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COMMISSION STAFF WORKING DOCUMENT

Report on assessment of the application for GSP+ by Sri Lanka

Accompanying the document

COMMISSION DELEGATED REGULATION

amending Annex III to Regulation (EU) No 978/2012 of the European Parliament and of the Council applying a scheme of generalised tariff preferences

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1. INTRODUCTION

1. The special incentive arrangement for sustainable development and good governance (GSP+) provides additional tariff preferences to developing countries which are vulnerable due to a lack of diversification and insufficient integration within the international trading system. GSP+ supports these countries to assume the special burdens and responsibilities resulting from the ratification of 27 core international conventions on human and labour rights, environmental protection and good governance, as well as from their effective implementation.

Vulnerable developing countries that fulfil the eligibility criteria linked to the relevant 27 international conventions, should be able to benefit from the additional tariff preferences upon formal application.

2. The Democratic Socialist Republic of Sri Lanka (hereinfter "Sri Lanka") has submitted a request for GSP+ preferences to the Commission.

2. LEGAL BACKGROUND FOR GRANTING THE GSP+

3. In accordance with the eligibility criteria for GSP+ as set out in Article 9(1) of the European Parliament and the Council Regulation (EU) No 978/2012 ('GSP Regulation')¹, GSP+ preferences may be granted to a country which:

- (a) is considered to be vulnerable;
- (b) has ratified all the conventions listed in Annex VIII to the GSP Regulation (hereafter the 'relevant conventions') and the most recent available conclusions of the monitoring bodies under those conventions do not identify a serious failure to effectively implement any of those conventions;
- (c) in relation to any of the relevant conventions, has not formulated a reservation which is prohibited by any of those conventions or which for the purposes of Article 9 of the GSP Regulation is considered to be incompatible with the object and purpose of that convention;
- (d) accepts without reservation the reporting requirements imposed by each convention and gives binding undertakings referred to in points (d), (e) and (f) of Article 9(1) of the GSP Regulation.

¹ OJ L 303, 31.10.2012, p.1.

4. The vulnerability criteria are defined in Annex VII of the GSP Regulation as follows:
 - (a) in terms of value, the seven largest GSP sections of the country's imports into the Union represent more than the threshold of 75 % in value of its total imports, as an average during the last three consecutive years;
 - (b) the country's imports into the Union represent less than the threshold of 6,5 % in value of the total imports into the Union originating in GSP beneficiary countries, as an average during the last three consecutive years.
5. For the purposes of Article 9 of the GSP Regulation, reservations are considered to be incompatible with the object and purpose of a convention if:
 - (a) a process explicitly set out for that purpose under the convention has so determined; or
 - (b) in the absence of such a process, the Union where a party to the convention, and/or a qualified majority of Member States party to the convention, in accordance with their respective competences as established in the Treaties, objected to the reservation on the grounds that it is incompatible with the object and purpose of the convention and opposed the entry into force of the convention as between them and the reserving state in accordance with the provisions of the Vienna Convention on the Law of Treaties.
3. **SERIOUS FAILURE TO EFFECTIVELY IMPLEMENT ANY OF THE CONVENTIONS IN THE CONTEXT OF GSP+**
6. The concept of "serious failure" used here is applied in accordance with the specific GSP+ objective to support and enhance the implementation of key international conventions in the beneficiary country. The GSP Regulation stipulates that GSP+ is designed – *inter alia* – to help vulnerable developing countries assume the special burdens and responsibilities resulting from the ratification and effective implementation of the relevant conventions (see recital 11 of the GSP Regulation). The general approach is that, as developing countries, all applicants experience problems of implementation. However, not every problem of implementation should lead to the exclusion of countries from the scheme – even developed countries have a number of shortcomings – but only serious failures to implement. GSP+ recognizes that developing countries have special needs in this respect and provides additional incentives.
7. The ILO has an established practice for the application of the benchmark of "serious failure" to effectively implement². Drawing on the ILO practice, taking into account the purpose of GSP+ and having regard to the specificities of the conventions on human rights, environment, and good governance, the EU uses a set of general principles for the "serious failure" benchmark, in a way that is meaningful and that ensures a consistent application across all 27 conventions and all applicant countries. Such consistent application is fundamental to respect the non-discrimination principle.

² In particular, for the purposes of GSP, a serious failure to effectively implement ILO conventions occurs when the tripartite International Labour Conference (ILC) Committee of Application of Standards, in the context of the yearly meetings of the International Labour Conference, notes the existence of a serious failure to implement a convention and introduces a "special paragraph" to that effect in its Report.

8. In order to establish whether a serious failure to effectively implement exists, the Commission assesses the reports of the relevant monitoring bodies, applying the afore mentioned general principles. This analysis encompasses the three areas generally used by the relevant monitoring bodies when assessing the implementation of conventions. These are: (1) shortcomings detected in the country's implementation record, (2) positive elements where the country shows progress, and (3) constraints suffered by the country, which limit its ability to achieve effective implementation.

4. ANALYSIS OF SRI LANKA'S APPLICATION

A. Vulnerability

9. As required by point (a) of Article 9(1) of the GSP Regulation and in line with its Annex VII, Sri Lanka is to be considered vulnerable. Indeed, the seven largest GSP sections of its imports into the Union of products listed in Annex IX represent around 92%, which is more than the threshold of 75 % in value of its total imports of products listed in that Annex, as an average during the last three consecutive years; and the imports of products listed in Annex IX into the Union represent around 2,6%, which is less than the threshold of 6,5 % in value of the total imports into the Union of products listed in that Annex originating in countries listed in Annex II, as an average during the last three consecutive years.

B. Ratification

10. As required by point (b) of Article 9(1) of the GSP Regulation, Sri Lanka has ratified all conventions listed in Annex VIII of the GSP Regulation.

C. Reservations

11. Sri Lanka has not formulated any reservations on the relevant conventions, therefore the criterion under point (c) of Article 9(1) of the GSP Regulation is also met.

D. Serious failure to effectively implement

12. **International Covenant on Economic, Social and Cultural Rights** – In its report of 9 December 2010, the Committee on Economic, Social and Cultural Rights (CESCR) had observed salient shortcomings regarding that the Supreme Court of Sri Lanka has on numerous occasions questioned the legally binding nature of ratified international human rights treaties, in particular ILO Conventions; widespread threats, attacks, defamation campaigns against human rights defenders, as well illegitimate restrictions of their activities; existing legislation, e.g. the Muslim Personal Law, does not sufficiently protect women and girls from all communities from early and forced marriage; tea plantation workers are not paid a decent salary and are subject to sexual harassment; the need to take urgent measures to ensure the freedom to form and join trade unions, including in Export Processing Zones (EPZs), and to allow labour inspectors to make unannounced visits; the Prevention of Domestic Violence Act of 2005 remain insufficiently known, notably by the police, and protection orders are seldom issued and perpetrators rarely prosecuted; cultural sensitivities are used as a justification by the State party not to criminalize marital rape in all circumstances; no effective measures have been taken by the State party to enforce child labour laws; thousands of children remain sexually abused and exploited including in child sex tourism, while perpetrators, including child traffickers are rarely prosecuted, and acute overcrowding and the inhuman detention conditions which prevail in many of the State party's prisons.

However, since 2010 there are significant elements of progress. In this respect, Sri Lanka has implemented several important actions to address observed shortcomings and respond to recommendations made in the report of the CESCR. A new independent Human Rights Commission of Sri Lanka (HRCSL) and several other Commissions have been appointed following the enactment of the 19th Constitutional Amendment in May 2015. The National Plan of Action for the Promotion and Protection of Human Rights 2011-2016 was adopted and a process is underway for a new Action Plan 2017-2021. The Employment of Women, Young Persons and Children (Amendment) Act (2003) has been adopted, raising the minimum age of employment from 12 to 14 years. In addition, the age of compulsory schooling has been raised from 14 to 16 years. In order to improve freedom of association in EPZs, two more free facilitation centers have been established in Wathupitiwala and Kandy in addition to the three existing ones, to allow trade union leaders to meet their members. Furthermore, a strengthened labour administration system is in place in respect of EPZs, whereby Labour Inspectors visit the Zones with a view to address the concerns of workers. The National Human Resources and Employment Policy for Sri Lanka sets eliminating child labor in hazardous activities as a priority and a goal of zero tolerance for the worst forms of child labour by 2016. Sri Lanka has established the Ministry of Foreign Employment and adopted the Sri Lanka National Policy on Labour Migration which focuses on concerns of migrant women workers. It should also be noted that Sri Lanka has achieved or almost achieved Millennium Development Goals, especially in health, education, gender equality and child mortality (Sri Lanka Millennium Development Goals Country Report 2014). Furthermore, Sri Lanka has ratified a number of international instruments, including the two Optional Protocols to the Convention on the Rights of the Child; the Convention on the Rights of Persons with Disabilities, as well as ILO Conventions related to discrimination in employment and occupation (Convention 111); minimum age of employment (Convention 138) and the worst forms of child labour (Convention 182).

Moreover, important legislative processes are ongoing, which are also a response to specific recommendations made in the report of the CESCR. In order to provide equal land succession rights to men and women an amendment to the Land Development Ordinance is in preparation. A Committee has been appointed in June 2016, which is working on amendments under Muslim law regarding the minimum age of marriage. The Prevention of Domestic Violence Act (2005) is being amended to provide safeguarding measures for children and women.

In conclusion, despite the fact that in 2010 salient shortcomings have been identified in an important number of areas, following the election of a new President and government in 2015, there are also significant elements of progress, a willingness to address the issues and a general commitment to improve implementation of GSP+ relevant conventions (see paragraph 17). The Sri Lankan authorities cooperate with international organisations to address the issues of, for example, child labour, trade union access to EPZs and sexual harassment at the work place. A number of legislative reforms have been initiated to strengthen the protection of women and ensure their equal rights. Thus, the shortcomings do not amount to a serious failure to effectively implement the Convention that would prevent Sri Lanka from joining the GSP+.

13. **Convention on the Elimination of All Forms of Discrimination Against Women** – In its report of 8 May 2011, the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) observed salient shortcomings on the need to harmonize domestic legislation with provisions of the Convention in particular to eliminate discriminatory provisions in several laws, including the Muslim Personal Law, the Thesawalamai law and the Land Development Ordinance; and during the last stages of the conflict, reports of gross violations of the human rights of women on both sides; reports of sexual violence and reports on the inadequate infrastructure and the limited availability of basic services.

However, since 2011 there are significant elements of progress. In this respect, Sri Lanka has implemented several important actions to address observed shortcomings and respond to recommendations made in the report of the CEDAW. In October 2015, Sri Lanka co-sponsored United Nations Human Rights Council (UNHRC) Resolution 30/1 on Promoting reconciliation, accountability, and human rights in Sri Lanka and steps are being taken to implement it, for example, through the adoption in August 2016 of the Office of Missing Persons Bill and the amendment to the Registration of Deaths Act to enable the issuance of Certificates of Absence which will allow, inter alia, families of missing persons to apply for benefits under social welfare schemes. The Citizenship (Amendment) Act (2003) enables a woman to transmit citizenship to her child and the Penal Code (Amendment) Act (2006) included an obligation to report incidents of child abuse. In February 2016 the National Strategic Plan to Monitor and Combat Human Trafficking 2015-2019 was approved. The resettlement of remaining internally displaced persons (IDPs) progresses at a steady pace. Furthermore, Sri Lanka has ratified a number international instruments, including the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2006), Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

As explained in paragraph 12, important legislative processes are ongoing, which are also a response to specific recommendations made in the report of the CEDAW, such as the forthcoming amendment to the Land Development Ordinance, which will provide equal land succession rights to men and women, the work on amendments under Muslim law regarding the minimum age of marriage (Committee appointed in June 2016) and the forthcoming Amendment of the Prevention of Domestic Violence Act (2005). Furthermore, legislative and policy initiatives are under preparation with regard to amending the laws to address marital rape and abortion; a National Action Plan on Gender Based Violence; a National Action Plan on Female-Headed Households and putting into place an effective system to address sexual harassment at the work place.

The latest CEDAW monitoring report recognises the decades-long armed conflict, the tsunami of 2004 and the then recent floods, as constraints that could impede implementation of the Convention.

In view of the fact that salient shortcomings have been identified in a relatively low number of areas and of the significant elements of progress, it is considered that there is no serious failure to effectively implement the Convention.

14. **Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** – In its report of 7 December 2016, the Committee against Torture (CAT) had observed salient shortcomings on the continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment of suspects in police custody, including the conditions in prisons and in detention facilities; prevailing impunity in most cases of torture and the need to ensure independent investigations of allegations of violations of the Convention, including torture, rape, sexual violence, enforced disappearances, with a view to holding perpetrators accountable and providing redress to victims; failure in practice to afford all detainees, including those detained under anti-terrorist laws, notably the Prevention of Terrorism Act (PTA), with all fundamental safeguards from the very outset of their detention, including right to immediate access to a lawyer, right to notify a relative and right to challenge detention before a magistrate ; the need to take all necessary measures to ensure that legislative, administrative and other anti-terrorism measures are compatible with the provisions of the Convention, including prompt repeal of the PTA and abolish the regime of administrative detention.

However, the CAT report identifies significant elements of progress. In this respect, Sri Lanka has implemented several important actions to address observed shortcomings. In August 2016 the Government of Sri Lanka made a declaration under article 22 of the Convention recognising the competence of the Committee to receive and consider individual communications. As mentioned above, in October 2015, Sri Lanka co-sponsored UNHRC Resolution 30/1 and steps are being taken to implement it, for example, through the adoption in August 2016 of the Office of Missing Persons Bill; the establishment in January 2016 of a Victim and Witness Protection Authority and the amendment to the Registration of Deaths Act to enable the issuance of Certificates of Absence. As mentioned above a new and independent HRCSL and other Commissions have been appointed following the enactment of the 19th Constitutional Amendment in May 2015. The HRCSL is mandated to visit prisons and has issued Directives to be followed by the police to ensure that the fundamental rights and humane treatment of persons arrested or detained under the PTA are respected. The Commanders of the Army, Navy and the Air Force have issued instructions to all service personnel in March and April 2016, that strict action will be taken against any human rights violations. Furthermore, the President of Sri Lanka, as Commander of the Armed Forces and Minister of Defence, issued in June 2016 directions requiring all armed forces and police to ensure that the fundamental rights and human treatment of persons arrested or detained are respected and assist the HRCSL to perform its functions and duties. The Government has made available a complete list of detainees and those released from detention to family members. Furthermore, detainees held under Emergency Regulations and the PTA are being released. In February 2016 the National Strategic Plan to Monitor and Combat Human Trafficking 2015-2019 was approved. In November 2016 Policy Framework and National Action Plan to address sexual and gender-based violence (2016-2020) was launched. The Penal Code (Amendment) Act No. 16, was adopted in 2006 and has, inter alia, made it a penal offence to engage and recruit a child for use in armed conflict and in child labour, child trafficking and child pornography. Furthermore, Sri Lanka has ratified a number of international instruments, including the Convention on Enforced Disappearances (2016), the Convention on the Rights of Persons with Disabilities (2016) and the United Nations Convention against Transnational Organized Crime (2006).

Moreover, important legislative processes are ongoing, which are also a response to specific recommendations made by in the report of the CAT. In particular, the Government has committed to replace the PTA with a new Bill on counter-terrorism, to be presented to the Parliament in January 2017. The new Bill has to be compatible with international human rights and counter-terrorism standards. In July 2016 an inter-institutional Committee to take preventive measures against torture was established.

In view of the fact that salient shortcomings have been identified in a relatively low number of areas and of the significant elements of progress, it is considered that there is no serious failure to effectively implement the Convention.

15. **Convention on the Rights of the Child** – In its report of 19 October 2010, the Committee on the Rights of the Child (CRC) had observed salient shortcomings that the State party needed to review its existing emergency laws and to repeal those incompatible with the State party's international obligations, in particular those related to juvenile justice; insufficient efforts have been made to investigate the death of hundreds of children during the final five months of the conflict in 2009 and deliberate deprivation of food, medical care and humanitarian assistance; the State Party has not formulated a coherent national policy on the deinstitutionalization of children and continues to put emphasis on the placement of children in institutions. There is a need to urgently improve the facilities within institutions for children and allocate the necessary resources; there is widespread and growing child abuse and neglect in the State party, including child sexual abuse in the home and community, and the need to establish shelters for child victims; there is a need to prohibit early and forced marriages and to raise the age of marriage to 18 years for both boys and girls, including in Muslim personal laws and several concerns regarding the administration of juvenile justice, including the very low legal minimum age of criminal responsibility; pre-trial detention periods are long; children are often ill-treated by the police; juvenile courts have not been established throughout the State party; and sentencing of juveniles remains severe and disproportionate.

However, since 2010 there are significant elements of progress. In this respect, Sri Lanka has implemented several important actions to address observed shortcomings and respond to recommendations made in the report from the CRC. As mentioned above, in October 2015, Sri Lanka co-sponsored UNHRC Resolution 30/1 and steps are being taken to implement it, for example, through the adoption in August 2016 of the Office of Missing Persons Bill and the amendment to the Registration of Deaths Act to enable the issuance of Certificates of Absence which will allow, inter alia, families of missing persons to apply for benefits under social welfare schemes. Child Rights Committees have been established in all districts. As mentioned above, the National Human Resources and Employment Policy for Sri Lanka sets eliminating child labor in hazardous activities as a priority and a goal of zero tolerance for the worst forms of child labour by 2016. As also mentioned above, the Employment of Women, Young Persons and Children (Amendment) Act (2003) has been adopted, raising the minimum age of employment from 12 to 14 years. A circular to schools against corporal punishment has been re-issued in April 2016. The age of compulsory schooling has been raised from 14 to 16 years. The Penal Code (Amendment) Act made it a penal offence to engage and recruit a child for use in armed conflict and in child labour, child trafficking and child pornography. The National Plan of Action for Children (2010-15) was adopted. The Strategic Plan on

Trafficking of Persons 2016-2019 was adopted in February 2016. Sri Lanka has achieved or almost achieved Millennium Development Goals, especially in health, education, gender equality and child mortality (Sri Lanka Millennium Development Goals Country Report 2014). In this respect, Several National Plans have been implemented to improve access to education, and quality of education. Furthermore, Sri Lanka has ratified a number of international instruments, including those recommended by the monitoring body report e.g. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2006); the Convention on the Rights of Persons with Disabilities (2016); the Convention on Enforced Disappearances (2016); the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2015).

Moreover, important legislative processes are ongoing, which are also a response to specific recommendations made by in the report of the CRC. An amendment to the law to raise the minimum age of criminal responsibility has been presented to Parliament. A Children (Judicial Protection) Act is under preparation. A committee has been appointed in June 2016, which is working on amendments under Muslim law regarding the minimum age of marriage. As mentioned above, the Prevention of Domestic Violence Act (2005) is being amended to provide safeguarding measures for children and women. Furthermore, the Government is committed to replace the PTA with a new Bill on counter-terrorism, to be presented to the Parliament in January 2017, which is to be compatible with international human rights conventions and counter-terrorism standards.

The CRC recognises in its last monitoring report that the nearly 30 years of civil war and armed conflict that ended in May 2009 and the catastrophic tsunami of December 2004 continue to have negative impacts on the situation of children, especially in the affected regions, and hamper progress in the implementation of the rights of all children under the Convention.

In view of the elements of progress and the fact that salient shortcomings have been identified in a relatively low number of areas, it is considered that there is no serious failure to effectively implement the Convention.

16. **Core labour rights ILO Conventions** – Sri Lanka has not been identified as a country case by the ILO Committee on the Application of Standards (CAS). At the same time the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has identified certain issues under some of the core ILO Conventions. Under ILO Convention 87 on freedom of association there are issues related to the intimidation and harassment of trade union leaders and the use of excessive force by the police in controlling strikes and demonstrations. In relation to ILO Convention 98 on the right to organise and collective bargaining, intimidation of trade union leaders and activists, as well as anti-union discrimination, are seen as problematic. Under ILO Convention 111 on discrimination in employment and occupation, there is a need to introduce anti-discriminatory provisions in different labour laws and regulations. With regard to ILO Convention 182 on the worst forms of child labour, there is a need to address child sex tourism and better protect children from hazardous work.

In conclusion, it is considered there is no serious failure to effectively implement the core ILO conventions. However, a close monitoring of further developments with

regard to the above issues and the relevant conclusions of the ILO supervisory bodies will be necessary.

17. *Conclusion:* In summary, the monitoring bodies of the relevant conventions have detected salient shortcomings in connection to the above listed conventions. The Commission will be paying particular attention to the identified salient shortcomings in its monitoring of the effective implementation of these conventions. As concluded above, it is considered that there is no serious failure to effectively implement any of these conventions. There is a considerably more positive political context in Sri Lanka with the election of a new President and coming into office of the new government in January 2015. The new government has set out a programme of major reforms to address reconciliation and accountability in relation to the civil war, improve human rights and the rule of law, as well as governance and economic development. A key development is the 19th Constitutional amendment which reinstated the Constitutional Council as a guarantee of the independent appointments to key institutions, such as the Human Rights Commission, the Attorney-General, the Inspector General of the Police etc. Sri Lanka has also embarked on a Constitutional reform which should offer the opportunity to address structural deficiencies that contributed to human rights violations. The government has started a legislative process to replace the PTA and is making good progress in releasing persons detained under it. The President and the Commanders of the armed forces have issued instructions to security personnel to ensure that the fundamental rights of persons arrested or detained are respected and that such persons are treated humanely, as well as that strict actions will be taken against human rights violations. Several legislative processes are underway to improve the rights of women and children, for example, with regard to discrimination, domestic violence, the minimum age of marriage, marital rape, sexual exploitation and hazardous work.

The new government has also re-engaged with the international community, including the UN. In September 2015 Sri Lanka took the unprecedented decision to co-sponsor the UN Human Rights Council Resolution 30/1 on "Promoting reconciliation, accountability and human rights in Sri Lanka" and is taking steps to implement it. Sri Lanka is under regular scrutiny by the UN Human Rights Council with the next comprehensive report on the implementation of Resolution 30/1 is due in March 2017. Sri Lanka has also extended an open invitation to all UN special rapporteurs and special mandate holders, several of which have already visited Sri Lanka.

The new government is also fully aware of the reasons that led to the withdrawal of Sri Lanka from GSP+ in 2010 and in its GSP+ application provided additional information on the actions being taken, against defined timelines, to address the shortcomings identified at the time. The analysis of that information indicates that Sri Lanka has made important progress in addressing those shortcomings within a relatively short time span. The remaining issues, including the Prevention of Terrorism Act, will be part of GSP+ monitoring.

The monitoring and co-operation under the GSP+, reinforced by the EU-Sri Lanka institutional set-up including a Working Group on Governance, Rule of Law and Human Rights, will provide further incentives to Sri Lanka to resolutely continue with reform and ensure it is steadfast.

E. Binding undertakings

18. Sri Lanka has submitted the binding undertaking as provided in point (b) of Article 1(2) of Commission Delegated Regulation (EU) No 155/2013.

F. Conclusion

19. Sri Lanka meets the eligibility criteria of Article 9(1) of the GSP Regulation.