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வெளிவிவகார அமைச்சு

MINISTRY OF EXTERNAL AFFAIRS

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STATEMENT CONCERNING THE EUROPEAN COMMISSION LETTER OF 17th JUNE TO THE MINISTER OF EXTERNAL AFFAIRS

The Government of Sri Lanka received a letter dated 17th June 2010 from the European Commission (EC) stating that the GSP+ preferences could be extended for a limited additional period, subject to a clear commitment by Sri Lanka to fulfill all of 15 conditions spelt out in a list attached to the Commission letter. The letter and its list were considered by the Cabinet of Ministers at their meeting on Wednesday, 23rd June. It is the view of the Government that the position taken up by the Commission, involves the imposition of a series of conditions, the cumulative effect of which is clearly inconsistent with Sri Lanka's sovereignty.

The Government wishes to emphasize that it has, for its part, always acted on this issue in the best interest of the country, as well as of the longstanding partnership between Sri Lanka and Europe. When in October 2008 the European Commission decided to launch its "investigation", Sri Lanka was facing the unprecedented turbulence of a severe terrorist onslaught. Given this situation it was inopportune for Sri Lanka to participate in such a process. The Government also pointed out that, despite the severe constraints being then encountered, there were nevertheless several other ongoing processes of engagement both between Sri Lanka and the European institutions and with the UN system, which could be drawn upon to clear up any matters of doubt. Moreover, the propriety of the "investigation" due to its per se discriminatory nature, was difficult to perceive.

However, with the "investigation" coming to a conclusion and the EC asking for comments on its report of October 2009, the Government provided a comprehensive response. Thereafter, on 15th February 2010, the EC announced its decision to withdraw the GSP+ trade benefits from Sri Lanka, with the decision taking place six months later with effect from 15th August 2010.

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In the Press Release conveying this decision, the Directorate General for Trade of the European Commission stated : “The EU remains open to a full dialogue with the Government of Sri Lanka, above all to encourage it to take the necessary steps towards an effective implementation of GSP+ relevant Human Rights Conventions”. The Press Release went on to add : “Once sufficient progress has been made, the Commission will propose to EU Member States that the decision taken today be reversed and GSP+ benefits restored”.

The Government of Sri Lanka immediately responded to the offer of dialogue by reaffirming that “Sri Lanka will therefore continue her engagement with the EU in the upcoming six months”. The Government also added that, for the engagement to be purposeful, “the setting of unattainable targets and the shifting of goal posts” should be avoided.

The Government followed up by on its pledge of engagement by sending delegations which included the Hon. Attorney-General, the Secretary of the Ministry of Finance and Planning, the Secretary of the Justice Ministry and the Secretary of the External Affairs Ministry, for two rounds of talks in Brussels in March and in May this year. The Sri Lanka delegation pointed out that the end of the extraordinary situation of terror faced by Sri Lanka for almost three decades, has enabled the authorities to scale down and roll back the laws and regulations specifically enacted to deal with the contingencies of that period. In the discussion in May, the delegation illustrated the actions being taken by the Government towards this end by pointing out the very significant scaling down by Parliament on 6th May 2010 of the Emergency Regulations and of the establishment of the Commission on Lessons Learnt and Reconciliation.

The other such examples were the rapid and sustainable reintegration of the internally displaced back to their places of livelihood, the successful and conclusive end to the issue of child soldiers recruited by the LTTE and the counseling and vocational guidance given to former LTTE cadres who had surrendered, with releases already of approximately 3,600.

The delegation also responded comprehensively to a host of issues raised with regard to the Code of Criminal Procedure Act, the Evidence Ordinance, the Prevention of Terrorism Act, the Public Security Ordinance, the Judicature Act, the independence of the judiciary and of legal practitioners and the proposed National Human Rights Action Plan. The delegation called upon the European Union (EU) and its Member States to give appropriate consideration to the manifold challenges pertaining to the development process faced by Sri Lanka and invited the EU to extend its partnership, in keeping with the longstanding tradition of friendly ties.

The letter of 17th June from the European Commission states : “We positively acknowledge the steps which the Government of Sri Lanka has taken to address the concerns raised in the European Commission report of 19th October 2009”. Notwithstanding this acknowledgement the conditions attached to the letter dated 17th June and addressed to the External Affairs Minister of Sri Lanka jointly by the High Representative, Vice President of the European Commission and by the Member of the European Commission, are so unacceptably intrusive as to require the public to be appraised of their implications of acceptance of these conditions. Accordingly, the full list is annexed.

It would be observed that condition number two relates to the 17th Amendment to the Constitution. The wording is such as to leave no discretion for the Government or the people of Sri Lanka, to decide on this issue of vital national importance. In fact, one possible result of such a mechanism might be the perpetuation of the fragmentation that terrorism sought to inflict, through encouraging mindsets based on perceived ethnic, religious and political divergences, instead of the more positive approach of all perceiving themselves as equal members of a wider Sri Lanka family. In any event, the Commission’s demands with regard to the 17th Amendment clearly represent an unacceptable intervention in the internal affairs of this country.

The third condition would, inter alia, result in those LTTE cadres who are now undergoing counselling and vocational training, having to be abruptly released without the necessary logistical support. This inevitably would have the impact of eliminating the opportunity for them to acquire civilian skills, whilst creating a conducive climate for those wanting to rekindle the embers of separatist terror.

The Prevention of Terrorism Act, which is referred to in item 4 of the list, was adopted on the basis of existent provisions already in force in several democratic nations, including those of Western Europe. It is observed that similar provisions adopted by certain developed nations, are far more stringent. Sri Lanka, too, might need to contemplate measures of a similar import, having regard to endeavours such as the formation of the so called “Provisional Transnational Government of Tamil Eelam”. Decisions relating to the need for vigilance in this regard are matters for the elected Government of Sri Lanka, and not for any external agency.

The request for repeal of Sections 8 and 9 of the Public Security Ordinance as per item 5, stems from a fundamental misunderstanding of the intent of the two sections.

The provision of immunity for acts commissioned in good faith stems from an universally accepted dictum of governance, namely that acts are presumed to have been correctly performed. There is in no way any scope for mala fide acts being shielded through these sections. We cannot endorse the Commission's demand for attribution of liability to public officers, who are constrained to act in good faith to protect life and limb in extremely challenging situations.

The conditions listed as items 7 and 8 would require an Act of Parliament to override a considered decision of the Supreme Court, which has proceeded to pronounce that the domestic laws and mechanisms have more than adequately provided for the protection and safeguarding of fundamental rights in keeping with national law and treaty obligations. In our view, it is hardly for the Commission to demand the reversal of a decision by the highest Court of Sri Lanka.

The matters referred to in item 12 are now superfluous given that the LTTE cadres in protective custody have been permitted access to their family members and to legal services. The majority of them have or will be released upon the completion of the counselling and rehabilitation programme, while a much smaller group, having regard to the gravity of their involvement, would be subjected to criminal proceedings. This process is well underway. In any event, whether all persons held under Emergency Regulations should be immediately released or not, is a matter which should be decided upon by the Government of Sri Lanka, and not by an external agency.

Item 13 of the list, which refers to a role for the International Committee of the Red Cross (ICRC) is under consideration. It has to be noted that the conditions under which the ICRC first began operations in Sri Lanka in 1989 have now ceased to exist, with the termination of the conflict situation in May 2009.

The reference in item 14 to the National Human Rights Action Plan is a matter upon which, as mentioned above, the EC has been fully briefed wherein the Government of Sri Lanka is keenly pursuing the initiative.

It must be appreciated that international law as well as the practice of multilateralism are based on the sovereign equality of nations, which principle Sri Lanka holds sacrosanct. It is therefore constitutionally imperative for the Government to leave no room for an usurpation of sovereignty.

The possible expectation of the restoration of the GSP+, cannot be an exception to this cardinal principle. In taking this decision, the Government is conscious that there are some opposed, both to the economic recovery of Sri Lanka from the conflict as well as to the further strengthening of national amity. These extremist elements are bound to claim the decision to stop the GSP+ with effect from 15th August 2010, as an endorsement of their cause.

The gist of the Government's considered view is that the conditions imposed by the European Commission, under the guise of what is essentially a trade agreement, amount to an intervention, the range and depth of which inevitably erodes in every significant respects, the authority of the Government of Sri Lanka to decide upon, and to deal with, a variety of sensitive domestic issues which have a vital bearing on the wellbeing of our nation.

Sri Lanka appreciates the benefits that were received for a certain period while the GSP+ concession was in operation. At the same time, as His Excellency the President of Sri Lanka observed in his Address to the Nation on the 18th of June 2010, "We are not ready to accept aid under conditions that will betray the freedom of our land and people". The Government is confident that the people of Sri Lanka who faced the challenge of terrorism, will also face and overcome equally successfully the challenges of ensuring economic progress and development. The Government will remain steadfast in prudently pursuing the path of restoring normalcy and of achieving rapid economic development, parallel to the progressive elimination of the threats of de-stabilization.

Ministry of External Affairs

Colombo

24 June 2010

ANNEX
List of Actions

1. Reduction of the number of derogations to the ICCPR.
2. Take steps to ensure that the key objective of the 17th Amendment to the Constitution, namely to provide for independent and impartial appointments to key public positions, is fully safeguarded, including through a Constitutional Council which adequately reflects the interests of all political, ethnic and religious groups and minorities within Sri Lankan society.
3. Repeal of the remaining part of the 2005 Emergency Regulations, notably those Regulations concerning detention without trial, restrictions on freedom of movement, ouster of jurisdiction and immunity, and repeal of the 2006 Emergency Regulations (Gazette No 1474/5/2006). If GoSL considers that it is essential to retain certain provisions which are compatible with the ICCPR or UNCAT, such as provisions concerning possession of weapons, such provisions should be transferred to the Criminal Code.
4. Repeal of those sections of the Prevention of Terrorism Act which are incompatible with the ICCPR (in particular, sections 9, 10, 11, 14, 15, 16 and 26) or amendment so as to make them clearly compatible with the ICCPR.
5. Repeal of the ouster clause in section 8 and the immunity clause in section 9 of the Public Security Ordinance or amendment so as to make them clearly compatible with the ICCPR.
6. Adoption of the planned amendments to the Code of Criminal Procedure, which provide for the right of a suspect to see a lawyer immediately following his arrest.
7. Legislative steps necessary to allow individuals to submit complaints to the UN Human Rights Committee under the First Optional Protocol to the ICCPR and to the UN Committee against Torture under Article 22.
8. Steps to implement outstanding opinions of the UN Human Rights Committee in individual cases.
9. Extension of an invitation to the following UN Special Procedures who have requested to visit Sri Lanka (UN Working Group on Enforced Disappearances, UN Special Rapporteur on Torture, UN Special Rapporteur on Freedom of Expression, UN Special Rapporteur on Independence of Judges and Lawyers).
10. Responses to a significant number of the individual cases currently pending before the UN Working Group on Enforced Disappearances.
11. Publication of the complete final report of the 2008 Commission of Enquiry.

12. Publication or making available to family members a list of the former LTTE combatants currently held in detention as well as all other persons detained under the Emergency Regulations. Decisive steps to bring to an end the detention of any persons held under the Emergency Regulations either by releasing them or by bringing them to trial.

13. Granting of access to all places of detention for monitoring purposes to an independent humanitarian organisation, such as the International Committee of the Red Cross.

14. Adoption of the National Human Rights Action Plan by Parliament and its prompt implementation.

15. Take steps to ensure journalists can exercise their professional duties without harassment.