

THE 'SECRET' TRADE AGREEMENT

Reviewing the recently signed Indo-Lanka Free Trade Agreement, focused on the core issue, as to whether, the agreement signed will widen the trade imbalance in favour of India, rather than narrow the same, as those who propounded the agreement proclaimed, that the agreement would achieve. In the given scenario of serious concerns of apprehension, as a consequence of such agreement, being expressed by knowledgeable and experienced persons of the potential threat of detriment to national economic growth and development, those who apparently foistered such agreement on this nation are defiantly endeavouring to blithely assuage the legitimate public concerns, without, however, proffering any rational or pragmatic logical arguments; or answering the grave questions that have arisen.

The Indian High Commissioner in Sri Lanka, Shiv Shankar Menon, was reported in the *Daily News* of January 8, 1999 to have pronounced at the National Chamber of Commerce, that the Free Trade Agreement between Sri Lanka and India was to Sri Lanka's advantage. One begins to wonder, as to what love the Indian High Commissioner has so much for Sri Lanka, to have promoted a bi-lateral agreement, that he claims is advantageous to Sri Lanka, and therefore admittedly, disadvantageous to his own country India, that he represents ! Accordingly, to assist Sri Lanka, would the High Commissioner, Menon, obtain the removal of the annual Basic Travel Quota of US \$ 3000 per person, to promote affluent Indian tourists to Sri Lanka and thereby develop the Sri Lankan tourist industry and also contribute towards the narrowing of the widening trade imbalance currently in favour of India ?

The apparent Sri Lankan main negotiator of the Indo-Lanka Free Trade Agreement, Presidential Economic Advisor, Lal Jayawardena, addressing the Ceylon Chamber of Commerce was reported in the *Daily News* of January 12, 1999 to have asserted to the business community, that there is absolutely no need for xenophobia by the Free Trade Agreement between India and Sri Lanka. "Xenophobia" according to the dictionary definition is a fear or dislike of foreigners !

In the instant case, it is certainly not a question of being fearful of foreigners, but it is a question of being apprehensive of subservient bureaucrats, particularly those politically appointed ! Lal Jayawardena had further pronounced that the fears in the business circles are purely emotional ! On the contrary, the very defences advocated to assuage legitimate public concerns appear to be emotional, since such defences lacked cohesive logical argument and were devoid of pragmatic answers to the concerns raised.

LOCAL INDUSTRIES DOOMED ?



Presidential Economic Advisor Lal Jayawardena

The factual position, no doubt, is that as rationally analysed the legitimately founded fears and apprehensions that prevailed among the knowledgeable public and the business community. The endeavours to defend the Indo-Lanka Free Trade Agreement by the Indian High Commissioner, Shiv Shankar Menon, and Presidential Economic Advisor, Lal Jayawardena, appear to be more in the nature of a desperate damage control exercise ! The all important cogent question is, why was there no such consultations with the Chambers of Trade and Industry prior to the conclusion of the Indo-Lanka Free Trade Agreement, to have facilitated the negotiations in a transparent manner ?

However, after the event and the damage had been done, the Presidential Economic Advisor, Lal Jayawardena, Deputy Secretary to the Treasury/PERC Chairman, P.B. Jayasundera and Chairman/Director General, BOI, Thilan Wijesinghe, had endeavoured to hold a brief to defend the Indo-Lanka Free Trade Agreement before the Ceylon Chamber of Commerce ! What hands on experience in industry, do all these three persons put together possess, to have understood the complex ramifications of the pangs of national industrial growth and development ?

Pointedly, the President of the Federation of Chambers of Commerce and Industry of Sri Lanka, Patrick Amarasinghe, who has understanding and experience of the country's industrial growth and development has articulated grave concerns, and recently in a television programme drew attention to the real consequential threat of local industries closing up, citing a good example, where a leading local manufacturer of refrigerators has now abandoned local production and has switched over to importing and trading the same. The grave question of concern that looms in the horizon, is whether this would be the future trend, with local industries giving way to the growth of import trading, contributing to the industrial growth and employment generation of India and not this country ?

On the other hand, the Chairman of the Ceylon Chamber of Commerce, Ken Balendran, who has patronisingly espoused the cause of the Indo-Lanka Free Trade Agreement is the Chairman of the John Keells Group, who have essentially been in trading, transportation and hospitality industry and is also now in plantations and financial services. The cogent question is whether the Indo-Lanka Free Trade Agreement will be a boon to the Indian industrialists, whilst the Sri Lanka industrialists in its nascent stage of growth and development will be snuffed out ? Surely, it is the growth and development of industry that will generate local employment opportunities and thereby emancipate the socio-economic plight of the people of this country.

THE QUESTION OF SECRECY

Interestingly, the *Midweek Mirror* of January 13, 1999 quoted the Indian High Commissioner, Shiv Shankar Menon, to have claimed at the Chamber of Commerce, that the Indo-Lanka Free Trade Agreement was an open secret. There is no doubt, whatsoever, that there was and is an absolute need to have a bilateral trade agreement between India and Sri Lanka to achieve the objective of narrowing the widening gap of the trade imbalance currently in favour of India, where Sri Lankan exports to India is less than 10% of Indian imports into Sri Lanka.

Nonetheless, what has triggered off the public apprehensions and furore over the Indo-Lanka Free Trade Agreement is the method and manner, in which the agreement had been hastily concluded, apparently shrouded in secrecy, contrary to what the Indian High Commissioner, Shiv Shankar Menon, had made belief, that the agreement had been an open secret. Even the knowledgeable Chambers of Trade and Industry had questionably not been consulted, notwithstanding that it is the interests of their members, that would be affected by such bilateral trade agreement !

On the interesting issue of shrouded secrecy or open secrecy, the real secrecy is being exposed and exposes it today in the public interest ! On December 15, 1998, the final draft of the Bilateral Free Trade Agreement between India and Sri Lanka had been finalised and initialled. This final draft agreement consisting of 13 pages had been initialled at each page to reflect the status of the negotiations between the official delegations of the two countries, as at December 15, 1998.

The cover note signed to the initialled final draft agreement stated – "The two sides have held two rounds of negotiations on the Bilateral Free Trade Agreement. The enclosed draft Agreement reflects the status of negotiations. Agreement has been reached on all issues except for the following Articles and Annexures, which are subject to further negotiations :- 1. Article III (sub-clause 3); 2. Article X; 3. Annexures 'A' to 'F'. The draft Agreement reflecting the status of negotiations as on 15th December 1998 has been initialed by us today, the 15th December 1998."

DELETIONS OF AGREED CLAUSES SHOWN IN BOLD

ARTICLE II – DEFINITIONS

2. "Para-tariffs" means border charges and fees, other than "Tariffs" on foreign trade transactions of a tariff-like effect which are levied solely on imports, but not those indirect taxes and charges, which are levied in the same manner on like domestic products. Import charges corresponding to specific services rendered are not considered as para-tariff measures.
3. "Non-Tariff Barriers" means any measure, regulation, or practice, other than "tariffs" and "para-tariff" which effectively prohibit or restrict imports or exports, or significantly distort trade within Contracting Parties.
5. "Preferential Treatment" means any concession or privilege granted under this agreement by a contracting party through, inter-alia, the elimination of tariff, para-tariff barriers and any other equivalent measures on the movement of goods.

ARTICLE III ELIMINATION OF TARIFF, PARA-TARIFF & NON-TARIFF BARRIERS

1. The Contracting Parties hereby agree to establish a Free Trade Area for the purpose of free movement of goods between their countries through, inter-alia, the elimination of tariff, para-tariff and non-tariff barriers and any other equivalent measures on the movement of goods in accordance with the provisions of Annexes A & B which shall form an integral part of this Agreement.
2. The Contracting Parties agree to eliminate from the date this Agreement enters into force, all non-tariff barriers and para tariffs other than those imposed in accordance with Article IV of this Agreement.

The three specific matters that needed further negotiations had been identified as Article III (sub clause 3), Article X, and Annexures "A" to "F". In other words, the rest of the Articles and Clauses all had been agreed upon by the officials, who had held only two rounds of negotiations. All this is clearly borne out by the cover note to the final draft agreement, every page of which had been initialled by the Presidential Economic Advisor, Lal Jayawardena, himself, on behalf of the Government of Sri Lanka. The cover note signed by Presidential Economic Advisor, Lal Jayawardena, on behalf of the Government of Sri Lanka, is reproduced.

**DELETIONS OF CLAUSES AGREED TO HAVE BEEN FURTHER
NEGOTIATED UPON**

**ARTICLE III ELIMINATION OF TARIFF, PARA-TARIFF & NON-
TARIFF BARRIERS**

3. {Except as otherwise provided in this Agreement neither Contracting Party may increase any existing customs duty or adopt new customs duties or para-tariff, or non-tariff barriers or any measures of equivalent effect in respect of goods covered under this Agreement. }

ARTICLE X MAINTENANCE OF THE VALUE OF CONCESSIONS

1. {Contracting Parties shall not nullify or impair any of the preferential treatment as agreed upon, by imposition of new charges or measures restricting trade through the application of methods of customs valuations, except in cases provided for in this Agreement. }
2. {Contracting Parties shall make exceptions to any foreign exchange restrictions relating to payments for the products under this Agreement as well as any restrictions on the repatriation of such payments without prejudice to their rights under Article XVIII of the General Agreement on Tariffs and Trade (GATT)'94 and relevant provisions of the Articles of Agreement of the International Monetary Fund (IMF)}

Not only had the Chambers of Trade and Industry not been consulted prior to the conclusion of negotiations, but quite shockingly it is revealed, that only two rounds of negotiations had been held by the officials concerned to have finalised this all important Indo-Lanka Free Trade Agreement, leaving for further negotiations only three specific matters itemised as at December 15, 1998.

Significantly, it is reliably learnt, that there had been no officials from the Attorney General's Department in the official delegation that negotiated and finalised the agreement. The all important question also arises, as to how and when Presidential Economic Advisor, Lal Jayawardena, had been authorised and empowered to have signed the final draft of the negotiated agreement for and on behalf of the Government of Sri Lanka. When had the Cabinet of Ministers approved such draft agreement, authorising and empowering him to have signed on behalf of the Government of Sri Lanka on December 15, 1998 ? Does the government normally and ordinarily sign contractual agreements, without the written approval of the Attorney General, clearing the very dicta of such agreements ?

DELETIONS FROM AGREEMENT – WHY ?

Formulation proposed by India

2. Within 2000 AD, deepening of the concessions on the items referred to in (b) above to 75%.
1. Within 2001 AD, elimination of the remaining duties on the items referred to in (b) above.

ANNEX -B

1. Upon entry into force of the Agreement;
 - (b) 50% on the remaining items except on items listed in Annex D.
2. Deepening of the concessions by 12.5% every year on the items referred to in (b) above, to reach zero duty level within 2003 AD.

Formulation proposed by Sri Lanka

Sri Lanka undertakes to reduce the preferential tariffs extended to India on the items in Annex 'F', to a zero duty level within a three year period, and will further undertake to review its remaining import duties with a view to their elimination as soon as possible within a 10 year period. The latter undertaking will be subject to the results of a domestic consultative process which would lead to the establishment of a limited "negative list" of items, as soon as possible, within this time frame.

The most shocking revelation is that the final agreement signed on December 28, 1998 had even gone beyond the three specific items, that had been identified to have been further negotiated upon, specifically Article III (sub-clause 3), Article X and Annexures "A" to "F". The agreement signed between the Indian Prime Minister Atal Behari Vajpayee and Chandrika Bandaranaike Kumaratunga on December 28, 1998, after a one to one meeting between the two without the presence of officials, had even excluded conditions, that had been included in the draft agreement finalised and initialled on December 15, 1998, as had been agreed upon by and between the official delegations of the two countries.

Significantly, these exclusions had been from Article II and Article III (sub-clauses 1 and 2), which conditions had specifically been already agreed upon by the official delegations of the two countries. In addition, Article III (sub-clause 3) and Article X, which had been identified to be further negotiated upon, on the contrary had been deleted in toto. Apparently there had been no question of further negotiations of the conditions contained therein, as had been stipulated in the draft finalised by the official delegation, subject to further negotiations. These exclusions made from the finalised draft agreement that had been initialled by the officials of the two countries are given in box.

What had been quite significantly excluded from the Indo-Lanka Free Trade Agreement signed on December 28, 1998 had been negotiated conditions pertaining to "para-tariff barriers" and "non-tariff barriers". "Para-tariff barriers" included levies other than mere import duties to restrict imports. "Non-tariff barriers" included statutory restrictions and prohibitions on imports. Why were these "para-tariff" and "non-tariff" barriers, that had been agreed upon by the official delegations, hastily excluded at the eleventh hour from the final agreement signed ? In whose interests and for whose benefit had they been excluded ? More pointedly, at whose instance had they been excluded ? Would not the different autonomous State Governments of India have the right now to impose "para-tariff" and "non-tariff" barriers and discriminate against imports from Sri Lanka ?

How is it that the Indian High Commissioner, Shiv Shankar Menon, and Presidential Economic Advisor, Lal Jayawardena, did not disclose and amplify on such contentious controversies to the Chamber of Commerce, when they addressed the members of the Chambers to allay apprehensions genuinely expressed by knowledgeable persons, quite concerned about the economic development of the country and socio-economic emancipation of the people ? On the contrary, ironically Lal Jayawardena even asserted that there is absolutely no cause for xenophobia, i.e. a fear of foreigners ! ? Why were the people of this country not made privy to the truth, the whole truth and nothing but the truth ?

Having negotiated and taken full responsibility for the Indo-Lanka Free Trade Agreement and assured the people of this country that it would develop Sri Lankan exports to India and thereby narrow the widening trade imbalance, ought not Lal Jayawardena be logically posted as Sri Lankan High Commissioner to India to ensure the achievement of such objective held out to the public, rather than posting him to lie abroad in the United Kingdom ? Ought not Lal Jayawardena take up such challenge, duty and obligation to this nation ?

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