

FURTHER DOWN A ONE-WAY STREET ?

The Indo-Lanka Free Trade Agreement signed between Indian Prime Minister Atal Behari Vajpayee and President Chandrika Bandaranaike Kumaratunga on December 28, 1998 has been the focus of much discussion in local business circles, with knowledgeable many expressing legitimate concerns in the national interests of this country. The immediate press release by the government hailed the agreement thus – " This Free Trade Agreement between Sri Lanka and India is a landmark in the bilateral relations between our two countries. It will contribute to a resolution of the persistent problem Sri Lanka has faced of a widening trade imbalance with India, by enabling Sri Lanka to have greater access to the Indian market."

As evidenced by the very dicta of the press release, it had been the intention of the Sri Lanka government to have sought resolution of the persistent problem that Sri Lanka had faced of a widening trade imbalance with India. Admittedly, the Free Trade Agreement had intended to have been negotiated to resolve this problem. The widening trade imbalance between India and Sri Lanka had been clearly acknowledged by the government, as a persistent problem faced by Sri Lanka. In terms of values, last year, Indian exports to Sri Lanka had amounted to US \$ 560 million, whilst Sri Lanka's exports to India had amounted to only US \$ 42 million i.e. less than 10% of the value of Indian exports to Sri Lanka, clearly revealing that in effect, it is essentially a one way street in India's direction.

TRADE GAP & INDIAN HANDICAP

It is admittedly, this Free Trade Agreement signed on December 28, 1998 between India and Sri Lanka, that according to the official press release by the government had sought to contribute towards the resolution of the persistently widening problem of the trade imbalance between India and Sri Lanka and the agreement accordingly, acclaimed as a landmark ! The question, no doubt, arises, as to how in logical and pragmatic terms, this Free Trade Agreement would arrest the widening trade imbalance between India and Sri Lanka and narrow the gap ? This question necessarily ought to be addressed and answered in unambiguous terms by those, who had handled the negotiation and finalisation of the agreement.

On the contrary, fears and apprehensions have legitimately been entertained in knowledgeable circles, as to whether the Indo-Lanka Free Trade Agreement would in actual practical terms contribute towards the further acceleration of the widening of the Indo-Lanka trade imbalance ? Worst still are the fears and apprehensions, that the influx of Indian goods would flood the local market, not only stifling and stultifying the domestic entrepreneurial endeavours towards industrial growth, but also that it would force out of production already existing local industries; they being unable to meet the competition from imported Indian goods. These fears and apprehensions are real and need to be addressed in unambiguous pragmatic and practical terms in the national interest of this country. Ought not those who negotiated the agreement be held accountable and responsible therefor ?

The more cogent issue than the widening of the prevalent Indo-Lanka trade imbalance is the degree of development achieved in industrialisation and agricultural production comparatively between the two countries. India with a massive domestic market, having zealously pursued a policy of self-sustenance with import restrictions over a very long period of time has, comparatively, well developed domestic production facilities. Given the large economies of scale facilitated by the massive domestic market, Indian industrialists and agricultural producers would naturally enjoy a very advantageous position of being able to produce goods at very competitive prices, which the Sri Lankan industrialists and the agricultural producers would not have the immediate capability to match and thereby compete with on a level playing field.

NARROWING THE TRADE IMBALANCE

Ought not this material imbalance between the two countries and this very cognisable handicap and advantage that India enjoys have been taken into reckoning in negotiating and entering into this Free Trade Agreement ? If it had been logically taken into reckoning, then how had it been recognised and provided for to make the playing field level and equitable ? India has the widest range of products to export and Sri Lanka does not even have an iota of such range to export to India. Ought not such important and material pragmatic factor have been taken into reckoning by those, who negotiated the Free Trade Agreement ? Already busses, trucks, tractors, motor vehicles, three wheelers, pharmaceuticals, cosmetics, ball point pens, confectioneries, etc., from India have accessed the Sri Lankan market with success.

For instance, Indian buses have an advantageous monopolistic access for supplies to the Sri Lankan government, that, dictated by tender procedures, necessarily procures on the basis of price and not quality, whereas on the contrary, quality buses from other countries are seen procured by the local private sector. How many other countries could India export buses to ? In such circumstances, ought not India have been obligated to facilitate exports from Sri Lanka on a counter-trade basis to balance such Indian exports ? Is not the recent agreement with Iraq for the export of tea and import of oil, at prevalent prices, a case in point ?

Contrary to the euphoric pronouncement in theory, that the Sri Lankan entrepreneurs would now have access to the massive Indian market, in actual practical terms, could the Sri Lankan entrepreneurs compete to get a foothold of the Indian market, without manufacturing at levels of large economies of scale ? Would not Indian joint-venture investments into Sri Lanka, with contractually committed buy-back arrangements to supply the Indian market, have been a strategy to have practically and pragmatically developed Sri Lankan exports to India, thereby developing the local level of industrial infrastructure and generating domestic employment and further contributing towards narrowing the trade imbalance ?

Given the prevalent scenario, how would the Indo-Lanka Free Trade Agreement give assurance and comfort to Sri Lanka, that the Indian exports to Sri Lanka would not be accelerated by this agreement, thereby not only further aggravating the problem of the widening trade imbalance, but also crippling the nascent industrial and agricultural production sector and stultifying and stifling local entrepreneurial endeavours ? The cogent question is, with the handicapped position that India patently enjoys, could the Sri Lankan industrialists and agricultural producers compete on an equal footing on price and quality, given the existing built-up capabilities of the Indian counterparts developed in a massive domestic market, in comparison with the prevalent local level of development of the industrial and agricultural infrastructure ?

PRIVATE SECTOR IGNORED & INEXPLICABLE SECRECY

One necessarily has to entertain such real pragmatic fears and apprehensions, particularly given the significantly shrouded apparent secrecy in which the Free Trade Agreement had been negotiated and concluded, even in a given background of non-consensus between the official delegations. None other than the well-known President of the Federation of Chambers of Commerce and Industry of Sri Lanka, Patrick Amarasinghe, has expressed public concern that the private sector, represented by the Trade Chambers, had not been consulted beforehand, querying as to why the list of goods intended to be exempted from duty have not been publicly divulged ? Rajiv Casie Chitty of the prestigious C.T. Smith Stock Brokers has been quoted to have poignantly stated – " The secrecy is inexplicable ". This essentially is the moot point and issue - why the secrecy, moreso from a government professing to be committed to a high profile policy of transparency in the conduct of public affairs ?

No one for a moment refutes that an agreement between India and Sri Lanka, no doubt, is desirable, to definitely achieve the narrowing of the trade imbalance between the two countries, which imbalance at the present is very heavily in favour of India. The Ceylon Chamber of Commerce Chairman, Ken Balendran, has been quoted to have stated – " The Agreement is a step in the right direction ", however, he has been ominously silent on the secrecy surrounding the negotiation and the conclusion of the agreement and the prior non-consultation with the Chambers of Trade, Industry and Commerce, which he represents. To the business leaders, who have voluntarily come forward, with the blessings of the government, to bring about a bi-partisan political approach towards resolving several national issues, including those essentially economic, would this not tantamount to be a rebuke ?

Rightly or wrongly, the public perception is that, not only the all-important and relevant knowledgeable Chambers of Trade, Commerce and Industry, but also that key and relevant Ministers of Trade, Industries and Agriculture had not been involved in the negotiation of this Free Trade Agreement and that the Ministry of Foreign Affairs had apparently hijacked the same ! Has this been the fact and truth, and if so, why ? Can national interests of a country be subjugated to the furtherance of parochial personal interests and grandiose one-upmanship ?

Ought not the draft of such Free Trade Agreement been subject to public exposure, scrutiny and debate, prior to the conclusion of negotiations and finalisation, so that all necessary and cogent view points from the perspective of national interests could have been taken cognisance of, prior to the finalisation and conclusion of such an all important agreement ? Why was it shrouded in secrecy and kept away from the public glare ? Was it because of apprehension of public opinion ? Is it how such agreements are negotiated and dealt with in other parts of the developed world ? Naturally, fears and apprehensions loom large, as a consequence of the haste and secrecy, giving rise to questions thereon ? Who would stand accountable and responsible for consequences, if any, detrimental to the future national interests ?

FAVOURABLE DEAL FOR INDIA

Sri Lanka essentially is not a country, where industry has developed with a high quotient of indigenous inputs. Industries at this stage of nascent growth have developed with a high import content, with a lower local content of value addition. This is quite unlike the scenario in India, where industries have developed with the protection of the massive domestic market. Ought not

those who negotiated the Free Trade Agreement have been alive to this stark reality ? Given such characteristic material imbalance, how could it have been agreed, that the minimum local value addition should be the same 35% in respect of both countries ? Even in the high labour intensive export garment industry, the local value addition is generally expected to be only around 30% !

Annexure "C" to the Free Trade Agreement defines the Rules of Origin and Rule 5 defines originating products thus – " 5. Originating products: Products covered by the Agreement imported into the territory of a Contracting Party from another Contracting Party which are consigned directly within the meaning of rule 9 hereof, shall be eligible for preferential treatment if they conform to the origin requirement under any one of the following conditions: – (a) Products wholly produced or obtained in the territory of the exporting Contracting Party as defined in rule 6; or – (b) Products not wholly produced or obtained in the territory of the exporting Contracting Party, provided that the said products are eligible under rule 7 or rule 8."

ANNEXURE "C" – RULE 7

7. Not wholly produced or obtained:-

- (a) Within the meaning of rule 5(b), products worked on or processed as a result of which the total value of the materials, part or produce originating from countries other than the Contracting Parties or of undetermined origin used does not exceed 65% of the f.o.b. value of the products produced or obtained and the final process of manufacture is performed within the territory of the exporting Contracting Party shall be eligible for preferential treatment, subject to the provisions of clauses (b), (c), (d) and (e) of rule 7 and rule 8.
- (b) Non-originating materials shall be considered to be sufficiently worked or processed when the product obtained is classified in a heading, at the four digit level, of the Harmonised Commodity Description and Coding System different from those in which all the non-originating materials used in its manufacture are classified.
- (c) In order to determine whether a product originates in the territory of a Contracting Party, it shall not be necessary to establish whether the power and fuel, plant and equipment, and machines and tools used to obtain such products originate in third countries or not.
- (d) The following shall in any event be considered as sufficient working or processing to confer the status of originating products, whether or not there is a change of heading;
 - 1) operations to ensure the preservation of products in good condition during transport and storage (ventilation, spreading out, drying, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations)
 - 2) simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, painting, cutting up;
 - 3) (i) changes of packing and breaking up and assembly of consignments,
 - (ii) simple slicing, cutting and repacking or placing in bottles, flasks, bags, boxes, fixing on cards or boards, etc., and all other simple packing operations;
 - 4) the affixing of marks, labels or other like distinguishing signs on products or their packaging;
 - 5) simple mixing of products, whether or not of different kinds, where one or more components of the mixture do not meet the conditions laid down in these Rules to enable them to be considered as originating products;
 - 6) simple assembly of parts of products to constitute a complete product;
 - 7) a combination of two or more operations specified in (a) to (f);
 - 8) slaughter of animals
- (e) The value of the non-originating materials, parts or produce shall be:

- (i) The c.i.f. value at the time of importation of the materials, parts or produce where this can be proven; or
- (ii) The earliest ascertainable price paid for the materials, parts or produce of undetermined origin in the territory of the Contracting Parties where the working or processing takes place.

In the context of such stipulation of 35% local component, provisions in Rule 7(d) in Annexure "C" to the Free Trade Agreement, which exclude certain processes, "as insufficient working or processing to confer the status of origin", no doubt have to be examined with much concern and their interpretation and application clarified and defined without any ambiguity. The processes apparently excluded as given in Rule 7(b) of Annexure "C". Would it mean, that the value added by all such processes would be excluded, in computing the 35% local value addition ? If not, what do such provisions intend to mean ?



Chairman, Chamber of Commerce, Ken Balendran —A step in the right direction?

The Ceylon Chamber of Commerce Chairman, Ken Balendran, is further quoted to have stated thus – " We do appreciate the difficulties in negotiating for a more attractive requirement of 25% ". No doubt a very accommodating and patronising statement, but then, had the negotiations been made public, as it ought to have, would not public opinion have brought about a more equitable agreement ? Let alone the public, ought not the Chambers of Trade, Commerce and Industry have been consulted, which would have prevented the lamenting over the fixing of the 35% barrier, as a less attractive requirement ? Would it be correct to state – "more attractive requirement of 25%" or to state a more aptly – "necessary requirement of 25% or less " ? Unless Ken Balendran was privy to the negotiations, how could he have expressed that he appreciated the difficulties in negotiating for a better deal ?

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