

## INSIGHTS AND FINDINGS ON THE SRI LANKA-SINGAPORE FREE TRADE AGREEMENT

### Introduction

Sri Lanka signed the Sri Lanka – Singapore Free Trade Agreement (SLSFTA) on 23 January 2018 and the Agreement was brought into operation with effect from 1 May 2018.

In view of the impact of the contents of this Agreement on our members, and the potential that Government states it offers to boost domestic trade, this Chamber decided to set out its perspectives on the significant features of the Agreement.

In finalising this brief a consultative process was adopted with adequate opportunities given to members of the Chamber to submit views.

As a first step, the Economic Intelligence Unit (EIU) of the Chamber studied three (03) of the seventeen (17) key Chapters in the SLSFTA i.e. those titled - (1) Trade in Goods (with an in-depth look at the Rules of Origin), (2) Trade in Services and (3) Investment. Other Chapters with links to these Chapters were also analysed.

Following this analysis, the findings were presented to the Chamber Steering Committees on Trade Liberalisation and on Economic Policy, as well as the Chamber Committee and the Chamber Board. After incorporating observations from these meetings, the findings were presented at a specially convened forum for members of the Chamber.

This research brief is structured to provide the key summary findings in Part 1 while the remaining sections (Part 2 to Part 4) delve into the facts and analysis of the three key Chapters referred to above. Insights from the recently concluded Sri Lanka Economic Summit 2018 have been included in Box 1.

### Part 1: Seven Key Insights on SLSFTA

#### **1. The SLSFTA is an important step towards driving Sri Lanka's growth in Trade, Services and Investment:**

The Chamber sees the Agreement 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). ASEAN is a growing trading region with links to global production networks that Sri Lanka could have the potential to integrate with to diversify its exports basket and attract Foreign Direct Investment.

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 numerous delegations that have visited the country from Singapore to explore potential investment opportunities.

## 2. Greater robustness required in the Consultation process:

The Chamber was an active stakeholder participant whenever consultations and meetings were convened by the Ministry of Development Strategies and International Trade (MoDSIT) and with the negotiating team of SLSFTA. The Chamber also assisted in the consultation process by making timely submissions and convening sector specific consultations on trade-in-service for its members, in maritime, construction, tourism and IT sectors, in 2017.

However, the Ministry of Development Strategies and International Trade should have engaged in a much more robust process with consistent two-way communication with all stakeholders impacted by the SLSFTA. A more structured approach would have given the stakeholders more confidence with regard to the process. We are encouraged by the Cabinet decision of 31 July 2018 to institutionalise the Trade Negotiation Committee for future trade negotiations. Regular updates pre and post negotiation rounds similar to the status update post the 9<sup>th</sup> round of ECTA negotiations<sup>1</sup> should be a high priority of the Negotiating Committee. These updates should be timely, as delayed releases detract from its value.

## 3. Cabinet Approval granted for SLSFTA:

We have examined the matter of obtaining approval of the Cabinet, and observe that the Minister of Development Strategies and International Trade has sought and obtained approval of the Cabinet. From a statement made by the Minister in Parliament<sup>2</sup> during the debate on the SLSFTA in Parliament, it is observed that –

- a) The draft Agreement was submitted to Cabinet by the Ministry of Development Strategies and International Trade by Cabinet Memorandum dated 21 December 2017.
- b) Positive observations were made by His Excellency the President and 14 other Cabinet Ministers on the 9 January 2018.
- c) These observations were incorporated in a revised Agreement which was submitted to the Cabinet on 12 January 2018 for approval.
- d) At the Cabinet Meeting held on the 16 January 2018, the Agreement was approved by Cabinet and approval was granted to MoDSIT for the signing of the same during the visit of the Singapore Prime Minister on the 23 January 2018.
- e) The Agreement came into force on the 1 May 2018 after the Anti-Dumping and Countervailing Duties Bill and the Safeguard Measure Bill were passed in Parliament.

It is also observed that the Agreement was “laid before” Parliament and debated on 17 July 2018 i.e. after the Agreement came into force.

#### 4. Tools to counter Dumping of Goods and Import Surges:

Two important laws were passed by Parliament in 2018. These are –

- a) the Anti-Dumping and Countervailing Duties Act No. 2 of 2018 which provides for the investigation and imposition of anti-dumping duties and countervailing duties in respect of products that are dumped in Sri Lanka thereby causing injury to Sri Lankan industry; and
- b) the Safeguard Measures Act No. 3 of 2018 which provides for the conduct of investigations and the application of safeguard measures on products imported into Sri Lanka.

These Acts were certified by the Speaker on 19 March 2018. Section 1 of each of the Acts states that the Act shall “... come into operation on such date as the Minister may appoint, by Order published in the Gazette.” The “Minister” is defined to mean “the Minister in charge of the subject of Trade.” Accordingly, we await confirmation of the date with effect from which they are in operation. In addition, the SLSFTA has a Chapter on “Trade Remedies” which is based on the principles of the above laws.

The collective impact of the above provisions is to provide protection to the domestic industries from illegal dumping, and to also provide for the application of safeguard measures where there are import surges that could cause serious injury to the domestic industry and where it is determined that the application of such measures is necessary in the public interest. The principle recognized here is that public interest is accorded due recognition and safeguard measures will be applied only in the public interest.

#### 5. Goods from the ASEAN region cannot flood in through the SLSFTA while Sri Lanka gains from predictability in the tariff regime:

The SLSFTA is one of the least stringent in terms of the Rules of Origin (ROO) criteria when compared to Sri Lanka’s existing FTAs, but it prohibits measures such as ASEAN cumulation that permits goods from the ASEAN region to access Sri Lanka through Singapore indirectly. Goods sought to be brought in to Sri Lanka are required to qualify under the ROO criteria which requires substantial value addition.

Sri Lanka does not gain from market access advantage to Singapore, as 99.9% of tariff lines were open free of duty even prior to the SLSFTA. However, according to the WTO<sup>3</sup> Singapore’s tariff regime currently levies taxes only on six tariff lines (beer and some other spirits), but at a multilateral level (WTO commitments) around 30% of Singapore’s tariff lines are not subject to an upper tariff rate (unbound). The tariffs on goods that are subject to an upper ceiling (i.e. bound) range from zero to 10%. As such, at a future date, Singapore has the flexibility to increase the rates to the rest of the world<sup>4</sup> on these tariff lines. However, with the commitment of 99.9% of tariff lines to Sri Lanka under the SLSFTA, these ceilings will not be applicable to Sri Lanka. Hence, it is seen that the SLSFTA has brought more predictability for Sri Lankan exporters with the confirmation of the zero tariff in respect of these goods.

## 6. Guidelines set for the Movement of Persons with links to Investment in the SLSFTA:

In International Trade, Services can take place through four distinct categories referred to as Mode 1, 2, 3 and 4. Mode 4 refers to the movement of people and this Mode has been further subdivided into 4 categories. A brief explanation on the categorisation of modes is found in Annexure 01.

In the SLSFTA, Mode 4 has been opened to only two of the four sub-categories, namely to Business Visitors and Intra Corporate Transferees (ICTs), with the latter requiring Singapore Nationals working as ICTs to work in a company that has made an investment in Sri Lanka and is incorporated (as specified in horizontal commitments under Mode 3 linked to commercial presence<sup>5</sup> through investment).

The SLSFTA does not permit entry for Singaporean Nationals to work in Sri Lanka under the other two sub-categories of Mode 4 i.e. Contractual Suppliers and Independent Professionals.

Furthermore, Sri Lanka has put in place guidelines for the two sub-categories of Mode 4 that are open (i.e. ICTs and Business Visitors). Entry of Business Visitors are restricted to 30 days. In terms of ICTs, they have to be (1) be a National of Singapore (not a Permanent Resident holder), (2) be employed in the Singapore Company for no less than 12 months and (3) have a minimum of five years of relevant industry or professional experience, prior to the date of application.

In addition to the above guidelines, ICTs are further restricted to the following positions: (1) Manager, (2) Executives and (3) Specialists which are clearly defined in the Agreement. The definitions of these positions can be understood to be stricter than what we would typically classify in Sri Lanka. For example, an "Executive" and a "Manager" is defined as an individual with wide decision-making power and one who is:

- a) a member of the board of directors; or
- b) receives only general supervision; or
- c) receives direction from higher level executives; or
- d) receives direction from general body of shareholders.

The guidelines are more stringent in terms of Professional Services. Sri Lanka has listed only three (03) Professional Services for Singapore. For these Services Mode 3 and 4 are closed for Singaporean Nationals. The resultant position is that Singaporean firms cannot incorporate companies to provide these Professional Services in Sri Lanka and bring down any Singaporean Nationals to work as ICTs.

## **7. The previous Bilateral Investment Treaty has been repealed by the new Investment Chapter in the SLSFTA, providing more investment protection for both sides:**

The Investment Chapter of the SLSFTA replaces the previous Bilateral Investment Treaty (BIT) between Sri Lanka and Singapore signed in 1980. This Chapter will now govern the entire investment regime between the two countries. The SLSFTA provides that previous investments will continue to be governed under the BIT for a period of ten years from the date of operation of the SLSFTA. After ten years these investments will be subjected to the provisions of the Investment Chapter of the SLSFTA. The scope of an investment is limited to 3 qualifying characteristics: (1) commitment of capital/other resources, (2) certain duration and (3) expectation of gain/profit or assumption of risk.

The SLSFTA provides that, in the event that the SLSFTA is terminated, the provisions of the Investment Chapter will continue to apply for a period of ten (10) years from the date of termination to investments in existence at the date of termination of the Agreement. This savings clause provides protection to investments made under this Agreement, for ten years.

A comparison of the provisions relating to “Expropriation” in the SLSFTA and the BIT Agreement indicates that the provisions in the SLSFTA provides more investment protection than the BIT Agreement.

In the case of inconsistency related to the Investment Chapter, other Chapters of the SLSFTA will prevail over the Investment Chapter to the extent of the inconsistency.

**Box 01: Insights from Sri Lanka Economic Summit 2018 related to the SLSFTA and Trade Agreements**

***"Differences in size is not a constraint to build strong economic partnerships"***

Mr. Arun M. Kumar, CEO, KPMG India

***"Unless you engage in domestic reform it is unlikely that you will be able to benefit from developments in the global economy"***

Dr. Rajat Kathuria, Director/Chief Executive, Indian Council for Research on International Economic Relations

***"Negative impacts of trade reforms are obvious and immediately felt, but tangible benefits may take longer to realize"***

Mrs Chandanie Wijayawardhana- Secretary to the Ministry of Development Strategies and International Trade

***"The discussion around current account deficits should be focused on competitiveness rather than on the success or failures of bilateral FTAs signed"***

Dr. Rajat Kathuria, Director/Chief Executive, Indian Council for Research on International Economic Relations

***"Sri Lanka needs to move from a buyer driven to a producer driven production networks and plug into niche markets by developing stronger brands which offers a higher value addition proposition"***

Summarised perspective from Session 04

***"Domestic reforms coupled with smart integration are two key ingredients for achieving structural reforms"***

Dr. Nihal Pitigala, Consultant, USAID, World Bank

***"Services trade creates an important platform for knowledge transfer, which Sri Lanka could leverage on to improve its global competitiveness"***

Reyaz Mihular, Managing Partner KPMG Sri Lanka

***"Greater use of trade data ensures sound return of public investment"***

Ms. Subhashini Abeysinghe, Research Director, Verite Research

***"Regulatory gaps such as lack of a 'Domestic Data Protection Law' need to be bridged to facilitate trade"***

Summarised perspective from session 3B

## Part 02: Trade in Goods

### What are the key elements of the tariff liberalisation process under the SLSFTA?

- The goods schedule of the SLSFTA covers-
  - Sri Lanka:
    - 7,438 tariff lines at HS 8-digit level on the tariff schedule
    - Customs duty on 80% of tariff lines (i.e. 5,950 tariff lines) are to be phased out over a period of 15 years
    - 20% of tariff Lines (1488) are in the negative list
  - Singapore:
    - Has already liberalised 99.9% of tariffs, as stated previously
    - Only 6 products in the negative list
    - 9575 tariff lines at HS 8-digit level on the tariff schedule
- The tariff schedule of SLSFTA specifies staging categories "0", "6", "10", "12" and "15", which specifies the period in which the customs duty will be eliminated for products that are not in the negative list.
- CESS and PAL applicable on imports as specified by the staging category "10" in the tariff schedule will be eliminated in 5 equal instalments from 31<sup>st</sup> December 2023 to 31<sup>st</sup> December 2027. The elimination of CESS and PAL will not be applicable on products in Sri Lanka's negative list.

### What is the definition of Customs Duty in the SLSFTA?

- It is based on the World Trade Organisation (WTO) definition. Customs duty includes any duty or charge of any kind imposed in connection with the importation of a good, but does not include:
  - Any charge equivalent to an internal tax
  - Any anti-dumping or countervailing duty
  - Any fee or other charge in connection with importation

Therefore, **Customs Duty = Import Duty + CESS + PAL**

### What is Sri Lanka's Tariff Liberalisation Programme (TLP) under the SLSFTA?

- The TLP gives details on products that will be subject to an elimination of import duty. The TLP is aimed at achieving an 80% tariff liberalisation over a period of 15 years (details given in table 01 below<sup>6</sup>).

Table 1: Tariff Liberalisation Programme as specified in Sri Lanka's Tariff Schedule (Tariff Lines at HS 8 digit level)	No of Tariffs	% Tariff lines
Staging category "0" Immediate duty concessions starting from 1 <sup>st</sup> May 2018	3,719	50.0%
Staging category "6" On 6 equal instalment reductions from 31 <sup>st</sup> Dec 2018 to 31 <sup>st</sup> Dec 2023	1,116	15.0%
Staging category "12" On 6 equal instalment reductions from 31 <sup>st</sup> Dec 2024 to 31 <sup>st</sup> Dec 2029	1,064	14.3%
Staging category "15" On 5 equal instalment reductions from 31 <sup>st</sup> Dec 2028 to 31 <sup>st</sup> Dec 2032	51	0.7%
Total	5,950	80.0%

### What are the Rules of Origin (ROO) under the SLSFTA?

This subject needs to be addressed by an understanding of the purpose of the Rules of Origin criteria. ROO are the criteria that are used to determine the national source of a product. ROOs serve a number of purposes in the context of a 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

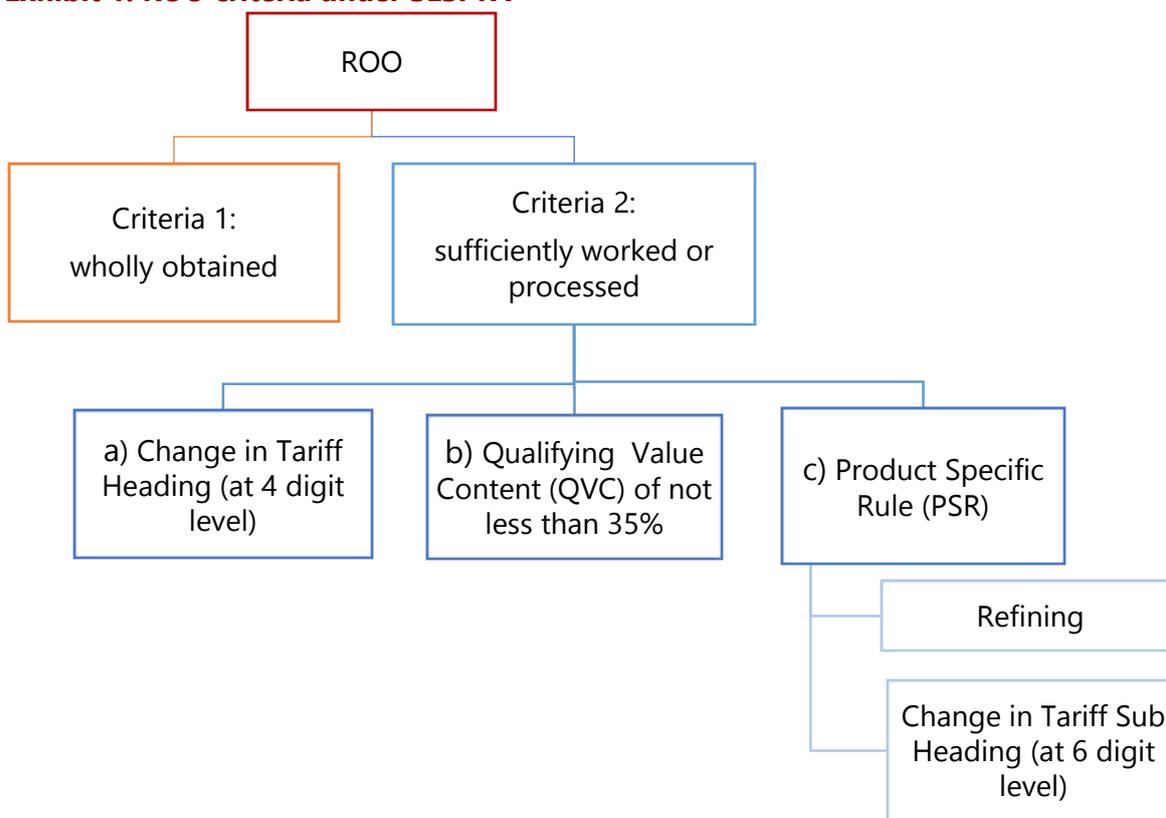
There are two main types of ROO criteria considered under the SLSFTA. Products are considered to be originating from a party if it satisfies one of the following criteria ( as given below and Exhibit 1);

**Criteria 1:** It is 'wholly obtained'

The scope of "wholly obtained" is defined by an exhaustive list given in Article 4 of the ROO Chapter of SLSFTA.

**Criteria 2:** Considered to be originating from the territory of a party to the FTA if the products satisfy one of the following criteria;

- a) It fulfils a qualifying value content of not less than 35% (domestic value addition) ; **or**
- b) It is classified in a heading, at the 4-digit level, of the HS different from those in which all the non-originating materials used in its manufacture are classified (change in tariff heading at HS 4-digit level); **or**
- c) It satisfies the applicable Product Specific Rule (PSR).
  - i. Change in Tariff Sub Heading (CTSH) (at HS 6-digit level) -1,315 products<sup>1</sup>
  - ii. Refining – 33 products<sup>1</sup>

**Exhibit 1: ROO criteria under SLSFTA****What Are the Special Features in ROO Criteria in the SLSFTA?**

- SLSFTA offers the most flexible ROO regime out of all Sri Lanka's FTAs for two reasons: (refer Table 3: Comparison of ROO criteria of Sri Lanka's FTAs)
  - The qualifying criteria under ROO Criteria 2: "sufficiently worked or processed" requires fulfilling only one of the three rules specified there (refer Table 2). However, it will not permit simple processing to qualify for duty concessions.<sup>7</sup> For instance, a simple assembly of parts of a product to make a new product will not gain the originating status and therefore will not qualify for duty concessions under the ROO criteria.
  - A criterion of ROO specified by Product Specific Rules (PSRs) is used for the first time in a bilateral FTA signed by Sri Lanka consisting of 1347 tariff lines.

Table 2: Product Specific Rules

Table 2: Type of PSR	Number of tariff lines at 6 digit
CTSH or chemical rule	682
CTSH or refining	1
CTSH only	632
Refining only	32
Total tariff lines in PSRs	1,347 <sup>8</sup>

- The provision for *cumulation of origin* permits flexibility for sourcing material from each other so that products sourced from parties to the SLSFTA are not required to have undergone sufficiently worked or processed criterion<sup>9</sup>. Under the *cumulation of origin* rule of the Pakistan-Sri Lanka Free Trade Agreement (PSLFTA) and the India Sri Lanka Free Trade Agreement (ISLFTA), the domestic value addition in the exporting country is required to be a minimum of 25% of the FOB value, provided the raw materials imported from the other contracting party accounts for not less than 10% of the FOB value of the product. However, the SLSFTA has not included this criterion, providing for a more flexible ROO regime under this Agreement.
- A *de minimis*<sup>10</sup> rule is also applicable for products with a value of less than USD 400<sup>11</sup>. This is the first instance, a *de minimis* rule was recognized by a FTA signed by Sri Lanka and makes a bold step towards recognizing new trends on trade such as e-commerce.
- SLSFTA will not recognize ASEAN cumulation. ASEAN cumulation<sup>12</sup> is a form of diagonal cumulation, which operates between member states of ASEAN<sup>13</sup>. Although Singapore is a founding member country of ASEAN, product input from ASEAN countries will not qualify under the ROO criteria as originating from Singapore under SLSFTA ROO criteria.

Table 3: Comparison of ROO criteria of Sri Lanka's FTAs

Name	a) Year signed b) brought into operation	PSR	De-Minimis	Cumulation of origin <sup>14</sup> (as a % of FOB value)	Qualifying criteria for sufficiently worked or process requirement <sup>15</sup>
ISLFTA	a) 1998; b) 2000	-	-	Minimum aggregate value addition – 35% and Minimum domestic value addition -25% <sup>16</sup>	35% domestic value addition and change of tariff at 4 digit <sup>17</sup> level
PSLFTA	Signed-2002 Came into effect-2005	-	-	Minimum aggregate value addition – 35% and Minimum domestic value addition -25% <sup>18</sup>	35% domestic value addition and change of tariff at 6 digit <sup>19</sup> level
SAFTA	Signed-2004 Came into effect-2006	Includes CTH or CTSH and domestic value addition	-	Minimum aggregate value addition – 50% and Minimum domestic value addition – 20% and one of the following; a CTH or a CTSH if present in PSR schedule <sup>20</sup>	35% domestic value addition and CTH or PSR are applicable <sup>21</sup>
SLSFTA	a) & b) 2018	Includes CTSH or refining	USD 400	100%	35% domestic value addition or CTH or PSRs are applied.

## Part 03: Services

### What are the Services Sectors Covered under SLSFTA?

- The Services Classification is based on the 12 main categories of the WTO services sectoral classification list<sup>22</sup> with further breakdown being provided through CPC classification<sup>23</sup>. The coverage of services in SLSFTA schedules are given below in Table 4;

Table 4: Core Service Sectors under WTO classification

Core Service Sectors		Listed in services schedule	
		Sri Lanka	Singapore
1	Business services (including professional services and computer services)	✓	✓
2	Communication services	✓	✓
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	✓	✓
12	Other services not included elsewhere	-	✓

- Singapore's schedule of Services commitments has 100% coverage of 12 broad services sectors of the WTO classification compared to the 75% coverage in Sri Lanka's schedule.
- The definition of services" includes any service in any sector except services supplied in the exercise of governmental authority<sup>24</sup>.

### How are Services Commitments Scheduled in the SLSFTA?

- Commitments in the services schedule follow a positive list approach. Both Sri Lanka and Singapore have listed specific sectors in respect of which they would like to make commitments. Any specific sector that is not listed in the schedule will not be governed by the Agreement.
- In all broad services sectors that are scheduled, commitments are given by sub-categories with reference to a CPC code<sup>25</sup> and further details of the nature of commitments is explained in the 'market access'<sup>26</sup> and 'national treatment'<sup>27</sup> columns under the four Modes of supply.

- Terminology in the schedule implies;

None	Full commitment implying that there aren't any limitations on that sub-sector in a particular Mode of supply
Unbound	No commitments to liberalise particular Mode of supply
Unbound except as indicated in horizontal commitments	No commitments other than those stated in the horizontal commitments

### Has the SLSFTA Opened Up Domestic Markets for Movement of Independent Professionals?

- Commitments are made in line with existing regulations covering Mode 1, 2, 3, 4. The horizontal commitments<sup>28</sup> on the services schedule imposes following restrictions on Mode 4;

Limitations on market access implies that Sri Lanka and Singapore remain unbound in Mode 4 except for the movement of Business visitors and Intra Corporate Transferees (ICT). The resulting position is that movement of Independent Professionals<sup>29</sup> (IP) and Contractual Service Suppliers<sup>30</sup> (CSS) are not covered by Mode 4 commitments of the SLSFTA.

- Movement of ICT are linked to investment where commitments have been made under Mode 3 (commercial presence).
- Intra-Corporate transferees are limited to three defined skilled categories: Specialists, Managers and Executives. ICTs require to;
  - Be natural persons<sup>31</sup> and employees of juridical persons<sup>32</sup> of a party to SLSFTA
  - Be employed in a company of a party to the SLSFTA for a period of not less than twelve months, immediately preceding the date of the application for temporary entry.
  - Have had a minimum of five (5) years of relevant industry or professional experience immediately preceding the date of the application for temporary entry.
  - Have very high level of executive powers<sup>33</sup>

The SLSFTA therefore does not permit Independent Professionals from either country to enter the other country, to practice their trade.

Limitations on National Treatment implies that subsidies where granted, shall be available only to domestic service providers.

### What is the Coverage of Professional Services Categories in the SLSFTA?

Ten Professional Services are listed in Singapore's schedule with greater market access opportunities made available for Sri Lankan firms and professionals<sup>34</sup>. While Sri Lanka has listed only three Professional Services which are covered with commitments being limited to Mode 1 and 2. There are no commitments in Mode 4 or Mode 3.

The three Professional Services are:

- Legal advisory services: Limited to international and third country law (excludes Sri Lankan law).
- Architectural services: Limited to pre-design advisory services (not architectural practice)
- Engineering Services - Limited to pre-design advisory services (not engineering practice)

- Due to the limited nature of commitments taken in professional services in these three professional categories (CPC: 861, 86711 & 86721) a commitment has been made that “Sri Lanka shall accord immediately and unconditionally to service suppliers of Singapore, treatment no less favourable than that it accords to like services and service suppliers of any other party.”

In the annexure 02, a comparison of commitments of a professional services category; ‘Legal Advisory Services’ in the Schedules of Sri Lanka and Singapore is provided.

### **What are the other Interesting Facts about Sri Lanka’s Schedule in the SLSFTA?**

- Mode 3 in Environmental Services are subject to regulations of Central Environmental Authority of Sri Lanka. In case of Investments in North Western Province, approval of the North Western Provincial Environmental Authority is required. Mode 4 remains unbound (no commitment to liberalise).
- Construction services are subject to more stringent requirements than what is offered unilaterally, which is 100% foreign equity. Market access under Mode 3 commitments for construction industry under SLSFTA requires a joint venture with minimum 60% of Sri Lankan equity participation and is subject to registration requirements under the Construction Industry Development Act No. 33 of 2014<sup>35</sup>.
- Other business services such as commercial market research, management consultancy services and services related to placement and supply services of personal commitments remains unbound in Mode 4.

## Part 4: Investment

### What are the key features of the Investment Chapter of the SLSFTA?

- The investment Chapter of the SLSFTA replaced the Bilateral Investment Treaty (BIT) between Sri Lanka and Singapore which was in effect since 1980. Therefore, the provisions of the investment Chapter govern the entire investment regime between Sri Lanka and Singapore.
  - All investments made prior to the 1 May 2018 will be governed by the provisions of the previous BIT up to a period of 10 years (up to 1 May 2028) and then the provisions of the new investment Chapter will be applicable on those investments as well.
  - All investments made after 1 May 2018 will be governed by the provisions of the investment Chapter of SLSFTA.
- Includes a savings clause, so that the termination of SLSFTA will not lead to immediate termination of the investment treaty. The provisions of the investment Chapter will stand for ten years from the date the termination of SLSFTA come into effect.

### What are the key provisions in the investment Chapter in the SLSFTA?

- There is greater precision in the definition<sup>36</sup> given to 'Investment' in SLSFTA compared to the previous BIT between Sri Lanka and Singapore (1980). The SLSFTA has limited the scope of an investment to three qualifying characteristics;
  - i) commitment of capital or other resources,
  - ii) a certain duration,
  - i) the expectation of gain or profit, or the assumption of riskThe scope is further restricted through a positive list that specifies different forms of investments that could qualify under the defined criteria.
- The definition of an investor<sup>37</sup> has a broader scope compared to the previous BIT and covers private and public enterprises as well as not for profit organisations<sup>38</sup>.
- Provisions for National Treatment<sup>39</sup> (NT) and Most-Favoured Nation Treatment<sup>40</sup> (10.5) has narrow scope of application compared to previous BIT with several economic sectors being excluded<sup>41</sup> from receiving NT and MFN Treatment under SLSFTA.



### **Does SLSFTA Provide Protection Against Unlawful Expropriation?**

- Expropriation criteria in the SLSFTA can be considered to be providing better protection for investments compared to the previous BIT<sup>42</sup> with sufficient provisions in place against unlawful expropriation<sup>43</sup>.
  - SLSFTA provides protection for investment against both direct expropriation<sup>44</sup> and indirect expropriation.
  - SLSFTA includes both criteria of public purpose<sup>45</sup> and lawful purpose (following due process).

### **How are inconsistencies between provisions in the Investment Chapter and other Chapters resolved?**

- In the event of any inconsistency between the investment Chapter and another Chapter, the other Chapters shall prevail over the investment Chapter to the extent of the inconsistency.

## **Annexure 1: Four Modes of Trade in Services**

### **How does a Cross-Border Trade in Service take place?**

A service is traded when an economic exchange takes place between a resident and non-resident regardless of the location of the transaction being made.

### **What are the 4 modes of services?**

General Agreement of Trade in Services (GATS) of the World Trade Organisation (WTO) defines 04 ways in which a service can be traded, known as "modes of supply"

Mode of Supply			Supplier Presence
<b>Mode 1</b>	Cross-border supply of services	Services are supplied from one country to another without requiring physical movement of either supplier or consumer. Only the service crosses the border, usually delivered through information and telecommunications	Service supplier is not present within the territory of the of the member
<b>Mode 2</b>	Consumption abroad	Services are provided to another country's citizens, who are required to travel to the territory where the services are located in order to benefit from the service.	
<b>Mode 3</b>	Commercial presence	Company from one country establishes subsidiaries or branches to provide services in another country	Service supplier is present within the territory of the territory of the member
<b>Mode 4</b>	Movement of natural persons (distinct for legal person)	Requires cross border movement of a natural person. Service providers travel from their own countries to supply services in other countries.	

### **Mode 4 can be further classified into 4 categories;**

- **Business Visitors (BVs):** Are not engaged in supplying the service or making direct sales to the public, and do not receive remuneration from a source in host Member. This cross border movement often takes place for activities such as to negotiate a sale of a service, establish business contacts, attend business meetings and similar.
- **Intra-Corporate Transferees (ICT):** Employee of a foreign company who has commercial presence under Mode 3 crosses the border to supply services in the commercial establishment set up in the host county.

- **Contractual Service Suppliers (CSS):** Self-employed (independent) service supplier or employee of a foreign service supplier (who do not have a commercial presence via Mode 3) crosses the border in order to provide a service on the basis of a contract their employer has concluded with a consumer in host country.
- **Independent Professionals (IP):** self-employed person based from one country crosses the border in order to supply a service on the basis of a services contract with a consumer in the host country.

### Example from the Education Services Sector

Mode	Example
Mode 1	Online education courses provided by foreign universities.
Mode 2	Sri Lankan Students going for higher studies in overseas universities
Mode 3	Sri Lankan students studying in subsidiaries of foreign universities situated in SL
Mode 4	Foreign lecturers moving to Sri Lanka to lecture students

### Example from the Health Services Sector

Mode	Example
Mode 1	Trade across borders through mail and electronic media (E.g. air freight of lab samples, internet consultations and medical education etc.)
Mode 2	Sri Lankan patients travelling to another country to obtain healthcare services.
Mode 3	Establishment of a foreign company/subsidiary for the provision of health services. (E.g. health management services, health insurance etc.)
Mode 4	Doctors and health consultants visiting Sri Lanka for the provision of health services.



## **Annexure 2: Comparison of Commitments in Legal Advisory Services: Sri Lanka and Singapore**

Country	Sri Lanka		Singapore	
Legal Advisory Services	Limitations on Market Access	Limitations on National Treatment	Limitations on Market Access	Limitations on National Treatment
	(1) None (2) None (3) Unbound	(1) None (2) None (3) Unbound	1) Unbound (2) None (3) Individual law firms of Sri Lanka which are or have been duly constituted under the laws of their respective home countries will be permitted to register as foreign law firms under the Legal Profession Act (Cap. 161) and the rules made thereunder in order to provide legal advisory services in Singapore in any home country law, foreign law and/or international law in which they are qualified to practise (but excluding any direct or indirect practice of Singapore law as the domestic law (host country law).	(1) Unbound (2) None (3) Individual law firms of Sri Lanka which are or have been duly constituted under the laws of their respective home countries will be permitted to register as foreign law firms under the Legal Profession Act (Cap. 161) and the rules made thereunder in order to provide legal advisory services in Singapore in any home country law, foreign law and/or international law in which they are qualified to practise (but excluding any direct or indirect practice of Singapore law as the domestic law (host country law).
	(4) Unbound	(4) Unbound	(4) Unbound except as indicated in the horizontal section	(4) Unbound

Note: Additional Comments on Sri Lanka's scheduled commitments under Legal Advisory Services

1. Limited scope with only CPC 8611, CPC 8612 covered
2. With respect to any measures in Mode 1, 2 or 3 covered in CPC 861, Sri Lanka shall accord immediately and unconditionally to service suppliers of Singapore, treatment no less favourable than that it accords to like services and service suppliers of any other party.

### **Annexure 3 - Endnotes**

<sup>1</sup> Update on 9<sup>th</sup> round of ECTA negotiations:

[http://modsit.gov.lk/images/pdf/Final\\_Status\\_report\\_after\\_9th\\_round\\_-\\_English.pdf](http://modsit.gov.lk/images/pdf/Final_Status_report_after_9th_round_-_English.pdf)

<sup>2</sup> Hansard of the Parliament: 17 July 2018 – (Volume 262- No. 1, page 70).

<sup>3</sup> WTO Trade Policy Review for Singapore (7 June 2016)

<sup>4</sup> Unless Singapore has commitments made through other FTAs

<sup>6</sup> EIU calculations based on SLSFTA Tariff Schedule of Sri Lanka

<sup>7</sup> SLSFTA: Goods Chapter – Protocol 1 – Article 8: Insufficient Working or Processing

<sup>8</sup> Economic Intelligence Unit calculations based on the ROO schedule of Singapore-Sri Lanka Free Trade Agreement.

<sup>9</sup> Article 03 of the ROO Chapter of SLSFTA; "Products shall be considered as originating in a Party if such products are obtained there by incorporating materials originating in the other Party. In such circumstances, it is not necessary that the materials of the other Party have undergone sufficient working or processing".

<sup>10</sup> De-minimis', is a valuation ceiling for goods, including documents and trade samples, below which no duty or tax is charged and clearance procedures, including data requirements, are minimal.

<sup>11</sup> Provision for waiver of Certificates of Origin (COO) under the Article 25 of ROO Chapter of SLSFTA; "When the value of all non-originating materials used in the product is not more than 10% of the FOB value of the good or goods that customs value does not exceed US\$ 400 or equivalent amount in the party's currency, shall not require a certificate of origin."

<sup>12</sup> Under Article 30 of ASEAN Trade in Goods Agreement (ATIGA); goods originating in a Member State, which are used in another Member State as materials for finished goods eligible for preferential tariff treatment, shall be considered to be originating in the latter Member State where working or processing of the finished goods has taken place.

<sup>13</sup> In accordance with the definition set out by World Customs Organisation.

<sup>14</sup> Applicable when raw materials are sourced from contracting state/s.

<sup>15</sup> Applicable when raw materials are sourced from parties other than the contracting state/s

<sup>16</sup> Aggregate value addition should not be less than 35% of the FOB value of the finished product, while the domestic value addition in the exporting country should be minimum 25% of the FOB value.

<sup>17</sup> Change in Tariff Heading (CTH)

<sup>18</sup> Aggregate value addition should not be less than 35% of the FOB value of the finished product, while the domestic value addition in the exporting country should be minimum 25% of the FOB value.

---

<sup>19</sup> Change in Tariff Sub Heading (CTSH)

<sup>20</sup> Extract from SAFTA ROO text: “Unless otherwise provided for, products worked on or processed in a Contracting State using the inputs originating in any Contracting States within the meaning of Rule 4 shall be eligible for preferential treatment provided that (a) the aggregate content (value of such inputs plus domestic value addition in further manufacture) is not less than 50 percent of the FOB value; (b) the domestic value content (value of inputs originating in the exporting Contracting State plus domestic value addition in further manufacture in the exporting Contracting State), is not less than 20 percent of the FOB value; and (c) the final product satisfies the condition of (i) change in classification at the four digit level (CTH) as provided under Rule 8 (a) (i); or 5 Non-originating material means material originating from countries other than Contracting States and material of undetermined origin. 5 (ii) change in classification at the six digit level (CTSH) as agreed upon in the Product Specific Rules reflected in Rule 8 (b)”.

<sup>21</sup> Extract from SAFTA ROO text “(a) Products originating in the exporting Contracting State shall be considered to be sufficiently worked or processed for the purposes of granting originating status if they fulfil the following conditions: (i) The final product is classified in a heading at the four digit level of the Harmonised Commodity Description and Coding System differently from those in which all the non-originating materials<sup>5</sup> used in its manufacture are classified and (ii) Products worked on or processed as a result of which the total value of the materials, parts or produce originating from other countries or of undetermined origin used does not exceed 60% of the FOB value of the products produced or obtained and the final process of manufacture is performed within the territory of the exporting Contracting State. (b) Notwithstanding the condition laid down in paragraph (a) of this Rule, the products listed in Annex-A shall be eligible for preferential treatment if they comply with Rule 8 (a) or they fulfil the condition corresponding to those products as mentioned in the Annex-A”.

<sup>22</sup> World Trade Organisation W/120 Services Sectoral Classification List

<sup>23</sup> Specified in the 1991 provisional Central Product Classification (CPC) of the United Nations Statistical Office.

<sup>24</sup> Exclusions also include government procurement

<sup>25</sup> Except for financial services and few professional services and communication services.

The services Chapter of SLSFTA defines a “sector” of a service, (i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a party’s Schedule , (ii) otherwise, the whole of that service sector, including all of its subsectors.

<sup>26</sup> These provisions cover six types of restrictions which members are allowed to enforce to restrict market access as long as they are scheduled and imposed in a non-discriminatory manner. These measures include both quantitative and qualitative measures in the following areas; (i) the number of service suppliers, (ii) the value of service transactions or assets, (iii) the number of operations or quantity of output, (iv) the number/nature of natural persons supplying a service, (v) the type of legal entity or joint venture and (vi) the participation of foreign capital.

<sup>27</sup> This provision implies the need for non-discrimination among domestic and foreign supplier on an equitable basis once the Foreign Service provider enters the domestic market.

<sup>28</sup> This section at the top of the schedules allows Members to inscribe entries, concerning market access, National Treatment or additional commitments. This applies to trade in services across all scheduled service sectors by Mode of supply, unless otherwise specified.

- 
- <sup>29</sup> Self-employed person based from one country crosses the border in order to supply a service on the basis of a services contract with a consumer in the host country.
- <sup>30</sup> Self-employed (independent) service supplier or employee of a Foreign Service supplier (who do not have a commercial presence via Mode 3) crosses the border in order to provide a service on the basis of a contract their employer has concluded with a consumer in host country.
- <sup>31</sup> Means a natural person who is a national of Sri Lanka or Singapore, according to their respective legislation.
- <sup>32</sup> In the case of the supply of a service through commercial presence, owned or controlled by: (A) natural persons of that Party; or (B) juridical persons of that Party identified under sub-paragraph g(i) of the services Chapter (i.e. (i) central, regional or local governments and authorities; and (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities)
- <sup>33</sup> Such as directing, controlling or administering an organization, sub division or a department of an organization or supervise or control the work of other supervisory, professional or managerial personnel, have the authority to appoint or remove the personnel and powers to exercise discretionary authority over day to day operations
- <sup>34</sup> Professional Services – i) Legal advisory, ii) Accounting, auditing and bookkeeping, iii) Financial auditing, iv) Taxation services and other tax-related, v) Architectural, vi) Engineering, vii) Landscaping, viii) Medical, ix) Dental, x) Veterinary
- <sup>35</sup> Mode 4 is subject to horizontal conditions and also a commitment has been made that “Sri Lanka shall accord immediately and unconditionally to service suppliers of Singapore, treatment no less favourable than that it accords to like services and service suppliers of any other party.”
- <sup>36</sup> The definition used in the SLSFTA has adopted the US model BIT (2012)
- <sup>37</sup> Article 10.1 of Investment Chapter of SLSFA: “investor of a Party” means a Party, a natural person or an enterprise of a Party recognised as a legal entity by the laws of the other Party, that has made a covered investment in the territory of the other Party;
- <sup>38</sup> Article 10.1 of Investment Chapter of SLSFA: “enterprise” means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation; and a branch of an enterprise;
- <sup>39</sup> Article 10.4 on NT standard entails that investment or investors of a party are entitled to a treatment by the other party which is no less favourable than the treatment the latter grant to their own investments or investors.
- <sup>40</sup> Article 10.5 on MFN standard entails that investment or investors of a party are entitled to a treatment by the other party which is no less favourable than the treatment the latter grants to investments or investors of any other third State.
- <sup>41</sup> These sectors include; agriculture; fisheries; forestry; mining and quarrying; real estate; arms and explosives; and traditional handicrafts. Articles related Performance Requirements (article 10.7) and Senior Management and Boards of Directors (article 10.8) are also subject to same exclusions.

- 
- <sup>42</sup> The Singapore- Sri Lanka BIT (1980) include the criterion of lawful purpose only protection for direct expropriation.
- <sup>43</sup> Genuine public need, non-discrimination, due process of law being followed and compensated in a prompt, adequate and effective manner.
- <sup>44</sup> Outright seizure or transfer of title.
- <sup>45</sup> Genuine public need and good faith and that the state have been granted a wide margin of appreciation.

**EIU**

This research brief prepared by the Economic Intelligence Unit of the Ceylon Chamber of Commerce is part of its 'Trade Intelligence for the Private Sector' (TIPS) initiative that helps our member businesses to be up-to-date on new developments in international Trade.

For queries contact EIU on [eiu@chamber.lk](mailto:eiu@chamber.lk)

*Disclaimer: All information in this research brief is derived from sources, which we consider reliable and a sincere effort is made to report accurate information. The CCC does not warrant the completeness or accuracy of information derived from secondary sources. Details published herein are intended for information purposes only.*