes precedence in the interpretation of entries.

In addition, List A details country measures that do not conform to obligations under National Treatment, Most-Favored-Nation Treatment, Performance Requirements, or Senior Management and Board of Directors.

The investment chapter includes a section on Public Debt, focusing on obtaining consent for debt restructuring, determining the burden of proof for claims related to debt default, and outlining limitations on submitting claims for breaches in debt restructuring arbitration.

Annex 9C²¹ on Public Debt outlines the definition of 'negotiated restructuring' as the modification or amendment of a debt instrument with the consent of at least 75% of the holders of the outstanding debt. It also highlights that no award will be granted to an investor for a

¹⁹ Exclusions also include government procurement

²⁰ <https://www.doc.gov.lk/images/2024/thailandfta/chapter9/9A/ANNEX-9A.pdf>

²¹ <https://www.doc.gov.lk/images/2024/thailandfta/chapter9/9C/ANNEX-9C.pdf>

claim related to default or non-payment of debt unless it is proven to be a breach of obligation under the Investment Chapter.

Furthermore, it states that claims regarding debt restructuring cannot be submitted for arbitration if it is a negotiated restructuring, except for violations of the National Treatment or Most-Favoured-Nation Treatment. Additionally, an investor cannot submit a claim for debt restructuring breach unless 365 days have passed since the written request for consultations.

Part 05: Summary of other Chapters

Sri Lanka and Thailand have agreed to cooperate in 11 key economic sectors to enhance the mutual benefits. The 11 sectors that they have identified for collaboration are Trade and Investment Promotion including Export Development, Infrastructure including Transport and Port sector, Agriculture and Agro Industry such as Fisheries, Gems and Jewelry, Tourism Sector, SMEs and MSMEs, Financial Cooperation, Packaging Industry, ICT and Technical and Vocational Education and Training. One of the main advantages of this cooperation is that Sri Lanka will be able to access the Thai market without facing non-tariff barriers such as SPS & TBT measures, which are often used to protect domestic producers and consumers from low quality or unsafe products. Sri Lanka will also benefit from the recognition of standards between the two countries, which will facilitate trade and reduce costs.

However, the cooperation also entails some risks for Sri Lanka, such as the possibility of increased competition from Thailand that could harm the local industries or consumers. To address this issue, the agreement provides for trade remedy measures, such as antidumping & countervailing duties and safeguard measures, that can be applied in case of unfair trade practices or serious injury to the domestic market. This ensures a balanced approach for trade flows.

The agreement also provides for Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) measures for ensuring fair competition, protecting animal, plant, and human health, and preventing the entry of low-quality products.

The agreement also establishes a mechanism for dispute settlement, in case of any disagreements or conflicts between the parties. The disputes can be resolved through consultations or arbitration, depending on the nature and severity of the problem. Additionally, a joint commission will be set up to monitor the implementation of the agreement and review its progress annually.

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