



Collaborative Midterm Evaluation of the Commercial Law Development Program in Sri Lanka

Midterm Evaluation Report

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Executive Summary

In September 2015, the State Department Bureau for South and Central Asian Affairs (State/SCA) signed a two-year interagency agreement (IAA) with the Commercial Law Development Program (CLDP) of the U.S. Department of Commerce. The IAA outlined four sectors of interest for improvement or reform in Sri Lanka: trade capacity building; government procurement; alternative dispute resolution, and intellectual property rights. Following an initial assessment in Sri Lanka in October 2015, the CLDP team indicated that activities would proceed in all sectors but government procurement, where there was as yet no institution for procurement oversight.

The Sri Lanka program has been managed from Washington, D.C. without permanent representation in Sri Lanka. To date CLDP has carried out 14 technical assistance activities of various sizes under this program. CLDP received a program extension in mid-2017 with funding increased from \$750,000 to \$2,850,000 and a project extension to September 30, 2019.

The stated goal of this technical assistance to the Government of Sri Lanka (GSL) is to improve the commercial legal and regulatory framework to support increased economic development. Given the lack of activity in government procurement (GPA) and only minor activities in alternative dispute resolution (ADR) to date, this midterm evaluation has focused only on three sub-programs: trade policy reform and analysis (TPR), trade facilitation (TFA), and intellectual property regime/technology transfer (IPR).

This is a qualitative, mixed method evaluation, relying on document review, key informant interviews, and focus group discussions. The team focused on beneficiaries of major activities, defined as those most important by size and cost. A number of managers, resource personnel, and stakeholders were also interviewed in Washington, D.C. In addition to those directly involved in CLDP activities, the team also reached out in Sri Lanka to key donor organizations, stakeholders, and independent observers.

The evaluation team found evidence that the CLDP team has put a good deal of hard work into this program, designing and sequencing appropriate assistance activities ranging from workshops and roundtables to U.S. based consultations tours. Their conceptual and reporting documents are consistent and logical. The team feels that the CLDP program has been appropriately responsive to true beneficiary needs and requests. The original program design has been informed and modified by periodic assessments and consultations in Sri Lanka. Later interventions have usually flowed from earlier interventions.

The Sri Lankan participants of the training programs, overseas visits, and roundtable discussions have expressed a high level of satisfaction with the content and quality of delivery of technical assistance. Some report to having become proficient enough to be trainers of others. Most progress has been made in intellectual property reform and trade facilitation, less in trade policy analysis.

There has been an especially effective series of interventions in advance rulings and origin determinations in trade facilitation and technology transfer modalities in universities. The IP regime in universities and research institutes is currently undergoing considerable change, although the legal basis

for university ownership of research is still pending. Amending the Customs Ordinance is also still a barrier to much of the new knowledge imparted by CLDP in the Sri Lankan Customs Department.

Interviews and focus group discussions in Sri Lanka as well as with U.S. and international partner organization staff have revealed very strong respect and approval for CLDP staff. Some in Sri Lanka stated that these managers “brought people together.” They attest to CLDP flexibility, speed, organizational capacity, strategic direction, sequencing, appropriateness of target groups and their needs, and appropriateness of assistance provided to these groups. Relations with counterparts in Sri Lanka seem to be quite well developed and enduring, although sometimes interrupted by retirement or transfer of senior contacts.

The evaluation team found that program design and CLDP implementer experience allowed flexibility and encouraged coordination and fit with other donor organizations of which there are many in Sri Lanka. CLDP capitalized well on U.S. and international donor expertise. In many cases, technical assistance was introductory or basic for many target groups, which several reported as “eye opening.” Skills were reinforced in many cases through successive workshops, although momentum was sometimes lost due to management at a distance from Washington, D.C.

The following represent the principal successes, challenges encountered, and recommendations for next steps in the CLDP program.

Successes

- CLDP interventions have been very relevant to the context and well aligned with both USG and GSL priorities following the elections of January 2015.
- CLDP has coordinated and fit well with other key donor plans and activities, particularly in the IPR and TFA areas. CLDP avoided duplication of assistance with other donors and found niches in advance rulings and origin determinations in Trade Facilitation and technology transfer in the Intellectual Property regime.
- Sri Lankan officials and beneficiaries, as well as donor and U.S. partner officials, consider CLDP program managers to be efficient, rapid, responsive and well organized and their technical assistance and resource consultants to be of high quality.
- CLDP technical assistance has been well targeted, relevant to needs, and much valued by counterpart institutions and participants.
- CLDP has created a basic understanding of advance rulings among a cross-section of senior customs officials as one of the compliance requirements under WTO-TFA, as well as the measures to be taken to bring Sri Lanka up to speed in this regard. It has also equipped some staff with knowledge around legal reforms and institutional arrangements necessary to systematize advance rulings in the country, thus setting up the basic ground work required to move Sri Lanka towards TFA compliance.

- CLDP has introduced trade and market analysis tools/models and places to access data considered relevant by the Commerce Department for their work in trade negotiations.
- CLDP has contributed to the learning and orientation of a batch of new recruits to the Department of Commerce who will benefit from this input to function as effective commercial attaches.
- TA activities have been sequenced and reinforced in technology transfer for universities and research institutes. Especially in IPR, a core group has been formed in the major universities that accumulate learning and maintain momentum through trainings by various donors.
- CLDP efforts helped Sri Lankan beneficiaries to consider U.S. technology transfer modalities as models to be pursued in Sri Lanka.

Challenges

Political

- The absence or lack of clarity on the legal basis for some of the institutions/aspects in IPR and TFA hinder impact of interventions to be realized. One relates to the Universities Act of 1978 that governs institutions like technology cells and their commercialization processes, and the other is the 19th Century Customs Ordinance that does not adequately cover advance rulings and other TFA requirements. The required amendments to these are part of an immensely political legal reform process.
- Given the power dynamics in the current government, the free trade agreements (FTAs) and trade policy are determined more now by the Ministry of Development Strategies and International Trade than by the Commerce Department. The analysis for these negotiations and policy are provided by the Central Bank and think-tanks. The Commerce Department, which is CLDP's principal interlocutor in this area, is an important actor but limited in its ability to influence some key decisions. As such, without subsequent reinforcement, the efficacy of some of the past interventions in these areas are unclear.
- While most of the trade facilitation reforms can be considered politically neutral, governmental political change may put at risk accomplishments in university IP reform, especially if the current reform-minded UGC chairman and Board are replaced. Similarly the trade policy area is susceptible to political changes.

Institutional

- There are institutional challenges within the targeted interlocutors that impact capacity building in TFA and TPR. Change of leadership, retirement of points of contact and senior workshop

participants following training, the heavy day-to-day work load of participants, delays in recruitment in the Customs and Commerce Departments hinder institutional commitments to follow through after trainings.

- In the Customs Department, where CLDP engaged in significant technical assistance, there did not appear to be any real mechanism or sanctioned change process to convert enthusiastic workshop participation into institutional decisions. Until changes are effectively prioritized through top-down processes, including through the influence of the National Trade Facilitation Committee (NTFC) Action Plan and top leadership buy in at the policy and administrative levels, chances of instituting changes are limited.
- There appear to be two currents in creating technology transfer entities within universities which need to be reconciled. There is overlap between the World Bank-supported University-Business Linkage cells (AHEAD project) and WIPO/CLDP-supported Technology Transfer Offices (TTOs) in the Enabling IP Environment project (EIE).

Management

- Long-distance management from Washington has meant that many of the outcomes and next steps announced following each workshop have not enjoyed follow-through and needed momentum has been lost. Given the nature of the capacity building outcomes envisaged, without strategic engagement with the institutional leadership and committed working groups, real change is likely to be elusive. Moreover, the absence of CLDP managers in country affects coordination with other donors like the WB, who are responding to local developments on a real time basis
- The training of district judges and magistrates in customs appeals and protection of intellectual property rights was not well targeted and does not appear to be a priority for the Judges' Institute. Customs appeals and IP cases rarely reach district judges and magistrates. With the retirement of the former head of the Judges' Institute, further demand for this training appears lacking.

Recommendations

Structured Assessment

- The next phase of programming should be shaped by the discussions launched by this midterm evaluation. Since the State/SCA program manager will spend several months in the near future in Sri Lanka working on the State Department country mission strategy, CLDP should undertake its new assessment during that time.
- The assessment should look in a structured manner at (a) political feasibility, (b) institutional and leadership buy-in, (c) resources for sustainability, (d) alignment with country and organizational priorities, (e) commitment and capacity to follow up, (f) changing donor involvement and directions,

(g) contingency plans, and (h) key stakeholders to be engaged with as change agents. It should result in informing a strategic approach to change rather than discrete interventions. Discussing and sharing this approach with USAID/Sri Lanka would enhance its value and increase U.S. agency coordination.

- The assessment should validate content and objectives of all sub-programs and project a sequence of activities over the next two years in each. The assessment should include discussions with relevant government agencies, universities, donor organizations, U.S. government, and other stakeholders in each of the four sub-programs.
- The new assessment should be detailed and structured enough to nail down future directions and provide concrete proposals for activities over the remaining two years of the extended IAA. Modified concept papers should be produced for the various sub-programs, as necessary, and discussed with State/SCA program managers. Various contingencies should be examined in these papers that take into account possible political shifts in Sri Lanka and new program challenges due to lack of supportive policy and legal changes or other unforeseen events.

Program Priorities

- CLDP needs to chart its course in the IPR field going forward. It should continue to specialize in institutionalizing technology transfer, supporting TTOs in universities and research institutes, and working within the existing framework of the EIE project. The private sector and chambers of commerce should be involved far more in CLDP activities going forward. However, the feasibility and value of training judges in IP enforcement and customs officials in customs appeals needs to be validated.
- Sri Lanka government and donor plans have become more defined in TFA, and CLDP should engage with other key players, including the WB and EU, and build on its already established niche intervention areas. It is advisable to focus on a narrower set of issues and analyze capacity requirements more fully (knowledge/skills, legal and regulatory change, institutional and behavioral change). On TFA this would involve taking the lead from NTFC in areas on which to focus and the tasks to accomplish under them. This means that CLDP should coordinate closely with the NTFC to proactively identify niche areas that play to CLDP strengths. This will include continued work in advance rulings but also in areas chosen from among Authorized Economic Operators (AEOs), risk management and post clearance audit that are identified by the Customs Department as priority areas for 2018. Likewise in TPR, the areas to focus on should be drawn from among trade remedies, anti-dumping and countervailing duties, advanced trade policy analysis, and possibly GPA.
- CLDP should re-engage with the Sri Lankan Commerce Department in assisting Sri Lanka to accede to the WTO Government Procurement Agreement. This could begin with a follow-up study to the one done under the USAID/STAIR project.
- CLDP should focus on the possibility of addressing the legal bottlenecks in the areas of TFA (Customs Ordinance) and IPR (Universities Act) that limit institutionalization of CLDP technical assistance.

- Building on its introductory programs in TPR for negotiations and trade promotion, CLDP should now offer more advanced capacity building in both skills building and in institutionalization, to a wider target group, in order for them to contribute effectively to free trade agreement negotiations. This would include support to the new research unit in the Commerce Department.
- Given their importance and relevance and the fact that the required law has been passed in anti-dumping, workshops in anti-dumping and countervailing duties should now be implemented. The workshop in advanced trade compliance and WTO dispute resolution as proposed in the 2015 TPR concept note should also be considered for implementation.
- CLDP needs to verify soon whether it is worthwhile to proceed under the ADR sub-program in the creation of a new non-governmental Commercial Mediation Center and the training of mediators within it as proposed in the 2017 ADR concept paper. Similarly it should revisit its proposed interventions in the areas of labor law reform, IT legislative framework, and multi-container consolidation that are new streams of interventions unrelated to the ongoing interventions.

Enhanced Coordination and Multi-Stakeholder Inclusion

- While continuing to anchor its TFA and TPR interventions in the Customs and Commerce Departments, CLDP should reach out to a larger group of stakeholders who will be critical to ensure capacity building in the chosen issues. This means not only those who have a stake in outcomes, but also those who are needed to push through the desired reforms and changes.
- CLDP needs to redouble its efforts to achieve greater inclusion of private sector actors in interventions in all sub-programs to ensure that they are aware of reforms under way, to engage them in consultations, and to build an engaged constituency that is invested in IP and trade policy reforms. Greater collaboration and involvement of key trade chambers is desirable. Capacity building in communications around FTAs, TFA, and trade policy are most relevant.

Enhanced Operational Modality with the Full Mix of CLDP Services

- Given the substantial additional financial resources in the program since September 2017 and based on a new round of sub-program assessments, CLDP should consider an extended in-country presence to engage strategically with target groups between capacity-building events and follow up as needed. An extended presence should also help to coordinate with other donors, whether partners in activities or not.
- If possible, a resident advisor should be placed in Colombo to maintain contact with target groups and coordinate with other donor activities. This might be an intermittent advisor for a few months at a time, allowing more frequent coordination and validation of assessments. The person may be part of the next assessment exercise and stay on to ensure that planning is appropriately carried out.

- CLDP needs to form and reinforce core working groups in Customs and Commerce Departments, a group of involved persons that can be given a sequence of trainings and can also be assisted by other donors, where appropriate. This has been the model developed in IPR. Core working groups would follow through on decisions taken in the training programs, would advocate for changes within the institution, and be the reference point for chosen issues when dealing with other donors.
- CLDP should consider an enlarged mix of interventions for objectives in TFA and TPR, including expert advisory support and guidance, short-term advisory placements, fellowships, and U.S. based consultations. This will result in a core set of trained personnel that can train others in key policy and operational areas. CLDP should not confine itself to workshops, seminars, and roundtables but consider these other modes of intervention and support to realize capacity building objectives. The recent consultations tour for the Commerce Department recruits is a good example to repeat.

Improved M&E Framework

- CLDP should update its monitoring framework to measure and guide its implementation. This could be done based on the results of a post-evaluation assessment and any updating of program targets and objectives. A hierarchy of outcomes with appropriate performance indicators should be proposed for each sub-program from outputs to outcomes to final objectives, even if realization is likely to be in tandem with donor partners.



Acknowledgments

The evaluation team would like to express our thanks to the many people who sat for interviews or participated in focus groups in the United States and in Sri Lanka. CLDP also graciously allowed one team member to attend sessions of the Licensing Workshop in Phoenix, Arizona, and the consultations for future commercial attaches in Washington, D.C. In Sri Lanka the team spoke to dozens of participants in past CLDP interventions and held 10 focus groups with beneficiaries of others. Resource personnel from U.S. government and Sri Lanka partner organizations also readily made themselves available for interview. All of this goodwill attests to the general enthusiasm surrounding this technical assistance program in Sri Lanka.



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Abbreviations and Acronyms

ADB	Asian Development Bank
AD/CVD	Anti-dumping and Countervailing Duties
AEO	Authorized Economic Operator
AfD	Agency for Development
AfIT	Agency for International Trade
AHEAD	Accelerated Higher Education Expansion (World Bank project)
ANSI	American National Standards Institute
ASTM	American Section of International Association for Testing Materials
ASU	Arizona State University
AUTM	Association of University Technology Managers
ADR	Alternative Dispute Resolution
BEA	Bureau of Economic Analysis (USDOC)
CCEM	Cabinet Committee on Economic Management
CIPE	Center for International Private Enterprise
CLDP	Commercial Law Development Program
COSTI	Coordinating Secretariat for Science, Technology, and Innovation
DOJ	Department of Justice (US)
DG	Director General
DOS	Department of State
DVC	Digital Video Conference
EIE	Enabling IP Environment
ELSA	European Law Student Association
EU	European Union
FAS	Foreign Agriculture Service (USDA)
FTA	Free Trade Agreement
FY	Fiscal Year
GATF	Global Alliance for Trade Facilitation



GPA	Government Procurement Agreement (WTO)
GSL	Government of Sri Lanka
HETC	Higher Education for the Twenty-first Century (World Bank project)
IAA	Interagency Agreement
I&E	Innovation and Entrepreneurship
IMF	International Monetary Fund
IP	Intellectual Property
IPR	Intellectual Property Regime (Reform)
IPS	Institute of Policy Studies
ISLP	International Senior Lawyers Project
ITC	International Trade Centre
ITI	Industrial Technology Institute
LTE	Lumbee Tribe Enterprises, LLC
MCC	Multi-container Consolidation
M&E	Monitoring and Evaluation
MIGA	Multilateral Investment Guarantee Agency
MoDSIT	Ministry of Development Strategies and International Trade
MOIC	Ministry of Industry and Commerce
MoSTR	Ministry of Science, Technology, and Research
NEC	National Economic Council
NERDC	National Engineering Research and Development Centre of Sri Lanka
NIPO	National Intellectual Property Office (Sri Lanka)
NIST	National Institute of Standards (US)
NSF	National Science Foundation of Sri Lanka
NTFC	National Trade Facilitation Committee
OECD	Organization for Economic Cooperation and Development
OTNA	Office of Trade Negotiations and Analysis (USITA)
PPR	Performance Plan and Report
R&D	Research and Development



SAIL	Supporting Accelerated Investment in Sri Lanka (USAID project)
SCA	South and Central Asian Affairs (Bureau)
SLIC	Sri Lanka Inventors Commission
SLINTEC	Sri Lankan Institute of Nanotechnology
STAIR	Short-term Assistance to Improve Public Financial Management Reform (USAID)
SOW	Statement (or Scope) of Work
TFA	Trade Facilitation Agreement (WTO)
TIFA	Trade and Investment Framework Agreement
TIP	Trade Information Portal
TPR	Trade Policy Analysis and Reform
TT	Technology Transfer
TTO	Technology Transfer Office
UBL	University-Business Linkage (cell)
UGC	University Grants Commission
UNDP	United Nations Development Programme
USCB	United States Census Bureau
USCBP	United States Customs and Border Protection
USCS	United States Commercial Service (USITA)
USDA	United States Department of Agriculture
USDOC	United States Department of Commerce
USG	United States Government
USITA	United States International Trade Administration (USDOC)
USITC	United States International Trade Commission
USPTO	United States Patent and Trademark Office
USTR	Office of the United States Trade Representative
Vis	Willem C. Vis
WB	World Bank
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Background

In September 2015, the State Department Bureau for South and Central Asian Affairs (State/SCA) signed a two-year interagency agreement (IAA) with the Commercial Law Development Program of the Department of Commerce. The IAA outlined four sectors for improvement or reform in Sri Lanka: trade capacity building; government procurement; alternative dispute resolution; and intellectual property rights. All activities were to be completed by September 30, 2017. The IAA included a tentative series of in-country activities in the four sectors that began with a country-level assessment. CLDP proposed a set of ten outcomes and three performance indicators.

Following an initial three-day assessment in October 2015, the CLDP team indicated that activities would proceed in all sectors but government procurement, due to government plans to set up a procurement commission. Another sub-program that has not progressed as originally expected is alternative dispute resolution (ADR). Workshops planned for judges in international arbitration and mediation never occurred. Work proposed in mid-2017 to support a new Commercial Mediation Center has not yet begun.

The Sri Lanka program has been managed from Washington, D.C. without permanent representation in Sri Lanka by two CLDP staff members, one for trade policy reform (TPR) and trade facilitation (TFA), and one for the intellectual property regime (IPR). To date CLDP has carried out 14 technical assistance activities of various sizes under this program.

In April 2017, a CLDP assessment in Sri Lanka examined the potential for new technical assistance in ADR, as well as expanded assistance in trade policy and facilitation. Based on this assessment, CLDP received a program extension in mid-2017 with considerably increased funding.

The amended Interagency Agreement (IAA) of 2017 extended the program for two more years with total funding increased from \$750,000 to \$2,850,000. The amended IAA called for a midterm performance evaluation to assess program progress to date and validate outcomes obtained. This has been a collaborative evaluation involving the full-time participation in field work of the State/SCA Bureau Evaluation Coordinator.

The stated goal of this technical assistance to the Government of Sri Lanka (GSL) is to improve the commercial legal and regulatory framework to support increased economic development. State/SCA modified program areas somewhat in 2017 from those originally targeted in 2015, but the heart of this assistance continues to be trade and investment capacity and intellectual property rights.

State/SCA launched the midterm evaluation on December 21, 2017 in a conference call bringing together key stakeholders from the Department of State, Bureau of South and Central Asia, CLDP, U.S. Embassy/Sri Lanka, and the two principal evaluators from Lumbee Tribe Enterprises, LLC (LTE) and Tetra Tech.

Evaluation activities began with a review of program documents and interviews with U.S. - based implementing staff and stakeholders, both in CLDP and in collaborating U.S. and international agencies. Following document review and related interviews, the evaluators delivered a first report. Beyond its role in summarizing information and insights gained from document review, the report was intended to point the way to research questions during field work in Sri Lanka. A methodology and work plan document was also produced prior to field work which lasted from March 16 to April 9.

Given the lack of activity in government procurement and only minor activities in ADR, this midterm evaluation has focused only on the three sub-programs that have seen real accomplishments to date: trade policy analysis, trade facilitation, and intellectual property rights/technology transfer.

The evaluation team consisted of Philip Boyle as team leader, Gowthaman Balachandran, expert in trade policy and facilitation, and Kavitha Ranganathan, logistics support advisor.

Methodology

Data Sources

This is a qualitative, mixed method evaluation, relying on document review, key informant interviews, and focus group discussions. The team focused in interviews and focus groups on beneficiaries of major activities, defined as those most important by size and resulting cost. In IPR, the team looked at four interventions: (1) the October-November 2016 U.S. technology transfer consultations; (2) the April 2017 university IP policy workshop; (3) the September 2017 institutional policy workshop; and (4) the licensing/technology transfer workshop of February 2018.

Under TFA the team looked in depth at three sets of interventions: (1) in February 2016, a workshop on advance rulings and customs appeals, customs appeals training for judges, and a roundtable on public information; (2) in January 2017, a workshop on advance rulings and origin determinations; and (3) in July 2017, advanced and introductory workshops on advance rulings and origin determinations and a roundtable on legislative language.

Under TPR the team examined two sets of interventions: (1) in November-December 2016, three separate workshops in trade policy analysis; and (2) in February-March 2018, consultations in the U.S. for new recruits to the Sri Lankan Commerce Department.

Data Collection Methods

Document Review

Documents were forwarded to the team early in the evaluation process and constituted the first act of data collection. These documents consisted of the Interagency Agreement for 2015, the amended IAA from 2017, sub-program concept papers from 2015, sub-program concept papers from 2017, nine quarterly reports from 1st Quarter 2016 through 1st Quarter 2018, 11 activity or trip reports, 14 workshop agendas, and 20 assorted documents on program logic, monitoring, and performance indicators.

Beyond these, the team reviewed some non-project documents directly pertaining to the interventions, including Sri Lanka's Vision document, a free trade agreement with Singapore, and the government's Trade Policy Document. Documents gathered in the field include a World Intellectual Property Organization (WIPO) study on integrating intellectual property into innovation policy, a WIPO/NIPO workshop agenda for late April 2018 on empowering creativity and the role of copyright, a volume on promoting university-Industry collaboration, the World Bank Gap Analysis, and the World Bank-supported Trade Facilitation Implementation Plan for the Customs Department and Ministry of Finance.

Key Informant Interviews and Focus Groups

CLDP provided the names of CLDP activity managers and US partner agency staff for interview in Washington, D.C., or by telephone if not local. A number of managers and stakeholders were also interviewed in State/SCA, and two U.S. Embassy and USAID officials in Sri Lanka. Altogether, some 67 persons were interviewed singly or in focus groups in Sri Lanka and another 20 in Washington, D.C. (see Annex A).

The team interviewed 11 of 17 points of contact in Sri Lanka supplied by CLDP, but others were retired or unavailable. In the field, the team interviewed six of the eight participants in the Phoenix Licensing Workshop/AUTM meeting (February 2018), 10 of 13 participants in the U.S. technology transfer consultations (October – November 2016), and four of nine new Commerce Department recruits from the U.S. consultations of February – March 2018. In Sri Lanka, all of the interviews and focus groups took place in Colombo, where all but two CLDP interventions had taken place (exceptions being Jaffna and Moratuwa).

In addition to those directly involved in CLDP activities, the team reached out to key informants from the World Bank, NTFC Secretariat, UNDP Donor Coordination, an independent think tank, and the USAID SAIL and STAIR projects, who were able to provide insights into the relevance and effectiveness of CLDP interventions. Similar meetings were held with the Ceylon Chamber of Commerce and the former director of the American Chamber of Commerce. The current director of the American Chamber had not had significant contact with CLDP and was consequently not interviewed.

Given the fact that some officials participated in a sequence of events, the team proposed that focus groups be structured around key intervention streams, namely – trade policy analysis, advance rulings and origin determination, customs appeals, customs information, judges IP training, university and institutional IP training, technology transfer, and related legislative and regulatory changes.

Focus groups were formed from 10 of the most important interventions undertaken by CLDP. These groups were formed as randomly as possible from attendance lists of participants. For some of the interventions, more than one focus group was conducted. Focus groups with participants from the judges' IP or customs appeals training in Colombo in 2016 could not be arranged due to lack of response from the current and former directors of the Judges' Institute.

- Workshop on Advance Rulings and Customs Appeals (February 8-10, & 13, 2016)
- Sri Lanka Customs Roundtable on Information Availability (February 12, 2016)
- U.S. Consultations tour (October 26 – November 4, 2016)
- Seminars on Trade Policy Analysis (November 29-30 & December 1, 2016)
- University IP Policy Workshop and World IP Day (April 24, 27-28, 2017)
- Workshop on Advanced Origin Determinations (July 24, 2017)
- Working Group Roundtable on Advance Rulings (July 25, 2017)
- Workshop on Advance Rulings and Origin Determinations (July 26-27, 2017)
- Sri Lanka Institutional IP Policy Workshop (September 11-12, 2017)

- Commerce Department recruits in U.S. tour (February 19 – March 5, 2018)

Surveys

The original SOW and LTE proposal indicated that a survey might be useful to gather information from relevant U.S. Department of State and Commerce staff, as well as staff members of other U.S. government partners and outside organizations. However, there was sufficient pre-field work time to do face-to face interviews with all indicated stakeholders in Washington, D.C. or by telephone with those located elsewhere.

The possibility of conducting a beneficiary survey, while not proposed in the SOW or LTE proposal, was raised by the evaluation team. The team decided to leave that option open until after focus group discussions with participants/beneficiaries in Sri Lanka. Based on these discussions, it was decided that quantification of types of responses among a much larger number of beneficiaries would not be useful.

Proxy Indicators and Monitoring Progress

Quarterly reports provided updated information on the basic indicators tracked by the program. These are summarized most recently in the State/SCA Program Plan and Report. These indicators are not of higher-level outcomes, so that information at outcome level was sought by the evaluation team for each type of sub-program activity: Intellectual Property and Technology Transfer, Trade Facilitation, and Trade Policy Analysis. Using the expected outcomes and suggested next steps in the activity reports as a starting point, results, outcomes, and potential impact were explored by probing for the end use of new knowledge and skills gained from CLDP assistance activities.

Core Evaluation Questions

The SOW for this midterm evaluation was centered on a set of nine key evaluation questions. The report consequently centers on responses to these questions.

Findings

A. Key Evaluation Questions

1. How was the project designed to support the objectives of enhancing and developing the stated sectors and/or target groups?

The original Interagency Agreement (IAA) of 2015 was designed to focus on reform in four sectors: trade capacity building; government procurement; alternative dispute resolution; and the intellectual property regime. As the program was implemented, activities under government procurement were postponed and alternative dispute resolution (ADR) was limited to training of moot court student arbiters. Moreover, trade capacity building soon effectively split into activities focused on trade facilitation (TFA) and trade policy analysis and reform (TPR).

The original IAA of 2015 lists 10 outcomes and provides 3 indicators to track progress toward program objectives. However, the document does not clearly identify objectives. The amended IAA of 2017

contains 17 outcomes and 7 indicators, but no clearly stated program objectives that subsume these many outcomes. Objectives and goals are presented separately in simple “objective trees” (M&E graphics) developed by State/SCA in collaboration with CLDP.

According to these objective trees, program interventions in the sector of Intellectual Property Rights (IPR) had three objectives: (1) educate judges, enforcement agencies, and the public on the importance of IPR enforcement; (2) increase capacity of the judiciary to create and implement a regulatory framework that promotes and sustains an increasingly effective IPR regime; and (3) increase public awareness of public and private sector stakeholders on updating and harmonizing IP laws. These three objectives underlie and support Program Goal 1: Develop an effective system for the enforcement of Intellectual Property Rights.

Program interventions under Trade Facilitation (TFA) have two objectives: (1) identify trade facilitation measures considered by government officials for reform; and (2) enhance access to relevant information regarding Sri Lanka’s customs regime. These two objectives support Program Goal 2: Reduce the cost to trade for importers and exporters.

Finally, program activities under Trade Policy Analysis and Reform (TPR)¹ also have two objectives: (1) increased capacity for advanced trade policy analysis and trade and investment negotiations; and (2) educate government officials on anti-dumping and countervailing duties enforcement and implementation. Each of these objectives supports and feeds into a separate program goal. Thus, one goal is a “liberalized trade and services regime to encourage economic growth, diversification, and investment;” the other is “development of a national trade policy and negotiations strategy.”

While there has been some departure from the explicitly stated objectives of these objective trees, CLDP activities and interventions between 2015 and the present clearly fall under the program goals for IPR, TFA, and TPR.

The program design was developed collaboratively between State/SCA and CLDP. This can be considered an advantage, in spite of lack of cost and proposal competition between potential implementing agency partners or private contractors. CLDP was experienced in implementing similar activities in many other countries. It could contribute substantively to the design, including proposed in-country and U.S.-based events over the first program year. Moreover, since CLDP employs volunteer consultants and employees drawn from other U.S. agencies, costs could be held down considerably with no loss of quality.

From the beginning, it was obvious that implementation would have to be episodic, since CLDP staff would not be based in Sri Lanka and the original (2015) budget would not allow for a resident advisor. To compensate for this, CLDP in the SOW promised to work closely with the U.S. Embassy and USAID in Colombo, as well as coordinating with multilateral donors, such as the ADB and World Bank. In fact, it has striven to do so. Moreover, CLDP project managers rapidly gained the confidence of many Sri Lankan government officials in various agencies, an admirable achievement given the evolving political context in 2015.

Program assessments have been carried out on a “rolling” basis and except for the first one have usually been combined with other trip objectives. CLDP has established and maintained close relationships with

¹ Trade Policy Analysis and Reform will be designated as TPR to distinguish it clearly from Trade Facilitation (TFA).



key points of contact in targeted counterpart institutions. Since activities are episodic, maintaining momentum has been a concern, except in IPR, given the large number of other donor activities in this sector.

In sum, program design was shaped to a large degree by the manner in which CLDP works to assess specific in-country needs and continues to address them from Washington, D.C. Cost-effective capacity building is its forte, and its managers have designed and staffed appropriate workshops, roundtables, and consultations to move Sri Lankan officials in key institutions to greater knowledge and needed skills.

Cost Efficiency

Project design has resulted in an efficient program that has remained within the agreed upon budget in the Interagency Agreement. As of the end of December 2017, CLDP had conducted 12 training events of various sizes and held four assessments, one of which was funded by another CLDP project. These 15 paid activities cost an average of \$29,179, ranging from \$95,219 for the U.S. study tour in IP/TT to a low of \$3,412 for a trade facilitation roundtable on information availability for Sri Lanka Customs officials (February 2016).

Overall by sector of activity, as of December 31, 2017, CLDP had spent \$270,122 on IP activities, \$100,813 on trade facilitation, \$51,081 on trade policy analysis, and \$29,034 on ADR (Vis and trade law moot courts). Assessments cost a total of \$26,454 and there were a few other minor activities totaling \$6,747.

In terms of cost-efficiency, CLDP is able to hold down costs by drawing upon partner staff who are either volunteers or employed by other U.S. agencies. Staff salaries account for 25% of the budget and overhead costs for 11%. In terms of CLDP salaries and overhead billed to this program, as of December 31, 2017 after nine quarters, CLDP had spent \$316,543 of the \$1,026,000 allocation (31%). With respect to program travel and training expenses, CLDP had spent \$437,690 of an allocation of \$1,824,000 (24%). Overall for the Sri Lanka program, after nine quarters CLDP had spent \$754,233 of \$2,800,000, or 26.5% of total budget. This works out to an average of \$83,804 per quarter of activity. If CLDP continues to spend at the same rate, it would have enough for about 25 more quarters, far beyond the seven quarters remaining in the amended IAA. However, \$150,000 has been reserved for this evaluation. The feasibility of placing an intermittent advisor is clearly supported by this substantial budget increase in 2017.

CLDP can clearly increase its burn rate going forward and may also hope for a program extension beyond the September 30, 2019 deadline. It is quite unusual for the amended IAA to state under project timeline that the program “would be completed on or before February 1, 2019.” In any case, there is ample budget to increase the pace of activities and hope for an extension beyond the 2019 end date.² However, the presidential and parliamentary elections at that time bring in a level of uncertainty that cannot be fully planned for at present. This underscores the need to include contingency planning in a new field assessment in which consultations with other donors can provide ideas and options for future action.

Intellectual Property Regime (IPR)

² An extension of this program to 2022 through a new IAA is planned.

With the exception of one early training of judges in the protection of intellectual property rights, CLDP has focused in the IPR sub-program on enhancing the potential for innovation and technology transfer from universities and research institutes to commercialization. This is a definite shift in emphasis away from the original objectives focused on the judiciary and public awareness. CLDP felt it had a distinct comparative advantage in technology transfer and could achieve more impact. CLDP has maintained this focus in its two U.S. consultations (study tours) and in two university and institutional IP workshops in Sri Lanka.

This new orientation toward technology transfer can be justified by the impact of the Bayh-Dole Act of 1980 in the United States that resulted in an explosion in commercialization of research activity, including the formation of technology transfer offices (TTOs) to engage with industry.³ This model has been imitated by a number of other countries that passed similar laws with similar impact.

According to a WIPO assessment in Sri Lanka in early 2015: “The result has been that since 1980 there has been an exponential growth in commercialization activity amongst universities and research institutes throughout the world, and the successful commercialization of numerous technologies. That, in turn, has resulted in economic and social benefits that would otherwise have not flowed to universities and research institutes, nor to their countries.”⁴

Allowing universities and research institutes in Sri Lanka to commercialize and retain earnings from government-funded research should in itself result in significant economic growth and development for the nation as a whole, which is the overall goal of the CLDP program. It will also provide incentives for further innovation and research in these same universities. Moreover, intellectual property generated by such innovation and research should not simply be assigned to private sector companies, but licensed to them against a flow of royalties, representing significant economic benefits, such as employment generation, increase in the tax base, growth of the manufacturing sector, export opportunities, and foreign revenue opportunities. The preferred licensees would be those Sri Lankan companies with greatest capacity to exploit the new technologies for maximum benefit to Sri Lanka.

Over the last three years, there has been considerable increase in donor-assisted activity in the IP sector, particularly in the domain of technology transfer within universities and some research institutes. CLDP has been adept at finding its niche among a large number and variety of multilateral and bilateral donor agencies assisting the Sri Lankan government to liberalize and modernize its intellectual property regime.

Trade Capacity Building

In the IAA of 2015, activities focused on trade are grouped under the heading of Trade Capacity Building. As in the case of IPR, it is evident that the project design approach first taken was one of gradual fine tuning. It began with a wide focus that aimed to help “Sri Lanka government officials develop targeted economic and trade policy analysis for negotiations and trade promotion in order to enhance economic growth and industry competitiveness” (IAA SOW, 2015, p. 5). Following the first field assessment, the concept notes divided Trade Capacity Building into the two sub-programs of Trade Policy Analysis and Reform (TPR) and Trade Facilitation (TFA). TPR’s stated objective was “to assist Sri Lanka in further

³ Also known as technology management offices (TMOs).

⁴ WIPO, p.32. 2015.

developing the skills and knowledge of its trade policy staff' and TFA focused on assisting "the Government of Sri Lanka in increasing access to information on customs procedures, implementing international best practices in advance rulings, and in further developing Sri Lanka's customs appeals procedures" (CLDP, 2015, Concept Notes on TPR and TFA, p.1). Individual interventions within these sectors were further fine-tuned through a process of rolling assessments and responsive design. The design of subsequent interventions was also intended to be informed by feedback from preceding interventions.

By means of this flexible and responsive activity design process, characterized by periodic assessments that permit taking stock of progress and adaptation to changing conditions, CLDP has been successful in settling on issues and interventions that were relevant to *enhancing and developing* the trade capacity of Sri Lanka. Most development projects, whether in IP or other sectors, are constrained by an overly rigid project design, whether imposed by the donor or by the implementer's proposal.

The interventions designed in the areas of trade policy (market access analysis, analysis of trade agreements, trade negotiations, objectives and features of a trade policy) and trade facilitation (customs appeals, advance rulings and origin determinations, and public information) were intended to contribute to current and ongoing efforts of the Sri Lankan government. They tapped into the government's initiatives in pursuing free trade agreements (FTAs) and compliance with the WTO Agreement on Trade Facilitation (WTO-TFA) that were part of an overall economic re-orientation process after the elections of 2015. The Sri Lanka Commerce and Customs Departments had been directed to undertake reforms in these areas at the time of CLDP intervention and thereafter. We can conclude that the interventions made were well aligned with the government's plans to develop the overall trade sector by making it more compliant with international standards and enhancing trade potential.

Given the complexity and size of the two trade capacity sub-program sectors, bringing about any change is only possible through the concerted efforts of multiple actors, including government policy makers, civil servants in various departments, donors, and customers. This calls for legal/regulatory, organizational, and behavioral change. In TFA, CLDP has used workshops and roundtables to introduce compliance requirements under WTO-TFA to Sri Lanka Customs and chose two specific areas in which to build capacity: (1) advance rulings (on classification, valuation and rules of origin); and (2) public information (publication/information availability through internet).

The underlying assumption in the design of technical assistance was that awareness and knowledge imparted regarding TFA requirements through workshops coupled with expert-facilitated roundtables would lead the target group to bring about necessary legal and organizational changes necessary to create a system of advance rulings and make available needed information to public consumers. The CLDP interventions followed this logic and a number of workshops on advance rulings and origin determinations, as well as roundtables on public information availability and legal/regulatory changes, were held in 2016 and 2017. While introductory and advanced trainings were given to a cross-section of customs officials, the impediment for implementation continues to be necessary reform of the Customs Ordinance.

The one-off judges training on customs appeals, conducted toward the beginning of the program (February 2016), was the only exception to the logic of this TFA design framework, the intention apparently being to contribute to *contract enforcement* within trade capacity building, an area identified as requiring attention by Sri Lanka due to its poor ranking on the World Bank “Doing Business” indicators, as well as in an OECD assessment. Customs’ officials indicated to the evaluation team that ordinary judges are very unlikely to hear customs appeals cases, and it was not repeated.

Given that Sri Lanka was in the midst of developing a national trade policy and was aggressively pursuing FTAs with key countries, in TPR CLDP chose to design interventions to contribute to these processes. The expectation was for knowledge and analytic skills provided through trade policy workshops and sharing of experience with a target group selected by the Commerce Department would feed into ongoing policy development and trade negotiations, thereby enhancing their quality. The training tour in the U.S. for new recruits in the Commerce Department (February-March 2018) is only tangentially linked to this change logic, given that they are too new and junior to have an effect on these high-level processes, at least in the short term. However, as an investment in capacity building this should be of considerable value over the longer term for the sector, as most in this target group will go on to serve as commercial attaches overseas and remain in the system for a generation.

While the design of TFA interventions evolved incrementally and each intervention built on earlier ones to create a sound basis for change, TPR design during the period under consideration was limited to one-off training workshops and a policy discussion. While these were necessary given the weak baseline situation, as explained by the Director General of Commerce, from a design point of view these alone were not sufficient to bring about desired outcomes. The DG indicated that the interventions were responsive at the time to the pressing need of the Commerce Department to “thrash out differing points of view on free trade agreements among stakeholders in a facilitated setting.”

i. How did the project capitalize on donor and U.S. government expertise?

The evaluation team has observed ample evidence that CLDP activities in trade capacity and investment (TFA/TPR) and IPR are positively linked and coordinated with other donor initiatives. This is particularly clear in IPR technology transfer but is also the case in the trade-oriented sub-programs. The leading role of the World Bank is apparent in TFA and IPR, but WIPO is also a major leader in IPR. There is no evidence that CLDP is not appropriately fitting into the overall donor assistance structure. It developed a focus and niche in technology transfer within IPR and in training in advance rulings and origin determination in TFA. It also initiated a process of introducing new Commerce Department recruits to trade policy and trade facilitation knowledge and skills in a U.S. consultations tour.

On the other hand, while CLDP appeared early on in 2016 to have identified a niche in training judges in customs appeals and IP law, bringing to Sri Lanka an impressive array of U.S experts from USCBP, USPTO, and U.S. district court judges, this initiative has not demonstrated objective progress, garnered sustained interest, or stimulated further demand within the Judges’ Institute. This is due in part to the retirement of the director of this institute and to the realization that most customs appeals do not

generally reach the judiciary and commercial IP cases are rarely handled by the targeted group of district judges and magistrates.

In its IPR workshops and consultations, CLDP drew on expert staff of various U.S. governmental agencies, including the U.S. State Department, U.S. Department of Agriculture, and U.S. Patent and Trademark Office (USPTO). USPTO has also participated in IPR workshops in Sri Lanka without CLDP. The most important non-U.S. implementation partner has been the Geneva-based World Intellectual Property Organization (WIPO), but the frequent use of an American IP expert in joint WIPO/CLDP trainings has allowed CLDP to maintain a U.S. perspective in its IPR activities.

In the United States, CLDP has sponsored and guided two major visits by key Sri Lankan officials and professors, beginning as early as October 2016. Most of these participants became key points of contact in their institutions and focal points for further capacity building and institutional change.

The first of these consultations (study tours) brought 13 Sri Lankans from key universities and related institutions to the U.S. for nine days of exposure to the establishment and functioning of technology transfer offices (TTOs) and technology incubators. In what the evaluation team feels was one of the most seminal activities carried out by CLDP under this Sri Lanka program, the participants met with a consultant from WIPO and then spent two full days meeting with USPTO experts in their facilities in Washington, D.C, before heading out to visit universities and their TTOs.

University expertise was marshalled over the next few days, as the participants travelled to Princeton University to spend a day hearing from experts in technology transfer and visiting the Office of Technology Licensing and the local incubator. The following day the participants visited Carnegie-Mellon University in Pittsburgh and its Center for Technology Transfer and Enterprise Creation and the nearby Idea Foundry. The next day the participants visited the University of Pittsburgh and also the nearby Olympus Incubator. The focus of this series of visits to universities was technology transfer mechanisms and technology incubators in or near these universities. In addition to visiting various locales, the participants received numerous presentations by expert staff associated with these facilities.

In Sri Lanka the evaluation team met with 9 of the 13 participants in this study tour, all of whom are still actively engaged in pushing their universities or related research promotion agencies to adopt the American model of technology transfer offices (TTOs) and incubators to spur innovation and commercialization of inventions. They describe their experience in these visits as “eye opening.”

Another TT-focused study tour took place in early 2018 and involved extremely relevant exposure for the target group of university and research institute professors or managers. Once again CLDP with relatively limited staff at its disposition, pulled in a wide variety of experts to build the knowledge and skills of Sri Lanka participants. This second major study tour was held over nine days in Phoenix, Arizona, and consisted of a two-day workshop on licensing and a visit to the Arizona State University technology transfer and incubator centers. This was followed by attendance in a four-day annual meeting and conference of the Association of University Technology Managers (AUTM). Participants have been fully registered with AUTM to enable them to continue to access resources provided under the aegis of this association. Independent consultants, a representative from USDA, and CLDP led the

licensing workshop, while the visit to the ASU Skysong Innovation and Entrepreneurship Centers included presentations by managers there. Finally, attendance in the AUTM meeting exposed participants to literally thousands of technology managers and other staff, and participants could choose to attend sessions from at least six tracks.

It is obvious that CLDP is quite competent at organizing the collaboration and participation of a wide variety of experts from U.S. government, private, and international agencies, particularly during longer consultation tours held in the United States. Moreover, participants always attested to the high degree of activity organization and the quality of experts provided as resource persons in these consultation visits.

Trade Policy and Trade Facilitation

CLDP leveraged U.S. government expertise extensively in its TPR and TFA interventions. CLDP organizers obtained resource persons from various units of the USG including from OTNA/ITA, USTR, USCBP, USITA, USDOC, USDA/FAS, U.S. Census Bureau, U.S. Commercial Service, and USITC. In the U.S. study tour for Commerce Department trainees, representatives from NIST, ASTM, ANSI, BEA, and USCS also made presentations. At the end these recruits engaged in simulation exercises with the International Senior Lawyers Project (ISLP), all volunteers.

These volunteers have generally been highly praised by beneficiaries. Sri Lanka Customs officials interviewed stated that “the advanced rulings system in place at USCBP is the gold standard and it was good to know the best way of doing it, though we in Sri Lanka still do not have the basis for doing it.” The new Commerce Department recruits recently returned from the consultation trainings in the U.S. greatly appreciated the opportunity to interact with the USDOC, which they said in a focus group discussion was “the ideal that we should aspire to, even though we are small and may never reach their standards.” CLDP’s ability to draw practitioners from these USG entities has kept its training programs very practical and provided a forum for the exchange of ideas with their professional counterparts in Sri Lanka.

Another important source of CLDP’s resource personnel was in specialized international organizations, such as the International Trade Centre (ITC), World Intellectual Property Organization (WIPO), WTO, and World Bank. These organizations are viewed positively by beneficiary interviewees. The FY 2017 3rd Quarterly Report also refers to accessing the expertise of the Global Alliance for Trade Facilitation (GATF) in the future. The fact that these institutions have other projects and are involved in capacity building themselves contributes to information sharing and coordination between their activities and CLDP interventions. This enhances the value of the CLDP program.

Trade facilitation and trade policy reform are crowded areas when it comes to donor support. The evaluators learned of interventions by Korea, Japan, Malaysia, India, China, Australia and the EU in these areas. Given its relatively small size and focus, it was imperative for CLDP to coordinate with other donors in country for effectiveness. CLDP’s interventions by and large appear to fit well and are positively linked to other donor interventions in country. Despite its limited and periodic presence on the ground, CLDP has made an effort to reach out to other major donors – including the World Bank –

with a view to coordinating approaches and intervention responses, with considerable success. In TFA, CLDP has found a niche in advance rulings that fits well with other donor plans in a concerted drive to bring Sri Lanka into compliance with the WTO-TFA. CLDP demonstrated the ability to secure participation from a principal donor as exemplified by the case of a World Bank representative who moderated a public and private sector panel of the Trade Policy Seminars with the Commerce Department in November 2016.

Managing from a distance has its limitations. Frequent interaction and involvement with the thinking and activities of organizations like the World Bank and the EU that have large and over-lapping areas of interest with CLDP would help coordinate better and build on each other's work. For example, a comprehensive TFA compliance mapping exercise done by WB in September 2015 (Gap Analysis) could have contributed considerably more to the TFA public information roundtable with the Customs Department in February 2016 and thereafter. The Gap Analysis set the scene for the current WTO-TFA compliance process coordinated by the NTFC and the World Bank. Similarly, inputs into trade policy development that were part of the November-December 2016 trade policy workshop could have been more strategically timed and targeted. Linking with other donors could also contribute to encouraging better buy-in and uptake with Sri Lankan institutions.

Since 2016 the World Bank has a three-year \$100 million project on 'Competitiveness, Transparency and Fiscal Sustainability' and the EU has an 8 million euro 'Trade-related Assistance Project' both of which overlap with CLDP areas of interest. Further, CLDP is also likely to draw on the same international organizations, such as the International Trade Centre (ITC), for its interventions. Beyond Sri Lankan strategic policy documents like Vision 2025, it is through these much larger projects that the government prioritizes policies, executes reforms, and takes initiatives to improve ease of doing business rankings, WTO-TFA compliance, and improve FTA analysis and negotiations. Beyond being cognizant of what other donors are doing, pro-actively coordinating and sequencing CLDP interventions with other donor support in TFA and TPR would enhance follow up and effectiveness. This is what is occurring to a large degree in IPR.

CLDP has also effectively used Sri Lankan officials as resource personnel in its interventions. This should continue where possible. In some cases, CLDP's key interlocutors have gone on to become key movers in the process of reform in the country. This has been much more the case in IPR and TFA than in TPR. For example, the directors of COSTI and NIPO and the chairman of the University Grants Commission participated in the U.S. consultations tour in technology transfer in late 2016. They are now very active in pushing for IP and technology transfer reforms and structures in Sri Lanka. An additional director general of the Customs Department went on to play a key role in the NTFC and was later retained as a consultant by the World Bank. To coordinate better in its trade activities, as well as to ensure greater effectiveness of these interventions, CLDP should identify a much larger set of relevant government authorities (political and administrative) to interact with on a regular basis. For instance, in TFA it would be desirable for CLDP to work closely with the National Trade Facilitation Committee (NTFC) that has overall coordination responsibility in this area, in addition to the Sri Lanka Customs Department where CLDP's interventions have been located. Similarly, linking and communicating with decision makers at the highest policy level, such as the Ministry of Development Strategies and International Trade (MoDSIT) and the Ministry of Finance, would improve targeting and impact of interventions.

ii. What are the target groups' needs? Are they appropriate for the success of the project?

A preliminary needs assessment was carried out in Sri Lanka in late October 2015 and concept papers later produced for four sectors: IPR, TFA, TPR, and ADR.

IPR - Technology Transfer

During its initial assessment CLDP met with the National Intellectual Property Office (NIPO), the Sri Lanka Institute of Nanotechnology (SLINTEC), the University of Colombo Science and Technology Cell, and the University of Moratuwa Intellectual Property Advisory Committee, all of which requested technical assistance in the field of technology transfer. The two universities and SLINTEC had already taken steps toward creating innovation and entrepreneurship ecosystems that would encourage commercialization of research outputs. USPTO had already been working with NIPO in the area of technology transfer. In fact, when the U.S. consultations tour took place in October-November 2016, all the key people from those institutions and several more, such as the University Grants Commission, were part of the delegation.

This target group of university professors, chairman of the University Grants Commission, and key officials in the Ministry of Science, Technology, and Research, especially the Coordinating Secretariat for Science, Technology, and Innovation (COSTI), was chosen with great skill and success. All are key movers in their institutions. Another eight more strategically selected participants from Sri Lankan universities, Inventors Commission, National Science Foundation, and COSTI attended the workshop in licensing and the Association of University Technology Managers' meeting in Phoenix in February 2018.

This target group, largely drawn from universities interested in creating technology transfer offices and changing the Universities Act of 1978 to permit commercialization of inventions in the universities, declared themselves highly satisfied with the assistance received from CLDP. This assistance consisted not only of the two consultation tours, but also of two university IP and institutional IP policy workshops held in Colombo in April and September 2017. The target group, which continues to expand to encompass other universities and research institutes, feels that the material presented in these workshops was fully relevant to their needs. They indicated to the evaluation team that each of the targeted governmental institutions and universities now has a core group of about five persons, of which there are always two or three available to attend training in IP and technology transfer. This is a true working group of key personnel in key institutions that is growing in competency through a sequence of trainings. It is also sustainable.

IPR - Judicial Capacity Building

The initial assessment trip report (November 6, 2016) outlines technical assistance needs in the various sectors. In IPR, the report indicates that the director of the Judges' Institute requested training for Sri Lankan judges in mediation, arbitration and in intellectual property rights in conjunction with USPTO. The director was also receptive to the CLDP proposal to work with the Federal Judicial Center in Washington, D.C. to assist the Judges' Institute in developing an IP bench book.

Two two-day workshops on the protection of intellectual property rights were carried out with USPTO in Colombo and Jaffna in late May 2016. Thirty judges in Colombo and 32 in Jaffna were trained by an impressive group of expatriate trainers, including two U.S. district court judges. The Sri Lankan judges were primarily magistrates and district judges. Although further training was requested for Kandy and Galle, this has not yet occurred. CLDP will have to carefully assess whether renewing this training meets the needs of the Sri Lankan judiciary.

There appear to be two problems with this training and the target groups involved. It appears that IP cases are very rarely brought to magistrates and district judges, although this might change in the more distant future. Consequently, it does not now qualify as a priority for this target group of judges or for the Judge's Institute, in spite of initial interest. Second, the director of the Institute in 2016 has now retired, and neither he nor the new director was interested in being interviewed by the evaluation team. In this case, it appears that the training delivered did not evoke enough interest within the Judge's Institute to warrant repeating it in other cities over the last two years. An opportunity for the new director to indicate renewed interest in further judicial trainings by CLDP, whether in intellectual property rights enforcement, arbitration, or mediation, was lost in not meeting with the evaluation team. Perhaps CLDP can reestablish contact with the Judges' Institute in a future needs assessment. On the other hand, training mediators in IP in a new Commercial Mediation Center and commercial judges in the Commercial High Court would appear to be directions to pursue moving forward.

All in all, it appears that CLDP has been skillful in targeting appropriate groups of beneficiaries, determining their specific needs, and providing them with relevant capacity building within an overall donor structure to improve the IP regime in Sri Lanka. In the case of technology transfer, CLDP is attempting to recreate the essentials of the American model in universities, and a principal consultant under the WIPO project is also being used extensively in CLDP activities.

Trade Facilitation and Trade Policy Analysis

CLDP has chosen the Sri Lanka Customs Department and Department of Commerce as their main interlocutors and vehicles for their interventions. They are central to enhancing and developing Sri Lanka's trade potential. Sri Lanka ratified the WTO-TFA in May 2016, having communicated its Category 'A' commitments as early as 2014. It has now also communicated its Category B and C commitments, and provided indicative dates for compliance to WTO by February 2018. Sri Lanka Customs is the lead agency responsible for over 70% of the WTO-TFA compliance tasks in the NTFC Action Plan and co-chairs the NTFC. Selecting the Customs Department and meeting its needs is the appropriate target for CLDP intervention in this area and should directly contribute to improving Sri Lanka's compliance with international standards.

Of the various compliance requirements identified pursuant to ratification of the TFA, both advance rulings and public information have been high on the list of priorities for Sri Lanka Customs. CLDP correctly identified these two areas in its first assessment report and TFA concept paper, and in responding to these priority needs has been both appropriate and timely. Given the baseline situation, as illustrated in the World Bank's Gap Analysis (2015) provided to the evaluation team, as well as CLDP's first roundtable discussion with Customs (February 2016), the needs in these two chosen areas ranged from basic awareness and introduction, establishing organizational units, new systems and processes, skills building among staff, and new legal and regulatory amendments. Interventions to fill these needs

aligned with the government's overall reform orientation and will greatly benefit importers and exporters, contributing thus to Sri Lanka's orientation toward increasing trade and investment.

Similarly, Department of Commerce is expected to play a key role in providing inputs to the government's overall trade policy and to its analysis and negotiation ability in its free trade agreements (FTAs) with key countries, while continuing its traditional trade promotion role. To fulfill these roles better, its needs range from capacity for advanced trade policy review and analysis (use of international databases, economic modelling, latest tools and techniques), ability to contribute to trade negotiations at the highest level, communicating and consulting with multiple stakeholders, and the capacity to promote the interests of Sri Lankan traders through anti-dumping, countervailing duties and other trade remedies, and WTO dispute settlement processes. Given latest developments, it also needs greater capacity in trade in services, non-tariff barriers, and sanitary and phytosanitary measures. The Commerce Department had also expressed initial interest in exploring work around the WTO Government Procurement Agreement (GPA).

As the Sri Lankan trade promotion agency, the Commerce Department requirement to train its new recruits and orient them is a pressing need met by CLDP for its most recent batch of recruits. As the agency traditionally responsible for international trade matters, CLDP technical assistance has helped the DoC to develop its overall capacity in the short term through trade policy analysis seminars and for the long run by training of new recruits in a broad range of trade concepts, practices, and analysis.

A critical counterpoint in this regard relates to the significant role that the new Ministry of Development Strategies and International Trade (MoDSIT) has assumed in this area. Given current power dynamics and the limited leverage the DoC appears to have with regard to FTAs and trade policy matters, it is arguable that future CLDP interventions should include the relevant sections of MoDSIT. Further, while the research unit to be set up in the DoC may improve its position, at present critical data needs, analysis, and modelling inputs for these processes are provided by the Central Bank and the Institute for Policy Studies (IPS), an external think-tank. DoC still remains the focal agency for trade promotion, WTO-TFA matters and issuance of origin certifications. Going forward, it may also have training needs pertaining to the establishment and maintenance of the Trade Information Portal (TIP) to be housed in the DoC.

Two target group needs responded to by CLDP that probably have a weaker link to the overall success of the project relate to the training of district judges and magistrates on customs appeals and the training of law students in WTO trade law dispute resolution mechanisms. Admittedly the lengthy litigation processes in the area of contract enforcement remains a key bottleneck in Sri Lanka's ability to improve its World Bank Doing Business rating and needs to be addressed. However, a general one-off training on customs appeals with a group of magistrates and district judges who may probably not see any customs appeals cases brought to them during their tenure was pointed out by Customs officials as not being very effective. A more targeted intervention addressing the needs of magistrates who are truly likely to be hearing any such cases was considered potentially useful. However, its link to overall CLDP project impact is far more tenuous than other interventions. Similar views were expressed by informants with respect to the usefulness of law students gaining applicable experience in WTO trade law through Moot Court training and competition.

2. How has implementation met the needs of target groups?

Intellectual Property Reform

Based on the interviews and focus groups held in Sri Lanka and evaluator observation of two workshops in the United States (licensing workshop in IPR and training for new Commerce Department recruits), it is clear that participants felt that CLDP technical assistance activities were at the right level of knowledge and complexity, were presented clearly by well qualified consultants, and that their needs were met by the TA. There is no indication that any target group or set of training participants felt disappointed, let down, or bored in capacity-building events. Nor have they indicated frustration by too much detail or volume of material to master. In IPR training there has been an excellent sequencing of training events, beginning with the first U.S. consultations tour in October 2016 that introduced participants to American models of trademark, patent, trade secret, copyright law, IP enforcement, IP protection, and management of technology transfer. This material was accompanied by some practical exercises in USPTO followed by visits to technology transfer offices (TTOs) and incubators at Princeton, Carnegie Mellon, and Pittsburgh Universities.

Momentum and reinforcement of knowledge has occurred in IPR overall and institutional technology transfer specifically. CLDP carried out four IP capacity-building events for the same target group, two of which were U.S. based.⁵ A set of key people were identified and exposed to U.S. models in late 2016 and then CLDP followed up by promoting an innovation chain from technology research to commercialization in universities, other research entities, and related governmental institutions, such as the Sri Lanka Inventors Commission, and the National Science Foundation.

CLDP, however, is not alone in this process. It has worked closely with WIPO and USPTO in Sri Lanka. A major WIPO project known as the Enabling IP Environment (EIE) came on line in 2017, within which CLDP has joined with WIPO and USPTO to fund and help manage the two workshops in Sri Lanka. CLDP is credited appropriately with responsibility for the first and second university IP policy workshops in April and September 2017 and jointly with WIPO in the visits over the next three days to universities to raise awareness of the basics of IP management and technology commercialization.

On the other hand, WIPO without CLDP held five events between June and December 2017 within the framework of EIE. This included a patent drafting workshop (5 days), IP awareness in universities (4 days), IP management and technology commercialization workshop (5 days), and WIPO Presidents' Summits in Japan and Korea. In collaboration with the National Intellectual Property Office (NIPO), WIPO just held a two-day workshop in Colombo in late April, in part to celebrate World IP Day (April 26) for a second year. This workshop had the somewhat unwieldy title of "High-level Sub-regional Workshop on Empowering Creativity for Sustainable Development and the Role of Copyright for Policy Makers."

The focus of the EIE project is technology development, management and commercialization. Three results are expected by the end of the project in 2020: strengthened IP-related competencies in university technology commercialization; strengthened university - industry collaborations; and an established networked community of technology professionals. The area of intervention is identified as

⁵ Two other workshops were held with judges, another target group, without follow-up.

IP-based technology transfer capacity of institutions. Capacity building targets for 2020 are: patent drafting, patent searching, technology management, and institutional IP policies.

In sum, CLDP is collaborating and coordinating with WIPO and USPTO, both of which have held IP events without CLDP in Sri Lanka. The principal framework now appears to be the EIE Project with COSTI and NIPO at the hub and five universities and 4 research or support entities as spokes. CLDP is recognized as one of the organizations providing technical assistance as part of this new ‘innovation eco-system.’ However, the donor organizations are not on the infographic showing the hub and spokes in this project. The infographic (PP presentation) is a handy tool for CLDP to show how it is integrated into this overall implementation structure in IP.

In regard to strengthening the National Intellectual Property Office, which needed both substantive IP training and technical assistance in administration and management, the CLDP 2015 assessment determined that between WIPO and USPTO these needs could be covered. This is another example of how CLDP was careful to choose a path of donor coordination. The original assessment stated that “USPTO is NIPO’s natural partner and should remain so unless CLDP is called upon to partner in such activities as IP awareness events.” This was, in fact, the case in April 2017 during World IP Day activities. A similar request for IP training by the Customs Department was also left to USPTO.

Trade Facilitation and Trade Policy Analysis

According to interviews and focus groups held by the evaluators in Sri Lanka, CLDP has been successful in meeting the expectations of participants in their various TFA and TPR trainings, consultations, and exchange interventions. CLDP has been efficient in planning and implementing selected activities. It received consistently positive reviews from an overwhelming majority of the participants sampled from the various activities examined during fieldwork. Barring a very few sessions, activities were said to be pitched at the right level of complexity with adequate practical examples and presented by well qualified resource personnel. The workshop agendas were uniformly considered to be relevant and appropriate for meeting the needs of the participants. The hands-on experience of the resource people and the appropriateness of practical examples, case studies, and exercises were remarked upon by a number of beneficiaries. The effort put in by CLDP’s activity managers on getting the logistics and coordination right was appreciated by all participants. They were impressed with and thankful for the personal attention shown in the U.S. consultations visits, particularly the young DoC recruits who stated that “they never had a chance to become homesick.”

Sequencing in TFA-oriented interventions with Customs Department has been notable. Workshops were conducted on advance rulings and customs appeals followed by a roundtable on information publication in February 2016. These were followed up with an advance rulings and rules of origin workshop in January 2017. This, in turn, was followed by several days of training in July 2017 that included an advanced workshop to train trainers in origin determinations, a roundtable for a working group on establishing a system of advance rulings, and a final two-day introductory training on advanced rulings and origin determinations.

While ratification of the WTO-TFA and the generation of action plans to meet compliance requirements were ongoing at high levels after Sri Lanka’s post-election 2015 policy reorientation, it was CLDP’s workshops, according to many informants, that first introduced the requirements and related trade facilitation concepts to a broad cross-section of Customs officials. This was particularly the case with

regard to advance rulings and origin determination, where CLDP was said by informants to be the only actor providing technical assistance in these areas.

In working towards a system of advance rulings and public information availability, the felt need of the Customs Department target group at the beginning was to gain an introduction to the concepts followed by deeper understanding and skills development. CLDP interventions, using United States examples and USCBP resource personnel, provided precisely this. Several participants in a focus group discussion were emphatic in claiming these interventions as ‘eye openers’ to critical issues. As informants indicated, these eye-opening experiences enabled the Customs staff to engage better with the issues and emphasized the need to work on the limitations posed by the Customs Ordinance and other regulations. The roundtable on public information, held at the time of the first TFA workshop in February 2016, was considered a good background by one participant, when involved in later discussions concerning the Trade information Portal (TIP) as part of the NTFC Action Plan.

In TPR, as previously mentioned, two sets of interventions were undertaken in partnership with the Department of Commerce. The first one was a series of three one-day workshops for a wide range of participants in late 2016 that provided tools for trade policy analysis, capacity building for identifying and negotiating FTAs, and developing a national trade policy. The second intervention was the two-week U.S.-based orientation program for new recruits to the Commerce Department. The latter was a comprehensive orientation to a range of topics – trade promotion, trade analysis tools, data sources, WTO mechanisms, anti-dumping and countervailing duties, standards, sanitary and phytosanitary measures, and trade agreements.

The first program met the needs of the target group by providing an introduction to analytic tools and data sources for trade policy analysis to a range of participants who participated on various days. Many informants reported being introduced to some of the tools (data sources, economic models) in this workshop for the first time. Most importantly, according to the Director General of the Commerce Department, CLDP was able to bring together in a single forum a diverse set of government organizations involved in bilateral trade negotiations and trade policy making.

Since the Sri Lankan government was aggressively pursuing FTAs with much larger (asymmetric) economies, the Commerce DG had identified a pressing need to look at the pros and cons and thrash out different points of view, in order to inform ongoing negotiations. The DG felt that the many sessions facilitated by representatives from the Office of Trade Negotiations and Analysis (OTNA) of the U.S. International Trade Agency (ITA), who brought in U.S and international experience and examples, had provided such an opportunity. A senior economist from the ITC rounded out the list of experts in these ‘seminars.’ The third day was used by another set of stakeholders, including several private sector representatives, to discuss objectives in formulating national trade policy. Though the drafting of the national policy was well underway, it gave an opportunity for representatives from MoDSIT, to hear multiple points of view. One participant commented to the evaluators on the usefulness of learning about trade adjustment arrangements.

It is too early to discern outcomes from the second TPR training program in the United States for the new recruits of the Commerce Department. However, an evaluation discussion with all nine of these participants in the United States and with a focus group in Colombo of four reveal that the exposure was extremely useful and met their largely beginners’ need to familiarize themselves with a wide range of concepts, tools and organizational actors. They stated that what they have learned may well be

reflected in their briefing notes to their superiors and trade promotion activities in the future. They reported that seeing how USDOC is structured and functions convinced them that these were the models and standards to aspire to. They felt this experience helped them to better define their learning needs and the changes they would like to see made in Sri Lanka. They would have liked to spend even more time, however, in practical exercises and case studies in many sessions.

i. What progress remains to be accomplished within the scope of the project's design?

Intellectual Property Regime

Judging what progress remains to be accomplished depends on what the project designers felt were the final objectives or end states in the various sub-programs of assistance to Sri Lanka. It has been noted that clear end states or specific objectives are not found in the original or amended IAA statement of work. There is a list of 10 outcomes in the original IAA, now expanded to 17 in the amended version of 2017. However, the ultimate goal in IPR would seem to be to advance universities and research institutes as far as possible toward an American model of technology transfer offices associated with these institutions, which allows researchers and inventors in universities to commercialize their inventions and maintain ownership through licensing and royalty agreements. The government would not retain ownership of these inventions but could be compensated through various methods.

Three of the original 10 outcomes relate to IPR under the project design, and these are carried over to the 17 outcomes in the amended version. They are: (1) Sri Lanka and CLDP educate judges, enforcement agencies, and the public on the importance of intellectual property rights enforcement; (2) Sri Lanka Judges' Institute and CLDP develop an IP judicial bench book for the Sri Lankan judiciary; and (3) NIPO determines with public and private sector stakeholders whether Sri Lanka's IP laws need to be updated/harmonized.

As mentioned previously, these outcomes were reoriented after the 2015 assessment. The assessment report now adds technology transfer among future directions. Both the original 2015 and new 2017 concept papers for IPR indicate sub-program results as:

- (1) Increased IP awareness on the part of the Sri Lankan judiciary.
- (2) Increased capacity on the part of the Sri Lankan judiciary to adjudicate IP cases in an efficient and transparent manner.
- (3) Increased capacity on the part of the Sri Lankan universities to establish sustainable technology transfer offices and incubators.

Expectations for capacity-building of judges remain an important part of the work plan going forward even under the amended IAA, yet the evaluation team found little interest on the part of the former or present director of the Judges' Institute, the key counterpart institution. Beyond initial IP protection trainings undertaken in May 2016, there has been no follow-up or replication training in other cities. While this would appear to be assistance left undone, it may also represent lack of demand from the Judges' Institute.

In the final analysis, it is difficult to determine what the final end states will resemble in work with the judiciary or when they can be achieved, but it is clear that CLDP in collaboration with WIPO and USPTO is now primarily focused on promoting models for innovation and technology transfer from universities and research centers to the private sector. The final models will certainly be a mix of Sri Lankan cultural practices and U.S. models and legislation and the process will likely take a few more years to have significant impact. Nevertheless, momentum is clearly building in this sector.

Trade Facilitation

Under TFA, the outcome expected originally in the 2015 IAA 2015 for “government officials to consider additional trade facilitation reforms” was too broad and in any case was less useful as a target given that the Sri Lankan government ratified the WTO-TFA in early 2016 and had committed to a full series of reforms under it. As a part of this ongoing process, an action plan with responsibility allocation for the individual reforms has been completed and a coordinating body (NTFC) empowered to follow through.

If we take the outcomes of the project as being to put in place a system of advance rulings and availability of public information through publication of all relevant information by the Customs Department (as per the concept note of December 2015 and related goals and objectives document), clearly this is a long road and more needs to be done. Both advance rulings and public information have been identified as key reform areas by the GoSL. Through a process led by the NTFC and World Bank, having in place a comprehensive Public Information Portal consisting of all relevant information from different ministries and departments by the middle of 2018 has been prioritized. It will be housed in the Department of Commerce. Individual entities like Sri Lanka Customs will need to enter relevant information and maintain it on a regular basis by updating as required. It is not expected that CLDP need to have any additional intervention in this area at this point in time.

With respect to advance rulings, and building on the awareness, knowledge and interest already created by CLDP, much more needs to be done in establishing a legal basis for the new system through amendment of the Customs Ordinance, thus institutionalizing the system in Customs with personnel responsibilities defined, formats and processes established, and staff skilled up. Advance rulings is a part of the NTFC Action Plan that CLDP can continue its commitment to accomplish in the process of compliance with the WTO-TFA. In addition there are other priority areas identified within the over-all TFA compliance requirement that need to be addressed.

Trade Policy Analysis

In the area of trade policy (TPR), the objective expected in the 2015 IAA was for “government officials to develop targeted economic and trade policy analysis for negotiations and trade promotions.” This was later fine-tuned to focus on Free Trade Agreements and expanded to include capacity building of the DoC to effectively implement the new anti-dumping and countervailing duties law (AD/CVD) in line with WTO commitments (according to the concept note of December 2015). During implementation, the scope was further broadened to include areas of trade policy development and generic capacity building in trade promotion. Here again, building on the introductory programs, the need now is for more advanced capacity building in both skills building and in institutionalization, in order for relevant target

groups to contribute effectively to the FTA process. Support to and engagement with the new research unit in DoC and providing advanced training on AD/CVD implementation, building on the generic introductory material would be required to reach the outcomes envisaged.

The work on GPA apparently did not progress beyond initial discussions. If outcomes in this areas as envisaged in the original design (IAA of 2015 and concept note of December 2015) are to be realized, more work in this area is required. This should be verified in a future assessment activity.

ii. Are there facets of the project that should have been designed differently?

Intellectual Property Regime

The IAA has already been amended, so it is a bit late to speak of what should have been. However, since we are at the midterm in this program, there is an opportunity to indicate adjustments to activities going forward. In this regard, it would be useful to be clearer as of now on what vision CLDP has of outcomes and objectives in its areas of activity, including its new push into commercial mediation. In terms of its IPR work with universities, research institutes, and related agencies it seems clear that the vision is to produce an innovation eco-system that includes institutionalized mechanisms to commercialize inventions. These mechanisms would include incubators and TTOs attached to universities and research institutes, but it would also involve amending the Universities Act to permit public universities to retain earnings from the sale or lease of inventions.

As mentioned previously, the 2015 and 2017 concept papers for IPR propose the same program results: increased IP awareness on the part of the Sri Lankan judiciary; increased capacity on the part of the Sri Lankan judiciary to adjudicate IP cases in an efficient and transparent manner, and increased capacity on the part of the Sri Lankan universities to establish sustainable technology transfer offices and incubators. While there is no mention among these results of raising public awareness of IP issues and rights, it is part of the amended IAA text. This very text emphasizes public awareness raising by stating: “One prominent Sri Lankan IP lawyer said that more IP public awareness was the most important thing that CLDP could do to help support IP reform in Sri Lanka (IAA, p.3, 2017). However, CLDP has engaged in only one public awareness activity – World IP Day in April 2017.

This tripartite breakout of IP reform results makes sense and does not necessarily indicate an error in original design. In reality it appears that training of judges in IP enforcement is premature in Sri Lanka, and commercial litigation takes place not in districts but in the Commercial High Court. Interest by the judiciary in training district court judges and magistrates now seems lacking. Public awareness events in which CLDP supports NIPO are certainly useful, but with uncertain impact, and WIPO can fill the void. On the other hand, CLDP has effectively targeted the area of technology transfer from universities as its specialty in the overall IP reform movement now under way in Sri Lanka.

A better informed initial design might have eliminated judicial reform as a key component in the technical assistance mix. A project focused only on creating the knowledge, legal, and institutional base for university – industry technology transfer might have been sufficient.

Trade Policy Analysis and Trade Facilitation

The shifts in emphasis described above illustrate how CLDP adopted a rolling assessment approach coupled with programmatic flexibility, allowing it to make the most of opportunities that arose during assessments and through contacts made on the ground. This was certainly the most appropriate approach, one of seeking intervention niches within other donor activities in the sectors of interest. Participants in these activities uniformly reported that the design of individual interventions was responsive to their needs at a given time. Taking a strategic view of outcomes envisaged, the evaluators wish to make the following observations regarding project design:

- (a) *The outcomes sought in each sector require multiple actor and stakeholder involvement.* Although the problems to be addressed and corresponding objectives directly related to the chosen agencies where CLDP interventions were anchored, achievement was contingent on the involvement of other agencies as well. Thus, establishing the legal basis for advance rulings by amending the Customs Ordinance would involve Ministry of Finance, the legal draftsman's office of the Ministry of Justice, traders' associations, relevant trade unions, and the NTFC/World Bank. In the case of FTAs, while MoDSIT took the lead in negotiations, analysis was provided by multiple organizational actors, including the Central Bank, private think-tanks, industry chambers, professional associations/unions, and Department of Commerce staff. In fact, the first two support actors continue to play a major role. In such cases, incorporating their views in the assessments and designing interventions in a manner that is inclusive of all these relevant actors would have been very useful. It would have ensured broader buy-in for change.
- (b) *Outcomes require institutionalization and organizational change.* Enhanced analytic capacity of the Commerce Department should require a new research unit. A system of advance rulings on rules of origin in the Customs Department will require a unit with systems, formats and processes, and skilled personnel. In such instances, trainings and exchanges alone will probably not suffice. CLDP could consider employing other longer-term options in its tool box when designing interventions. Taking such a strategic approach to institutionalizing change in organizations would require establishing and reinforcing core working groups in the Sri Lankan Customs and Commerce Departments, structured follow-up following trainings with decision makers in the organizations and outside, direct guidance in the form of advisory services, and placement of experts. This brings up once again the possibility of placing a resident expert in one or both of these targeted institutions to maintain contact and momentum for reform. While the original budget of 2015 would not have been sufficient to do this, the current budget may allow for such placement, at least for a series of multi-month residencies.
- (c) *A full suite of interventions must be considered in design.* Many of the subject areas in which capacity building is provided and outcomes expected are complex and highly technical, such as quantitative trade analysis, anti-dumping and countervailing duties, WTO dispute resolution, advance rulings and origin determinations, and FTA analysis and negotiations. Informants who had participated in CLDP events agreed that one or two-day workshops could at best provide only an introduction and basic understanding of such concepts. In such complex areas, interventions should preferably be designed for smaller numbers of participants, and broken down into introductory, intermediate and advanced levels with more practical, hands-on training on these subjects. CLDP could also consider hosting key participants in fellowships that

would give a more immersive exposure. Such a fellowship appears planned only for technology transfer under the IPR sub-program.

- (d) *CLDP should re-think the usefulness of standard customs appeals training delivered for a range of magistrates and judges.* According to informants in focus groups in Customs, customs appeal disputes rarely are taken to the formal judicial system and when they are taken, CLDP does not seem to have a particular advantage over trainings that could be provided by Customs officials in country.

All in all, the original design and its sectoral interventions have been modified a number of times, and it should be said that this flexibility and adaptability is just the right approach for CLDP in Sri Lanka. Rather than arriving with a rigidly prescriptive framework as many donor projects do, experienced CLDP experts continue to seek openings and reform opportunities in collaboration with other donors that will eventually lead to increased trade and resulting economic growth.

3. What challenges have the interventions faced in building the capacity of target groups?

Intellectual Property Regime

The biggest challenge in building the capacity of target groups appears to be the distance at which the program is managed and its dependence on maintaining solid and durable links with various points of contact. This has surely slowed program advancement compared to what a local implementing body might have achieved. Retirement of key senior people has also slowed progress, as in the case of the director of the Judges' Institute. Maintaining momentum of workshop accomplishments seems also to be a problem. In IP, the joining of CLDP (and USPTO) activities with the WIPO EIE project has led to the creation of core groups within the major universities that can replicate with others the skills and knowledge learned in a string of IP and TT-focused activities.

The IPR movement in Sri Lanka has become fairly crowded with donors and their activities. The weight of the World Bank is felt strongly, and it has an office in Colombo. There are at least two major WB initiatives that include IP. The first is the AHEAD project under the Ministry of Higher Education and the University Grants Commission. The UGC has issued a circular approving the creation of University-Business Linkage cells (UBLs) in 15 public universities, and the World Bank will provide some funding to equip and staff them during project life. This will affect the EIE project's launching of TTOs, but the two may eventually become the same. At present university faculty involved with proto-TTOs do not seem concerned by this new UBL structure. The UGC is also promoting wider university reform, including amending the Universities Act of 1978 to allow universities to commercialize inventions developed by researchers.

Another section of the World Bank, the World Bank Innovation Global Practice team, has been partnering with the Ministry of Development Strategies and International Trade (MoDSIT), Ministry of Industry and Commerce (MOIC), and the Ministry of Science, Technology and Research (MoSTR) to develop the Sri Lanka Innovation and Entrepreneurship (I&E) Strategy. This I&E Strategy has as objective the re-aligning and modernizing of research and development (R&D), including establishing a well-defined IP policy and IP eco-system at the national level. To achieve this vision the country needs to

develop a national policy framework to address key issues of IP ownership, management and commercialization.

In support of achieving this vision, the Ministry of Industry and Commerce has set up an IP steering committee with a financial commitment from WIPO and the Embassy of Switzerland. The steering committee will oversee work being done in the IP landscape, including the IP policy draft. An IP subcommittee has also been established with private sector stakeholders with the purpose of developing IP policies. COSTI of the MoSTR is also the hub of the WIPO EIE project with which CLDP has been collaborating.

A great deal is going on in the Sri Lankan IP landscape in which CLDP can play a continuing role. The challenge is to find the right niche or niches within this landscape. The quality of CLDP managers and experts is highly praised by donors and ministries alike and opportunities to promote TTOs, incubators, and public awareness raising will continue to abound.

Another challenge arise from the fact that the final functioning of these TTOs depends on legislation permitting universities to retain earnings from commercialization. Opposition is clear in a letter by the University of Colombo senior legal consultant to a professor in the university: “With regard to your consulting people from WIPO and NIPO, I am not sure to what extent they are sensitive to and appreciative of the fact that the University is not a commercial entity and whether such an educational institute can get into a binding Agreement with a commercial entity under the Universities Act which agreement tacitly admits of the other party to commercially exploit results derived from scientific testing/studying of materials supplied by the University.”⁶

The professor responded with: “If that is true then there is no way we can do any of the things that we were discussing at the IP Workshop this week because it was all about Universities coming into binding agreements with the private sector commercial entities. We will be losing access to about 400 million LKR worth of research funds if we cannot sign this contract due to the reason stated.”

Trade Facilitation and Trade Policy Analysis

In the TFA and TPR areas, the challenges to capacity building have been due to three main reasons.

The almost inevitable impact of political dynamics on project aspects is a challenge. This has been the case in the CLDP Sri Lanka program. More specifically, the amendments to the Customs Ordinance, a necessary step in establishing a system of advance rulings in the Customs Department, is held up in the politics of legal reform not directly related to the issue at hand. While there is consensus across the board on both the need for and the nature of amendments to facilitate advance rulings, the process of amendment of the Customs Ordinance is caught up in the tussle between the traders and the unions regarding the scope and nature of changes to this 19th Century document. While the trading community supports writing a whole new act, the trade unions are of the view that amendments should suffice. It is imperative that the government resolves this deadlock to move forward. In a different vein, some informants were skeptical that analysis produced by the Commerce Department and other analysts on FTAs would be listened to, if it were to go against the dominant policy preferences spearheaded by MoDSIT. This is the ministry that is currently providing political leadership to national trade policy and

⁶ Personal communication by one informant.

trade negotiations. Existing ministerial power dynamics and political orientation may well have most impact on the choice of FTAs and negotiating strategies. This may well reduce the value of new analytical skills, tools, and knowledge sources transferred through CLDP trainings.

There were institutional challenges within the targeted interlocutors that impacted on capacity building in TFA and TPR. Change of leadership, retirement of points of contact and workshop participants following trainings, the heavy day to day work load of participants, delays in recruitment in Customs and Commerce Departments were some of the issues mentioned by interviewees that impact on institutional commitments to follow through after trainings. In a few cases, the choice of participants had inhibited effective capacity building in the chosen issue area, because they did not deal directly in their work with the subject matter. Moreover, in the Customs Department, where CLDP engaged in significant technical assistance, there was no real mechanism or process to convert enthusiastic workshop participation into institutional decisions. Until changes are effectively prioritized through top-down processes, including the influence of the NTFC Action Plan, there is no way of instituting changes that are required.

As mentioned previously, another critical challenge for effective capacity building has been program management at a distance. The momentum created through the interventions and the commitments made needs follow-through in person for a period of time. As one interviewee noted “discrete interventions are done in isolation and without much of a flow. We need consistency and connection which is possible through regular interaction.” The activity reports written by CLDP after TFA and TPR workshops contain outcomes and ambitious next steps, but in the absence of follow up many have not materialized. Given the nature of the capacity building outcomes envisaged, without strategic engagement with the institutional leadership and committed working groups, real change is likely to be elusive. Moreover, the absence of CLDP managers in country affects coordination with other donors like the WB, who are responding to local developments on a real time basis.

i. Are there adjustments needed to the project implementation? If so, how should this be done?

Intellectual Property Regime

This is a more relevant question than whether the original or amended project design should have been different. The opportunity to redesign under the amended IAA has already passed, so that a focus on possible adjustments to program focus and interventions going forward is more relevant. However, the issue of whether adjustments to implementation can be made requires some serious thought. It would involve suggesting ways to maintain closer communication between key points of contact, where change is desired and possible, and CLDP implementers in Washington, D.C. It will require as a first step a new assessment activity, in which CLDP can work out with its partners in Sri Lanka contributions to be made within the evolving donor and political contexts.

CLDP should have no problem coordinating with WIPO in future activities as it has ably done in the past. Any adjustments to implementation can be made within the existing design, simply by modifying the sectoral concept notes which in any case only cover 2018. If training of judges seems warranted and collaboration active, judicial training can be resumed with the Judges’ Institute. In the area of technology transfer from universities, CLDP is already a leader. The path ahead is to expand knowledge

and skills to new universities beyond the current five and to pull in a somewhat skeptical and wary private sector.

Trade Facilitation and Trade Policy Analysis

Given that program content and context have evolved over the last two years, target groups are now at a different stage. Coupling this with direct feedback from individual and focus group discussions, the following adjustments to implementation can be envisaged going forward.

- (1) A more structured assessment should be carried out now as early as possible. CLDP's approach of opportunistic and rolling assessments have been proven responsive and flexible. At this midterm stage, in light of greater understanding of needs and more awareness of target groups and organizations, a somewhat longer and more structured assessment cum planning exercise is needed that can help to confirm or modify material in the last set of sub-program concept notes. Formulation of objectives and intervention strategies on chosen issues under TFA and TPR for the remaining project period is needed. A structured assessment in this context means for each of the intervention areas to be examined looking systematically at: (a) political feasibility, (b) institutional and leadership buy-in, (c) resources for sustainability, (d) alignment with country and organizational priorities, (e) commitment and capacity to follow up, (f) changing donor involvement and directions, and (g) key stakeholders to be engaged with as change agents.
- (2) Sri Lanka government and donor plans have become more defined in TFA, and CLDP should engage with other key players, including the WB and EU, and build on its already established niche intervention areas. In TFA this would involve following the instructions and plans of the NTFC concerning areas on which to focus and the tasks to accomplish under them. Advance rulings is certainly one of these.
- (3) CLDP, while anchoring its TFA and TPR interventions in the Customs and Commerce Departments as before, should reach out to a larger group of stakeholders who will be critical to ensure capacity building in the chosen issues. This means not only those who have a stake in outcomes, but also those who are needed to push through the desired reforms and changes. On advance rulings in TFA, for example, this could include the Ministry of Finance, Legal Draftsman's office, Ministry of Justice, NTFC, traders associations, unions and so on. In TPR capacity building for trade reform and analysis, other entities should include the relevant sections of the Central Bank, MoDSIT, members of the FTA negotiation teams, economists in think-tanks like IPS, universities, and chambers of commerce, and professional associations and unions.
- (4) Overall, there appears to be a need for greater inclusion of private sector actors in the various interventions in TFA and TPR, to ensure that they are aware of reforms under way, to engage them in consultations, and to also build an engaged constituency that is invested in commercial law reform. Greater collaboration and involvement of key trade chambers would be useful in the areas

of TFA and TPR. This would be an imperative in capacity building on issues like Authorized Economic Operators (AEOs) and implementation of the anti-dumping and countervailing duties law.⁷

- (5) Given the substantial additional financial resources in the program extension of September 2017 and based on a new round of sub-program assessments, CLDP could consider an extended in-country presence to engage strategically with the target groups between trainings/workshops and to follow up as needed. This may also help engaging with other donors for coordination. Further, CLDP should consider an appropriate mix of interventions for chosen issues in trade facilitation and policy research, including expert advisory support and guidance, placements and fellowships, in addition to the workshops, roundtables and U.S. exposure visits.
- (6) Finally, CLDP could update its monitoring framework to measure and guide its implementation. This could be done based on the basis of the post-evaluation assessment referenced previously. More on this is found in the report section on monitoring.

ii. *What project activities were not completed and why? What have been some successes? How can SCA and CLDP shape the next phase of programming?*

Activities Not Completed

Of the four targeted sectors in the statement of work of the 2015 IAA, Government Procurement (GPA) and to a large degree Alternative Dispute Resolution (ADR) were not completed as planned. GPA was postponed from the assessment stage and the workshops in international arbitration and mediation proposed in the ADR concept paper (December 2015) were never carried out. Going forward, GPA is an area that CLDP can focus on, since there is renewed demand and interest on the part of government. It is not clear why ADR activities in arbitration and mediation never got off the ground, but it appears that in the final analysis demand and interest have been lacking. As in the case of GPA, that might have been caught by a thorough assessment in Sri Lanka prior to signing the IAA. Although some Moot Court competitions were held ostensibly to form future potential arbiters for Sri Lanka, this activity was not even mentioned in the ADR concept paper of 2015.

In the revised concept paper for ADR developed in May 2017, activities to support a new Commercial Mediation Center are proposed. Prospects for this governmental Commercial Mediation Center are unclear, since it appears to be replaced now by a private initiative of the Ceylon Chamber of Commerce, in view of governmental procrastination or ambivalence. If CLDP wants to participate in capacity building for mediators within this new institution, it will need first to be sure of its viability. CLDP needs to do a proper assessment to judge the feasibility of either the governmental or private options before going forward with activities.

With regard to government procurement reform, although Sri Lanka has been an observer to the WTO-Government Procurement Agreement (WTO-GPA) since 2003, it has not acceded to it as a full member.

⁷ The Anti-dumping, Countervailing and Safeguard Measures Acts were passed in parliament on March 7, 2018.

However, given the current government's policy orientation and the fact that it is now entering into several FTAs, the Department of Commerce is open to considering the WTO-GPA, but only after further study of its impact and implications for local firms and overall benefits of participation for Sri Lanka. A new phase of interest for CLDP could commence with a follow-up study to what was done under the USAID/STAIR project in this regard. In fact, the TPR concept note of October 2017 proposes a private sector roundtable on WTO-GPA.

In the 2015 TPR concept note, activities listed under capacity building in anti-dumping and countervailing measures and advanced trade compliance and WTO dispute resolution were not implemented. The former was put off due to delays in passage of AD/CVD law and is now part of the 2017 concept note, but it is unclear why the latter workshop was never held. Nevertheless, both these issues were covered at a basic introductory level in the training of new recruits to DoC in Feb/March of 2018. Given their importance and relevance and the fact that the required law has been passed in anti-dumping, these workshops should now be implemented.

Further, e-learning modules and distance learning through DVC with trade policy experts, also planned in the 2015 TPR concept note, has not been implemented. The interviewees in the field did not bring this up, and it is unclear why it has been postponed or eliminated.

What have been some successes?

By success we mean the degree to which various assistance activities have been translated into subsequent action by beneficiaries. The evaluation team sought to learn to what degree participants in various training activities have been able to put into practice what they have learned. These participants overwhelmingly attest to the relevance and appropriate level of the TA, but it seems that much of it cannot simply be implemented without waiting for a host of other structural and regulatory changes to occur.

In the IPR sector, however, there is clearly much momentum, and the sequence of activities engaged in by CLDP along with USPTO and WIPO (and Japan) has certainly borne fruit. According to COSTI, progress in universities and research institutes under the EIE project has been significant. Again, CLDP is part of an overall set of donors in IPR with coordination exercised largely by Sri Lankans. In fact, some IP activities in universities began several years before the CLDP interventions.

COSTI indicates that as of late 2017 there are approved IP policies in at least one major university (Moratuwa) and pending in four others (Colombo, Ruhuna, Peradeniya, Kelaniya). The science-oriented University of Moratuwa has had an IP Advisory Committee since 2008 and an IP policy since 2009. Four of these universities have an IP Policy Committee. Three research institutes (ITI, NERDC, and SLINTEC) have IP policies and TTOs are pending in two of them. The University of Moratuwa has had a TTO since 2016, and the other four universities have begun to establish them.

There is a Science and Technology Cell in Colombo University with two employees and company spin-offs in the University of Moratuwa. The Science and Technology Cell was set up in 2013 through a grant from a previous World Bank project.⁸ Each university is following a generic WIPO IP policy template that is said to be sufficient and modifiable. Moreover, under the World Bank AHEAD project University-

⁸ Higher Education for the Twenty First Century (HETC).

Business Linkage Cells (UBLs) will be created in 15 universities.⁹ There is clearly a good deal of momentum now in promoting a structure favorable to technology transfer from research institutions to commercialization in the private sector.

In trade facilitation, CLDP through its various interventions has managed to raise awareness about TFA and some important aspects of it among a critical group of officials. Its intervention has been timely in the area of advance rulings and public information. There is now a basic understanding of advance rulings as one of the compliance requirements under TFA, as well as the measures to be taken to bring Sri Lanka up to speed in this regard among a cross-section of senior customs officials. Some of the staff are also equipped with knowledge around legal reforms and institutional arrangements necessary to systematize advance rulings in the country. Most of this is directly attributable to CLDP interventions. On public information, CLDP's contribution early in the project had raised awareness among key customs staff and had helped some of the staff to engage in an effective manner with the Trade Information Portal exercise that the Government was putting in place with support from World Bank.

In trade policy reform, CLDP's main contribution has been to introduce analytic tools, data sources and models to a set of officials. It also provided a forum to discuss policy alternatives with regard to national trade policy. The information and to some extent the analysis has been taken into higher level processes (trade policy and FTA negotiations), albeit in a limited manner. With appropriate follow up and capacity building, this has the potential to influence future FTAs and how they are communicated to the private sector and the public. CLDP has also contributed to the learning and orientation of a new batch of recruits in the Commerce Department, which was highly valued by the Director General and will bear fruit in the long run.

How can SCA and CLDP shape the next phase of programming?

The next phase of programming will be shaped by the discussions launched by this midterm evaluation and a structured assessment as described above. Since the State/SCA program manager will spend several months in the near future working on the State Department country mission strategy, CLDP should revisit its assessment that underpins the four concept notes developed in 2017. Moreover, the assessment should be longer than the usual 3-4 days and provide concrete proposals for activities over the remaining two years of the extended IAA taking into consideration the contextual aspects outlined in the following section. Modified concept papers should be produced for the various sub-programs, as necessary and discussed with State/SCA program managers. Financial absorption capacity would seem to be a problem for CLDP under the existing situation, unless they can confidently extend for a longer period.

The evaluation team found no performance issues in IPR, where CLDP is focused on technology transfer from universities and research institutes, or in TFA in which CLDP has focused on advance rulings and origin determinations. TFA is now firmly locked in to the overall process of compliance under the Trade Facilitation Implementation Plan led by the World Bank and the NTFC. However, the most recent TFA concept paper indicates doing workshops in multi-container consolidation, authorized economic operators, and post-clearance audits and risk management. All of these need to be verified as priorities

⁹ Accelerating Higher Education Expansion (AHEAD)

with the various target groups in government and the private sector. Multi-container consolidation is, however, not part of the NTFC Action Plan and may well be clarified by the report issued by the Port of Colombo assessment.

In TPR next steps should be to work in trade remedies, now that the framework law has been passed on anti-dumping and countervailing duties. Elsewhere, however, CLDP should reconfirm that the government is ready to enter into the process of preparing for accession to the WTO-GPA and undertake interventions that help in the process.

In the sub-program covering ADR, according to the most recent concept paper the focus going forward is on assisting in the creation of a new Commercial Mediation Center and training of mediators within it. The Ceylon Chamber of Commerce is in the throes of launching the Center without government participation, so its current status needs to be verified. The government may still want to launch its own or may not want to see a purely private mediation center created.

B. Program Adaptability in a Changing Context

In Sri Lanka, the promise of 2015 has given way to caution in 2018. The consolidation of democratic gains and the reorientation of national economic trajectory is at a crossroads. CLDP began its interventions in a very favorable environment. The government elected to power in August of 2015, set about moving away from a public sector led, infrastructure heavy, debt driven growth orientation to a more liberalized, private investment attracting, export-oriented, trade sector driven growth model. Simultaneously, it embarked on a fiscal consolidation regimen with IMF support and supervision, under which, after the initial populist responses, it planned to increase revenue and cut back expenditure, including rationalization of the state enterprise sector and streamlining of procurement. In addition, there were also plans for reforms in governance areas pertaining to greater transparency, accountability, power-sharing and respect for rights. It was an ambitious agenda.

After assuming power, the present government set about delivering on its mandate in the right direction. It defined a medium-term growth plan (Vision 2025) that gave shape to its liberalizing agenda. It developed a medium-term trade policy framework that included objectives around increasing competitiveness by improving trade facilitation, convergence of local and international standards, protection of intellectual property, creation of a conducive policy environment for trade and investment, and enhancing exports. It entered into agreements with the IMF and WB on investments, competitiveness, transparency, and fiscal consolidation. It moved constitutional amendments to establishing independent commissions, including a procurement commission, and passed the Right to Information Act. Government passed a comprehensive Inland Revenue Act and brought to floor a National Audit Act.

Sri Lanka ratified the WTO-TFA in May 2016. It committed to improving Sri Lanka's standing in doing business index, pursuant to which it set up eight task forces to work on it. As a part of this structure, the National Trade Facilitation Committee (NTFC) was formalized by the Cabinet, was strengthened, and a comprehensive action plan drawn up. A one-stop shop to facilitate investment was initiated. Reflecting its external orientation, the government also adopted a policy of pursuing bilateral trade agreements with key countries and has concluded a treaty with Singapore. Negotiations with India, China, and Pakistan began and are ongoing.

This burst of activities, although somewhat incoherent and less well coordinated in the initial stages, provided ample room for donor engagement and support to initiatives that were aligned with the liberalization/reform process. Substantively, these initiatives were relevant and temporally they fit in with the initial stages of the country's reform process. The context was ripe for seeding new concepts, such as technology transfer, advance rulings on imports, stocktaking of country practices against international standards (WTO-TFA, WTO-GPA), and capacity building (FTA analysis, rules of origin determination).

Beginning in late 2015, CLDP's interventions fit well in this context. The rolling assessments and very responsive design process that CLDP adopted merged well with the situation. The feasibility of interventions was, however, dependent on the availability of key government staff. The operational style adopted by CLDP of short, discrete and customized trainings and exchanges, some of which formed the source of future needs assessments, activity design, and basis for further interventions, makes sense in this context.

Three years after the 'change' of 2015, the context has evolved with implications for the operational environment facing CLDP now and through its period of extension. The change was more precipitous from the latter part of 2017. Going forward three key features to consider in this regard are the following:

- (1) Volatility in the political environment may act as a dampener. Although the basic orientation of the liberalization reform is expected to remain on course, the political momentum behind it and its pace may slow down. The resurgence of the opposition in parliament and outside over a period of time and its display of popularity in the recent countrywide local government elections will impact on the political capital that the government can apply towards bold reforms in many areas. The elections calendar with a good number of Provincial Council elections in 2018/19, the Presidential election likely in December 2019, and a parliamentary election soon thereafter would make any government risk averse in the coming months. These are bound to affect some of the subject areas that are included in the CLDP 2017 concept notes and are of concern to CLDP going forward (e.g., labor law reform, GPA accession, the pace of FTAs, amending the Customs Ordinance, Telecommunications law, and the amendment to the Universities Act establishing a legal basis for commercialization and technology transfer in universities).
- (2) The apparent divergence in policy orientation and priorities of the two main coalition partners in the government and tensions in cohabitation will impact on smooth implementation of the economic reform program as envisaged. The absence of cabinet nod for the Agency for Development (AfD), and Agency for International Trade (AfIT) that were considered as central institutional features of the economic reform process, and the recent dismantling of the Cabinet Committee on Economic Management (CEM) and empowering of the National Economic Council (NEC), are reflective of this dissonance within the government. This is particularly pertinent as the CEM was beginning to play an influential role in the reform process. There will be a reordering of the institutional arrangements that are responsible for trade policy, trade negotiations, trade facilitation, and the like. What is feasible in the current context therefore will be those aspects that all agree to be shared priority areas or those which the main actors in the government consider to be politically neutral.

- (3) At the operational level, many areas of reform and transformation are now more defined and priorities identified within them when compared to two years ago. The government over the last two years has progressed from exploring options and analyzing gaps to more defined objectives, action plans, and priorities in many of the areas of concern to CLDP. The relevant ministries and departments have more defined objectives, action plans, and targets in their respective areas. This is the case with respect to the intellectual property regime, trade policy, and trade facilitation. For instance, the NTFC and Customs Department have a clear plan, division of labor, and list of priorities for trade facilitation. NIPO and COSTI similarly have an overall plan and priorities on intellectual property. The World Bank has stepped up through different projects, for example the AHEAD project in the case of IP and technology transfer, with ITC in the Competitiveness project in the case of trade facilitation, and WIPO is a major force in IPR with its EIE project. The European Union and many of the bilateral donors (Korea/Japan/China/India) have therefore begun to focus on a narrow set of interventions within these broad areas with interventions that are more advanced and intensive. They are now therefore part of several bilateral agreements, multilateral projects, and so on.

Taking the above into consideration, CLDP as well should design interventions that fit in with these political trends, government plans and projects and with other donors, choosing those issues and areas that are robust against political changes, and move on from introductory and familiarization programs/exchanges within these areas and issues to more advanced and customized interventions that are embedded in key organizational departments. Greater attention will be necessary in the current context to ensure that interventions are complementary and synergistic. Coordination and follow up will become critical in the current context both for effectiveness, as well as for CLDP's profile in the country.

C. Monitoring Issues

Achievement Indicators

Sri Lanka program indicators were first reviewed in the document review report prior to field work, but they are important enough to be discussed again in this final report. There were three original performance indicators in the IAA statement of work (SOW) in September 2015. These original indicators are drawn from the DOS Office of U.S. Foreign Assistance Resources Standardized Program Structure. The first two are, strictly speaking, measures of inputs and the third indicator measures outputs, rather than results.

1. Number of person hours of training completed in trade and investment capacity building supported by USG assistance.
2. Number of days of US supported technical assistance in trade and investment capacity building provided to counterparts or stakeholders.
3. Number of policy reforms/laws/regulations/administrative procedures drafted and presented for public/stakeholder consultations to enhance sector governance and/or facilitate private sector participation and competitive markets as a result of USG assistance.

A CLDP Indicator Template from FY 2017 presents the indicator values achieved in the first program year and the projections for the two succeeding years. The Mission Objective is given as: "Sri Lanka

Improves Its Business Climate with Greater Transparency of Government Transactions and Adherence to Macroeconomic Principles.” There is no baseline value for any of these indicators, since these are really inputs or outputs that began with the program. Moreover, person hours are not gender disaggregated where they could certainly be.

Table 3: CLDP Indicator Progress in FY 2016 and Future Targets

Indicator	FY 2016 Result	FY 2017 Target	FY 2018 Target
1. Person hours of training in trade and investment capacity supported (# 4.2.2-10)	1722	1500	1500
2. Number of days of training in trade and investment capacity provided (# 4.2.2-11)	9	10	12
3. Number of policy reforms/laws/regulations/administrative procedures drafted and presented (# 4.4.1-33)	6	7 5 = Stage 1 2 = Stage 2	8 5 = Stage 1, 2 = Stage 2 1 = Stage 3

Indicator 3 on number of policies, laws, regulations, etc. drafted and presented for stakeholder and public consideration is based on five stages of accomplishment defined in most of the activity reports. Stage 1 is review and/or analysis of the item; Stage 2 is public debate and/or consultations with stakeholders on the proposed new or revised item; Stage 3 is presentation of the item for legislation or decree; Stage 4 is official approval of the legislation or decree of the item; and Stage 5 is actual implementation of the item. At the end of FY 2017, no item had progressed beyond Stage 2.

Following these standard indicators, the IAA lists 10 outcomes which are to be tracked by these standardized indicators. Most of these outcomes are actually outputs. Work on accession to the WTO GPA was postponed and little progress was made in working in commercial mediation and arbitration.

The 2017 amended IAA statement of work (September 2017) now lists 17 outcomes to be tracked and measured by five indicators, four of them now customized and tracking the four sectors of activity:

1. Number of WTO Trade Facilitation Agreement provisions supported by USG assistance disaggregated for new and continuing provisions being supported.
2. Number of individuals who complete USG assisted capacity building programs in patents, copyrights, trademarks, criminal IPR enforcement, trade secrets, and/or enforcement cases.
3. Number of policy reforms/laws/regulations/administrative procedures/action plans drafted for public and private stakeholder consultations to enhance public awareness and/or the trade and investment policy environment.
4. Number of individuals who complete USG assisted capacity building programs in alternative dispute resolution, contract disputes, improving contract enforcement.
5. Number of WTO Government Procurement Agreement provisions supported by USG assistance.

An Indicator template produced recently for the annual State Department Performance Plan and Report (PPR) gives the following values for these new indicators. The three indicators from the original IAA are retained in the reporting under the PPR, but one is repeated in the second revised group yielding a total of seven indicators now reported. The Custom 2 indicator on number of policy reforms, laws, regulations, etc. is slightly reworded to indicate drafting only (not drafted and presented) and the PPR does not break out the achievements by stage.

Table 4: Indicator Achievements through FY 2017 and Projections for Subsequent Years

Indicator	FY 2016 Result	FY 2017 Projected	2017 Achieved	FY 2018 Projected	FY 2019 Projected
1. Number of WTO TFA provisions supported (EG 2.1-1)	n/a	4	4	2	2
2. Person hours of training in trade and investment capacity supported (# 4.2.2 – 10)	1722	1500	1606	1000	1000
3. Number of days of training in trade and investment capacity provided (# 4.2.2 – 11)	9	10	12	12	12
4. Number of individuals who complete USG assisted capacity building programs in IPR (Custom indicator 1)	n/a	300	324	200	200
5. Number of policy, reforms, laws, regulations, administrative procedures, action plans drafted in public awareness and/or trade policy/ investment policy environment (TPR) (Custom indicator 2)	n/a	3	3	3	3
6. Number of individuals who complete capacity building programs in ADR (Custom indicator 3)	n/a	4	4	8	16
7. Number of WTO GPA provisions supported (Custom indicator 4)	n/a	n/a	n/a	2	2

While an improvement over the initial set of indicators and outcomes of 2015, these new measures really track activities and outputs rather than higher-level results and outcomes.

The CLDP program in Sri Lanka has been considerably enhanced financially, although it still focuses on Intellectual Property Rights regime (IPR), Trade Policy reform (TPR), and Trade Facilitation measures (TFA). Materials provided for review by State/SCA include three problem statements with objective trees that are useful, but they could be completed by placing major outputs under each of the objectives and feeding into them. These objectives and key supporting outputs would each have one or two proxy

indicators that should be an acceptable measure of progress toward reaching the objectives. The program has developed a useful flow chart from inputs to activities to outputs and on to short-term and long-term outcomes. A matching of short-term outcomes and final objectives (results) to each sub-program is still lacking, as are indicators to track or validate them. The ten outcomes of the 2015 IAA were expanded to 17 in 2017, but they remain very general without performance tracking indicators, and are not always linked to CLDP manageable interest (within CLDP's control to affect the outcome).

The program goal given in these objective trees can also be given one or two indicators to measure this level of program achievement. In the case of IPR, the goal of an effective system for the enforcement of intellectual property rights could be measured by time to resolve certain common disputes or number of cases presented and resolved. The twin goals of trade policy reform could be given some quantitative indicators, such as diversification, investment, and growth measures for the one, and successful trade negotiations guided by a national trade policy for the other. In the case of trade facilitation, cost and time measures for a set of imports and exports can be tracked as they are reduced through time. The number of requests for advance rulings, time spent in receiving them, and the actual number of rulings handed out could be tracked as key indicators.

Overall Conclusions

Successes

- CLDP interventions have been very relevant to the context and well aligned with both USG and GSL priorities following the elections of January 2015.
- CLDP has coordinated and fit well with other key donor plans and activities, particularly in the IPR and TFA areas. CLDP avoided duplication of assistance with other donors and found niches in advance rulings and origin determinations in Trade Facilitation and technology transfer in the Intellectual Property regime.
- Sri Lankan officials and beneficiaries, as well as donor and U.S. partner officials, consider CLDP program managers to be efficient, rapid, responsive and well organized and their technical assistance and resource consultants to be of high quality.
- CLDP technical assistance has been well targeted, relevant to needs, and much valued by counterpart institutions and participants.
- CLDP has created a basic understanding of advance rulings among a cross-section of senior customs officials as one of the compliance requirements under WTO-TFA, as well as the measures to be taken to bring Sri Lanka up to speed in this regard. It has also equipped some staff with knowledge around legal reforms and institutional arrangements necessary to systematize advance rulings in the country, thus setting up the basic ground work required to move Sri Lanka towards TFA compliance.

- CLDP has introduced trade and market analysis tools/models and places to access data considered relevant by the Commerce Department for their work in trade negotiations.
- CLDP has contributed to the learning and orientation of a batch of new recruits to the Department of Commerce who will benefit from this input to function as effective commercial attaches.
- TA activities have been sequenced and reinforced in technology transfer for universities and research institutes. Especially in IPR, a core group has been formed in the major universities that accumulate learning and maintain momentum through trainings by various donors.
- CLDP efforts helped Sri Lankan beneficiaries to consider U.S. technology transfer modalities as models to be pursued in Sri Lanka.

Challenges

Political

- The absence or lack of clarity on the legal basis for some of the institutions/aspects in IPR and TFA hinder impact of interventions to be realized. One relates to the Universities Act of 1978 that governs institutions like technology cells and their commercialization processes, and the other is the 19th Century Customs Ordinance that does not adequately cover advance rulings and other TFA requirements. The required amendments to these are part of an immensely political legal reform process.
- Given the power dynamics in the current government, the free trade agreements (FTAs) and trade policy are determined more now by the Ministry of Development Strategies and International Trade than by the Commerce Department. The analysis for these negotiations and policy are provided by the Central Bank and think-tanks. The Commerce Department, which is CLDP's principal interlocutor in this area, is an important actor but limited in its ability to influence some key decisions. As such, without subsequent reinforcement, the efficacy of some of the past interventions in these areas are unclear.
- While most of the trade facilitation reforms can be considered politically neutral, governmental political change may put at risk accomplishments in university IP reform, especially if the current reform-minded UGC chairman and Board are replaced. Similarly the trade policy area is susceptible to political changes.

Institutional

- There are institutional challenges within the targeted interlocutors that impact capacity building in TFA and TPR. Change of leadership, retirement of points of contact and senior workshop

participants following training, the heavy day-to-day work load of participants, delays in recruitment in the Customs and Commerce Departments hinder institutional commitments to follow through after trainings.

- In the Customs Department, where CLDP engaged in significant technical assistance, there did not appear to be any real mechanism or sanctioned change process to convert enthusiastic workshop participation into institutional decisions. Until changes are effectively prioritized through top-down processes, including through the influence of the National Trade Facilitation Committee (NTFC) Action Plan and top leadership buy in at the policy and administrative levels, chances of instituting changes are limited.
- There appear to be two currents in creating technology transfer entities within universities which need to be reconciled. There is overlap between the World Bank-supported University-Business Linkage cells (AHEAD project) and WIPO/CLDP-supported Technology Transfer Offices (TTOs) in the Enabling IP Environment project (EIE).

Management

- Long-distance management from Washington has meant that many of the outcomes and next steps announced following each workshop have not enjoyed follow-through and needed momentum has been lost. Given the nature of the capacity building outcomes envisaged, without strategic engagement with the institutional leadership and committed working groups, real change is likely to be elusive. Moreover, the absence of CLDP managers in country affects coordination with other donors like the WB, who are responding to local developments on a real time basis
- The training of district judges and magistrates in customs appeals and protection of intellectual property rights was not well targeted and does not appear to be a priority for the Judges' Institute. Customs appeals and IP cases rarely reach district judges and magistrates. With the retirement of the former head of the Judges' Institute, further demand for this training appears lacking.

Recommendations

Structured Assessment

- The next phase of programming should be shaped by the discussions launched by this midterm evaluation. Since the State/SCA program manager will spend several months in the near future in Sri Lanka working on the State Department country mission strategy, CLDP should undertake its new assessment during that time.
- The assessment should look in a structured manner at (a) political feasibility, (b) institutional and leadership buy-in, (c) resources for sustainability, (d) alignment with country and organizational priorities, (e) commitment and capacity to follow up, (f) changing donor involvement and directions,

(g) contingency plans, and (h) key stakeholders to be engaged with as change agents. It should result in informing a strategic approach to change rather than discrete interventions. Discussing and sharing this approach with USAID/Sri Lanka would enhance its value and increase U.S. agency coordination.

- The assessment should validate content and objectives of all sub-programs and project a sequence of activities over the next two years in each. The assessment should include discussions with relevant government agencies, universities, donor organizations, U.S. government, and other stakeholders in each of the four sub-programs.
- The new assessment should be detailed and structured enough to nail down future directions and provide concrete proposals for activities over the remaining two years of the extended IAA. Modified concept papers should be produced for the various sub-programs, as necessary, and discussed with State/SCA program managers. Various contingencies should be examined in these papers that take into account possible political shifts in Sri Lanka and new program challenges due to lack of supportive policy and legal changes or other unforeseen events.

Program Priorities

- CLDP needs to chart its course in the IPR field going forward. It should continue to specialize in institutionalizing technology transfer, supporting TTOs in universities and research institutes, and working within the existing framework of the EIE project. The private sector and chambers of commerce should be involved far more in CLDP activities going forward. However, the feasibility and value of training judges in IP enforcement and customs officials in customs appeals needs to be validated.
- Sri Lanka government and donor plans have become more defined in TFA, and CLDP should engage with other key players, including the WB and EU, and build on its already established niche intervention areas. It is advisable to focus on a narrower set of issues and analyze capacity requirements more fully (knowledge/skills, legal and regulatory change, institutional and behavioral change). On TFA this would involve taking the lead from NTFC in areas on which to focus and the tasks to accomplish under them. This means that CLDP should coordinate closely with the NTFC to proactively identify niche areas that play to CLDP strengths. This will include continued work in advance rulings but also in areas chosen from among Authorized Economic Operators (AEOs), risk management and post clearance audit that are identified by the Customs Department as priority areas for 2018. Likewise in TPR, the areas to focus on should be drawn from among trade remedies, anti-dumping and countervailing duties, advanced trade policy analysis, and possibly GPA.
- CLDP should re-engage with the Sri Lankan Commerce Department in assisting Sri Lanka to accede to the WTO Government Procurement Agreement. This could begin with a follow-up study to the one done under the USAID/STAIR project.
- CLDP should focus on the possibility of addressing the legal bottlenecks in the areas of TFA (Customs Ordinance) and IPR (Universities Act) that limit institutionalization of CLDP technical assistance.

- Building on its introductory programs in TPR for negotiations and trade promotion, CLDP should now offer more advanced capacity building in both skills building and in institutionalization, to a wider target group, in order for them to contribute effectively to free trade agreement negotiations. This would include support to the new research unit in the Commerce Department.
- Given their importance and relevance and the fact that the required law has been passed in anti-dumping, workshops in anti-dumping and countervailing duties should now be implemented. The workshop in advanced trade compliance and WTO dispute resolution as proposed in the 2015 TPR concept note should also be considered for implementation.
- CLDP needs to verify soon whether it is worthwhile to proceed under the ADR sub-program in the creation of a new non-governmental Commercial Mediation Center and the training of mediators within it as proposed in the 2017 ADR concept paper. Similarly it should revisit its proposed interventions in the areas of labor law reform, IT legislative framework, and multi-container consolidation that are new streams of interventions unrelated to the ongoing interventions.

Enhanced Coordination and Multi-Stakeholder Inclusion

- While continuing to anchor its TFA and TPR interventions in the Customs and Commerce Departments, CLDP should reach out to a larger group of stakeholders who will be critical to ensure capacity building in the chosen issues. This means not only those who have a stake in outcomes, but also those who are needed to push through the desired reforms and changes.
- CLDP needs to redouble its efforts to achieve greater inclusion of private sector actors in interventions in all sub-programs to ensure that they are aware of reforms under way, to engage them in consultations, and to build an engaged constituency that is invested in IP and trade policy reforms. Greater collaboration and involvement of key trade chambers is desirable. Capacity building in communications around FTAs, TFA, and trade policy are most relevant.

Enhanced Operational Modality with the Full Mix of CLDP Services

- Given the substantial additional financial resources in the program since September 2017 and based on a new round of sub-program assessments, CLDP should consider an extended in-country presence to engage strategically with target groups between capacity-building events and follow up as needed. An extended presence should also help to coordinate with other donors, whether partners in activities or not.
- If possible, a resident advisor should be placed in Colombo to maintain contact with target groups and coordinate with other donor activities. This might be an intermittent advisor for a few months at a time, allowing more frequent coordination and validation of assessments. The person may be part of the next assessment exercise and stay on to ensure that planning is appropriately carried out.

- CLDP needs to form and reinforce core working groups in Customs and Commerce Departments, a group of involved persons that can be given a sequence of trainings and can also be assisted by other donors, where appropriate. This has been the model developed in IPR. Core working groups would follow through on decisions taken in the training programs, would advocate for changes within the institution, and be the reference point for chosen issues when dealing with other donors.
- CLDP should consider an enlarged mix of interventions for objectives in TFA and TPR, including expert advisory support and guidance, short-term advisory placements, fellowships, and U.S. based consultations. This will result in a core set of trained personnel that can train others in key policy and operational areas. CLDP should not confine itself to workshops, seminars, and roundtables but consider these other modes of intervention and support to realize capacity building objectives. The recent consultations tour for the Commerce Department recruits is a good example to repeat.

Improved M&E Framework

- CLDP should update its monitoring framework to measure and guide its implementation. This could be done based on the results of a post-evaluation assessment and any updating of program targets and objectives. A hierarchy of outcomes with appropriate performance indicators should be proposed for each sub-program from outputs to outcomes to final objectives, even if realization is likely to be in tandem with donor partners.

Annex A: Persons Interviewed and in Focus Groups in Sri Lanka and the U.S.

Interviewees

1. Mohan de Silva	Chairman, University Grants Commission
2. Partha Mazumdar	Chief Economist, US Embassy, Sri Lanka
3. Brian Wittnebel	Deputy Economic Growth, USAID/Sri Lanka
4. Ms. Radika Obesekara	Marketing Director, Dipped Products PLC
5. Ms, Sonali Wijeratne	Director General, Department of Commerce
6. Ms. Thusitha Abeyunga	Senior Professor, University of Colombo
7. K.R.R. Mahanama	Dean, Faculty of Science, University of Colombo
8. Ms. Geethanjali Ranawaka	Director General, NIPO
9. Ms. Nissansala Abhayaruwan	Patent Examiner, NIPO
10. Ms. Lena Zezulin	Consultant, USAID SAIL Project
11. S. Rajendran	Additional Director General, Customs Department
12. M. Ravindrakumar	Director, Customs Department
13. H.M.S. Premarathna	Director, Customs Department
14. Ms. Pubudinie Wickramasekara	Consultant, NTFC Secretariat
15. Patrick Vandenbruaene	Donor Coordinator, UNDP
16. Ms. Maya Karunaratne	Knowledge Management and Operations Analyst, UNDP
17. Ms. Dhara Wijayatilaka	CEO, Ceylon Chamber of Commerce
18. Shiran Fernando	Chief Economist, Ceylon Chamber of Commerce
19. Ms. Manori Dissanayaka	Assistant Secretary General, Ceylon Chamber of Commerce
20. Ananda Jayawardene	Director, National Science Foundation
21. Ms. Himali Jinadasa	Senior Advisor to Minister, Ministry of Industry and Commerce
22. Harin de S. Wijeratne	CEO, Sri Lanka Institute of Nanotechnology (SLINTEC)
23. Ms. P.M.M.S Harischandra	Professor, University of Moratuwa
24. Nalin Dolawatta	Sri Lanka Inventors Commission (SLIC)
25. Ms. Subashini Abeysinghe	Verite Research Pvt, Ltd.
26. Harsha Aturupane	Lead Economist, Education Global Practice, World Bank
27. Ajith de Alwis	Project Director, COSTI
28. Ms. Vindiya Jayawickrama	Deputy Project Manager, COSTI
29. Ms. Bhagya Herath	COSTI
30. Udayanath Liyanage	Additional Director General of Customs, Corporate Cluster
31. Sunil Jayaratne	Director of Customs, Policy Planning and Research
32. A.W.Sudath	Deputy Director of Customs, Customs Department
33. Achala Chandrasekare	Deputy Director of Customs, Policy Planning and Research
34. Dinesha Samaranayake	World Bank, Colombo
35. Melani Schultz	Chief of Party, SAIL Project, Colombo
36. Thomas Borula	Chief of Party, STAIR Project, Colombo

Focus Group Participants



37. A.L.C.W Weerakoon	Deputy Superintendent of Customs, Customs Department
38. Ms. Shanthini Dinesh	Deputy Superintendent of Customs, Customs Department
39. Ms. I.A.B.S. Perera	Deputy Superintendent of Customs, Customs Department
40. R. Lamahewa	Director of Customs, Customs Department
41. S. Anandeswaran	Deputy Director of Customs, Customs Department
42. I.A.D.A. Perera	Retired Director of Customs, Customs Department
43. S. Mahesan	Director of Customs, Customs Department
44. Mahesh Edirisinghe	Commissioner, Sri Lanka Inventors Commission
45. J.A.K.S. Jayasinghe	Professor, University of Moratuwa
46. Ms. Kavindra Perera	Assistant Director, Department of Commerce
47. Sandun Sameera	Assistant Director, Department of Commerce
48. Ms. Gaya Kasunmalee	Assistant Director, Department of Commerce
49. Ms, Wickramage Sulochani	Assistant Director, Department of Commerce
50. Ms. Nadeeja Wickramarachi	Senior Science Officer, National Science Foundation
51. Ms. Senthathirajah	Dean, Faculty of Management, University of Colombo
52. A.G.T. Sugathapala	Director, Enterprises
53. B.D.R. Pransantha	Senior Lecturer, Faculty of Agriculture, University of Peradeniya
54. Ms. Priyanwada Warakodaga	Science Officer, National Science Foundation
55. Vajira Dissanayake	Director, Human Genetics Unit, University of Colombo
56. Ms. Ameena Zacky	Consultant, Commercial Projects, SLINTEC
57. Ms. Seevali Wijewantha	Assistant Director of Commerce, Department of Commerce
58. U.P. Jayasinghe	Board of Investment
59. W.G.P.R. Wathugala	Senior Economist, Central Bank of Sri Lanka
60. E.W.A Shantha	Appraiser, Customs Department
61. N.D. Hettiarachchi	Assistant Superintendent of Customs, Customs Department
62. S.N. Kumanayake	Appraiser, Customs Department
63. M.Gunarathne	Customs Department
64. E.G. Anton	Customs Department
65. K.P.W.H. Karunathilake	Customs Department
66. H.W.C. Shyamal	Customs Department
67. A.M.T.B. Adikaram	Customs Department

Persons Interviewed in the United States

CLDP

Michael Delaney	Consultant, CLDP, U.S. Department of Commerce, Washington, D.C.
John Dickerson	Senior Commercial Law Advisor, CLDP, U.S.DOC, Washington, D.C.
James Filpi	Senior Counsel, International, CLDP, U.S.DOC, Washington, D.C
Stephen Gardner	Chief Counsel. CLDP, U.S.DOC, Washington, D.C
Megan McMillan	Attorney Advisor, International, CLDP, U.S.DOC, Washington, D.C
Joe Yang	Senior Counsel, CLDP, U.S.DOC, Washington, D.C



Embassy of Sri Lanka

Sumedha Ponnamparuma Commercial Minister, Sri Lanka Embassy, Washington, D.C.

USCBP

Ieva O'Rourke Branch Chief, US Customs and Border Protection, Washington, D.C.

USDOC

Erol Yesin International Trade Specialist, International Trade Administration, U.S.DOC

USPTO

Ameen Imam Attorney Advisor, US Patent and Trademark Office, Alexandria, Virginia.

Marina Lamm Patent Attorney, US Patent and Trademark Office, Alexandria, Virginia.

Minna Moezie Attorney Advisor, US Patent and Trademark Office, Alexandria, Virginia.

State Department, SCA Bureau

Amy Eagleburger Economic Officer, U.S. State Department/SCA Bureau, Washington, D.C.

Jason Evans Desk Officer (Sri Lanka/Maldives), U.S. State/SCA Bureau, Washington, D.C.

Jeffrey Ficken Regional Program Officer, U.S. State Department/SCA Bureau, Washington, D.C.

Thomas Holt M&E Officer, U.S. State Department/SCA Bureau, Washington, D.C.

Jacqueline Homann Program Officer, U.S. State Department/SCA Bureau, Washington, D.C.

USTR

Christina Kopitopolous, Director for Customs and Trade Affairs, Office of the U.S. Trade Representative.
Washington, D.C.

Zeba Reyazuddin Director for South and Central Asian Affairs, Office of the U.S. Trade
Representative, Washington, D.C.

WIPO

Richard Cahoon Consultant to World Intellectual Property Organization. Ithaca, New York.



Annex B: Documents Consulted

Evaluation Design

US State/SCA and CLDP/USDOC. 2017. "DRAFT Statement of Work: Collaborative Evaluation: Commercial Law Development Program in Sri Lanka."

Lumbee Tribe Enterprises. November 2017. "Collaborative Evaluation: Commercial Law Development Program in Sri Lanka." Amended Proposal.

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4th Quarter FY 2016 Activity Report (July 1 to September 30, 2016). CLDP. Washington, D.C.

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4th Quarter FY 2017 Activity Report (July 1 to September 30, 2017). CLDP. Washington, D.C.

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CLDP Washington. November 2016. "Trade Policy Analysis Seminars with the Sri Lanka Department of Commerce." Report on trade policy activities from November 28-December 1, 2016.

CLDP Washington. January 2017. "Program/Trip Report Sri Lanka: Advance Rulings and Origin Determinations Training." Report on customs training from January 9-10, 2017.

CLDP Washington. April 2017. "Sri Lanka Intellectual Property Programs April 24-27, 2017." Report on activities World IP Day and University IP Policy Workshop.

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- State/SCA. n.d. "Root Causes: ADR." 1p.
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- State/SCA. November 2016. "Commercial Law Development Project – IPR Activity Stakeholders. 2 pp.
- State/SCA. November 2016. "Commercial Law Development Project – Trade Facilitation Measures Activity Stakeholders. 2 pp.
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- State/SCA. n.d. "Stakeholder Analysis Matrix." 5 pp.
- State/SCA. n.d. IPR Objective Tree. 1 p.
- State/SCA. n.d. TFA Objective Tree. 1 p.
- State/SCA. n.d. TPR Objective Tree. 1 p.
- State/SCA. n.d. Objective Flow Chart (inputs to long-term objectives). 2 pp.
- State/SCA. n.d. "Stakeholder Map." 1 p.
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World Bank. 2015. “Sri Lanka WTO TFA Validation and Reform Map.” September 2015. (Gap Analysis).

First FTA signed by Sri Lanka this year after over a decade (with Singapore):

<http://www.sundaytimes.lk/180128/business-times/sl-spore-fta-to-open-trade-to-the-east-asian-region-278377.html>

Sri Lanka's last Trade Policy Review submission to WTO (end 2016):

<http://www.sundaytimes.lk/180128/business-times/sl-spore-fta-to-open-trade-to-the-east-asian-region-278377.html>

Government Procurement Agreement of WTO that Sri Lankan Government wants to accede to:

https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm

Trade Facilitation Agreement (TFA) of WTO that Sri Lanka has accepted:

https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm

Draft National Trade Policy developed by Ministry of Development Strategies and International Trade (MoDSIT): [http://www.iesl.lk/resources/common/MoDSIT-](http://www.iesl.lk/resources/common/MoDSIT-Natinal%20Trade%20Policy%20(Draft)_24%2002%202017.pdf)

[Natinal%20Trade%20Policy%20\(Draft\)_24%2002%202017.pdf](http://www.iesl.lk/resources/common/MoDSIT-Natinal%20Trade%20Policy%20(Draft)_24%2002%202017.pdf)

Sri Lanka: Company Perspectives; An ITC Series on Non-Tariff Measures, 2011 available at

http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/NTM%20Report_Sri%20Lanka.pdf

Annex C: Statement of Work

Collaborative Evaluation: Commercial Law Development Program in Sri Lanka

Nature and Purpose of the Evaluation

The U.S. Department of State's Bureau of South and Central Asian Affairs (SCA) covers the countries of Bangladesh, Bhutan, India, Kazakhstan, Kyrgyzstan, Maldives, Nepal, Sri Lanka, Tajikistan, Turkmenistan, and Uzbekistan. The countries of South and Central Asia have economic and security importance to the United States. The region is home to over 20 percent of the world's population and a \$1.7 trillion regional GDP.

Created in 1992, the Commercial Law Development Program (CLDP) is a program of the U.S. Department of Commerce Office of the General Counsel that provides commercial law technical assistance to the governments and private sectors of developing and transitional countries in support of their economic development goals. CLDP assists countries by providing training and consultative services to government representatives, lawmakers, regulators, judges, lawyers, educators and other stakeholders.

The January 2015 Sri Lankan presidential election ushered in a new political era and opportunity for renewed U.S. diplomatic and development engagement to support the country's ongoing reforms. Through funds provided by SCA, CLDP is providing technical assistance to strengthen Sri Lanka's commercial capacities to ensure a competitive, transparent framework and processes for economic growth. This includes assistance focusing on trade and investment policy, alternative dispute resolution, and intellectual property protection.

The purpose of this external evaluation is to assess the performance of CLDP project activities against objectives and expected outcomes, examine the implementation problems or successes, and draw lessons learned for future programming. Recommendations and findings from this evaluation will identify corrective measures for the design, implementation, monitoring, and evaluation of the project. Additionally, the evaluation can articulate actions for follow-up or to reinforce initial benefits of previous activities. This evaluation is a performance evaluation, where the focus of the examination is on implementation, inputs, outputs, and likely expected outcomes. The project initiative is approximately at the mid-point of its performance period, so project managers need to have an objective assessment of implementation progress, problems and challenges, which will enable mid-point corrections if necessary. The intended audience for the evaluation is primarily the managers on this project and the Economic Section at U.S. Embassy Colombo. State Department and Commerce officials have a keen interest in the recommendations and findings of the evaluation, as these officials will ultimately have to make funding and programmatic decisions. Other audiences could include the U.S. Agency for International Development (USAID), the Bureau of Economic and Business Affairs within the U.S. Department of State, and offices within the Department of Commerce.



CLDP will provide input and coordinate on the evaluation, however, SCA will have contracting authority and oversight of the Evaluation Team.

Background and Current Status of the Effort

In 2015, SCA and CLDP entered into an interagency agreement to provide for technical assistance to Sri Lanka. Through this agreement, CLDP has conducted activities with the objective of improving Sri Lanka's commercial, legal, and regulatory framework to support increased economic development in the country. Funding provided by the interagency agreement has supported capacity building workshops, provided trade policy toolkits for Government of Sri Lanka officials to use in trade negotiations, and helped develop the technical capacity of Sri Lankan judges to decide intellectual property cases in a fair and predictable manner.

The initial scope of CLDP in Sri Lanka was budgeted for four sub-programs a) trade capacity building; b) government procurement; c) alternative dispute resolution; and d) intellectual property reform. The overarching objectives for these activities were to:

- Assist Sri Lankan government officials in developing targeted economic and trade policy analysis for negotiation and trade promotion;
- Encourage Sri Lankan government officials to consider introducing additional facilitation reforms, consistent with the WTO Free Trade Agreement;
- Introduce procurement officials to specific reforms for future accession to the WTO Government Procurement Agreement;
- Educate judges, lawyers, enforcement agencies, and the public on the importance of intellectual property rights; and
- Educate judges and lawyers to improve contract enforcement through viable alternatives for contract disputes.

During the performance period of the project there has been coordination with USAID, U.S. Embassy Colombo, the World Bank, the U.S. Patent and Trade Office, and the Asian Development Bank to avoid duplication and to ensure that CLDP programs complement existing donor and U.S. government efforts.

There have been challenges in implementing activities for government procurement and alternative dispute resolution. Following the initial October 2015 assessment, CLDP and SCA colleagues agreed to delay technical assistance in these areas and prioritize other areas of assistance, until the Sri Lankan government and private sector counterparts are well-positioned to benefit from technical assistance in these areas at the time.

SCA will continue funding ongoing activities through this interagency agreement in the coming year. Currently, standardized indicators are being monitored for all project activities. No baseline data was available or collected before the project began.

Evaluation Questions

The Evaluation Team will be tasked with answering three core questions, and associated sub-questions:

- I. Was the project designed to support the objectives of enhancing and developing the stated sector and/or target group?
 - a. Did the project capitalize on donor and U.S. government expertise?
 - b. What are the target groups' needs and are they appropriate for the success of the project?

- II. How has implementation met the needs of target groups?
 - a. What progress remains to be accomplished within the scope of the project's designs?
 - b. Are there facets of the project that should have been designed differently?

- III. What challenges have the interventions faced in building the capacity of the target groups?
 - a. Are there adjustments needed to the project implementation? If so, how should this be done?
 - b. What project activities were not completed and why? What have been some successes? How can SCA and CLDP shape the next phase of programming?

SCA anticipates that the research conducted to answer these questions should generate data, findings, and recommendations that can be used by program managers and other stakeholders involved in performance management.

Evaluation Design, Data Collection Methods, and Approach

The Evaluation Team's proposal should outline a participatory approach to implementing a mixed-method evaluation design. The Evaluation Team will be responsible for developing an evaluation strategy and methodology that includes a mix of qualitative and quantitative data collection and analysis, which will be presented as part of the work plan, as outlined in the deliverables below. The suggested methodology should include, but is not limited to, the following:

- Document review, including project progress reports and design materials.
- Individual interviews and focus groups in Washington, D.C. with relevant Department of State and Commerce staff, and other U.S. government, implementing partner, and external organizations. Some interviews may need to be conducted by phone, video teleconference, or email. An electronic survey with these sources would be a feasible adjunct method
- Interviews with local partners, community members and current and former beneficiaries in Sri Lanka, when and where this can be accomplished safely. Remote methods might also be used.
- Relevant reports of other international or donor organizations.
- Relevant existing data such as surveys and third-party economic data.

SCA will provide an initial list and contact information of relevant personnel, and organizations. The Evaluation Team will also be free to follow leads beyond the provided contact list.



The proposal should take into account the following elements, as SCA expects a productive working relationship with project managers and the Evaluation Team while the latter is conducting the evaluation independently:

I. The Evaluation Team should hold initial meetings with project managers and other stakeholders to clarify information needs and to establish a consultative process.

II. The Evaluation Team should initiate discussions with project managers and other stakeholders to deepen the Evaluation Team's understanding of the vision of the evaluation and serve the knowledge needs of both SCA and CLDP.

III. The Evaluation Team should invite project managers' participation in the evaluation process while preserving its analytical independence to make final decisions regarding the findings, conclusions, and recommendations. The Evaluation Team will retain the overall and final responsibility for the content of all reports. SCA may assign a staff member to participate in any phase of the evaluation, subject to consultation with the Evaluation Team. These assignees will likely have relevant experience and interest at a management or policy level, but no direct involvement or interest in evaluation activities.

IV. The Evaluation Team may hold conference calls, with both SCA and CLDP staff involved in implementing or managing the project, U.S. Embassy Colombo, and Washington, D.C. representatives to introduce the Evaluation Team and discuss the overall approach, and logistics. Biweekly conference calls with Washington, D.C. staff to discuss updates and any other areas requiring special attention.

V. The Evaluation Team should coordinate with its local logisticians who can set up travel and appointment schedules. U.S. Embassy may assist in these areas as necessary, in terms of scheduling meetings and providing points of contact.

VI. All surveys and other interview methods must follow the ethical and informed consent rules set out by the American Evaluation Association.

General Evaluation Team Requirements

The Evaluation Team should provide the appropriate number of staff to fully execute the evaluation, using a cost-effective approach. The core Evaluation Team should be a multi-disciplinary team with knowledge of and expertise in evaluating and conducting an assessment of U.S. government technical assistance programs, which typically are implemented in environments with complex interactions between economic, political, and social elements. Team members should have experience with mixed-method studies and be able to analyze, synthesize, and draw broader conclusions and lessons learned

from various sources of data and findings in a manner that is easily grasped by the evaluation stakeholders.

The Evaluation Team will provide resumes for each individual on the team, all of whom will be regarded as key personnel, and therefore are to be essential to completing the evaluation. SCA expects that key personnel will be available to conduct the activities noted in the statement of work. At least 30 days prior to diverting any of the specified individuals to other programs or contracts (or as soon as reasonably possible), the Evaluation Team will notify SCA program staff, and submit a justification for the diversion or replacement request (including proposed substitution(s)) to permit evaluation by SCA program staff of the impact this could have on the performance under this statement of work. The Evaluation Team shall not divert or otherwise replace key personnel without written consent from the Department's program staff.

SCA expects that key personnel proposed by the Evaluation Team will be available, and responsible for their own housing, logistics, and transportation, though at times they may need to rely on U.S. Embassy Colombo for assistance in making country-level contacts. Additionally, SCA expects proposed key personnel to be the staff executing the evaluation and any changes in key personnel needs to be reviewed and approved.

The following is just an illustrative description of the Evaluation Team composition, and SCA expects and welcomes alternative recommendations to best achieve the vision of this evaluation.

Evaluation Team Leader/Senior Level Evaluation Design and Execution

The Evaluation Team Leader will provide technical direction and overall guidance to key personnel for all activities, with a particular focus on supervising data collection, analysis and the preparation of evaluation plan, approach, and methods.

This individual must have:

- Demonstrable track record in leading, coordinating, and delivering utilization-focused evaluations and assessments to program managers and senior policy makers.
- Fluent in English and have a deep background in research, writing, analytical and effective presentation skills catering to non-specialists. Must have an ability to deliver a quality written product in English that lends itself to actionable decisions.
- Experience working in Sri Lanka (or in South Asia) in work related to trade and economics is highly desirable.

Mid-Level Trade Policy/Trade Facilitation Specialist

The Specialist is primarily assisting the Evaluation Team Leader for all evaluation activities including developing the evaluation plan, approach, and methods.

- A Master's degree in the social sciences.
- A demonstrable record of writing evidence-based evaluations and studies.

- Experience working in South Asia in work related to trade policy and trade facilitation as it relates the WTO Trade Facilitation Agreement is highly desirable

Junior Specialist/Research Assistant

This junior-level specialist will assist to carry out a literature review, design research instruments, drafting reports, conducting data analysis.

- Demonstrable background academically (for example focused course work) or through related work experiences in intellectual property enforcement, or trade policy is highly desirable.
Evaluation Team Logistics Support Staff

The Evaluation Team Leader or support staff will be responsible for overall management and coordination of project activities from the date of award to closeout. We expect that this role would be with someone currently in or familiar with Sri Lanka to provide the proper logistics support necessary for the Evaluation Team.

Expert in Data Presentation:

The Evaluation Team is strongly encouraged to engage the services of an expert in devising and presenting complex information to both technical and laymen users, including such mediums as infographics and other forms of communicating information. This person will assist the Evaluation Team to develop graphics for reports and presentations, so that program managers and senior decision makers in both Departments can easily internalize and use the information for actionable decision making.

Timetable and Staff Time Allocations

We anticipate for the evaluation to begin in September/October 2017 and last approximately 6-8 months. A timetable for initial planning, data collection and analysis, report writing and final submission of the report must be included in the proposal. In addition, a table of staffing days by task and team member is required. Below is an illustrative framework for the Evaluation Team to use for drafting the technical proposal to assist with initial planning. SCA anticipates and encourages the Evaluation Team to provide recommendations on the best approach to achieve the goals of this evaluation.

PHASE I

- Draft Comprehensive Work Plan
- Proposed Methodology for Data Collection

PHASE II

- Literature and Project Document Review
- Current State of Play Report

Phase III



- Field Work
- U.S. Colombo In- and Out- Briefings

PHASE IV

- First Draft of Reports
- Final Report & Next Steps
- Public Executive Summary
- Actionable Immediate Next Steps Plan

Deliverables

Below is a summary list of Deliverables with notional dates. Firm dates will be included in the Evaluation Team Draft Comprehensive Plan.

Deliverable Description	Due Date
Monthly Progress Reports	No later 15 days after the end of the month
Weekly Progress Reports	Weekly status – before 5 p.m. EST Monday for the previous week
Evaluation Team Draft Comprehensive Work Plan (for Phases I-IV) of contract award	Within 3 weeks
Proposed Methodology for Data Collection (for Phases I-IV) contract award	Within 3 weeks of
Deliver Current State of Play Report Report (Phase II Report) Contract	Within 3 months of
SCA/CLDP reviews draft Phase I report and provides feedback Contract award	Within 3.5 months of
Evaluation Team finalizes Phase I report and submits to State/Commerce months of Contract award	Within 4
Evaluation Team provides supports briefings at State/Commerce to key stakeholders (Phase I & II concludes)	Within 4.5 months of Contract award
Evaluation Team finalizes Comprehensive Work Plan for approval (if required, based on data or knowledge gaps during Phase I or II)	Within 4.5 months of Contract award
Field Work in Colombo	Within 4.5 months of Contract award



In- and Out-Briefings to Embassy Colombo and other relevant stakeholders (e.g., USAID Mission Colombo, World Bank, etc) on the initial results and findings of the Field Work and Data Collection

Recurring (briefings could include DVC's, in person, etc)

Presentation of preliminary field analysis to State and other key stakeholders in Washington, D.C. (Phase III concludes) Within 6.5 months of Contract award

First Draft of Final Report & Next Steps submitted for review and comment Within 7 months of Contract Award

Draft Public (unclassified) Executive Summary submitted for review and comment Within 7 months of Contract Award

Final Report & Next Steps submitted (Phase IV) concludes Within 6-8 months of Contract Award (6 months is preferable)

Monthly and Weekly Progress Reports

The Evaluation Team shall submit monthly reports in written English to designated point of contact within SCA no later than fifteen (15) days after the month has ended. The reports shall succinctly summarize, in one-two pages maximum 11 pt Georgia font, progression of major activities under these categories: 1) activities undertaken, 2) compare actual work completed with the goals and objectives for the period of performance, 3) deviations from the work plan, 4) remedial actions, if appropriate, 5) projected activities for the next reporting period.

The weekly reports should be submitted to the project managers and COR no later than 4:30 p.m. EST every Monday for the previous week, and should include date, activities, and hours worked. Templates will be provided for both reports at before or during the Kick-off Meeting. Finally, biweekly conference calls (approximately 30-40 minutes maximum) to discuss areas that need special attention or generalized updates.

Comprehensive Work Plan

The Evaluation Team shall submit a final draft comprehensive work plan, which includes details on the activities to be performed, and meets all the requirements in the SOW – deliverables, start and end dates, and other associated dependencies. The plan may include revisions as needed based on the goals of the evaluation, resources, and best expert judgment of the Evaluation Team.

Proposed Methodology for Data Collection

The Evaluation Team shall submit a detailed description of its proposed methodology for data collection and analysis for both Departments to approve, which may include revisions to the plan submitted as the proposal.

Current State of Play Report

The Evaluation Team shall conduct a preliminary analysis and data collection, submitting a literature review/desk assessment. The “Current State of Play Report” should include a bibliography, and an executive summary. The literature review/desk assessment should not require review of activities in Sri Lanka. The Evaluation Team should produce the research tools to be used for review. Project managers can assist with making contacts in Washington.

Final Report & Next Steps

The Evaluation Team shall submit a “Final Report & Next Steps,” which addresses comments and suggested edits raised during the review of the draft final report. The Evaluation Team shall include, as part of the Final Report, a section outlining immediate, actionable next steps in project implementation. The recommended “Next Steps” have to be within the scope of the project. Additionally, Next Steps shall include discrete recommendations to update the logic model and assumptions; also developing an updated performance management plan. Where edits and comments have not been accepted, comments explaining why should be included in the report, or in another format determined by the Evaluation Team. If recommendations are not actionable, the project managers will provide explanations in the Final Draft. Identification of weaknesses should be accompanied by a potential solution.

The Evaluation Team will submit all draft reports to the project managers using the following format:

- Executive Summary – a 2-4, page, single-spaced document containing a concise summary of the most critical elements of the report.
- Report – No more than 35 pages (not including annexes), document that presents the scope, methodology and limitations of the data, the findings by question, overall conclusions derived from the analysis of the findings, and recommendations. In addition, updates to the logic model, assumptions and performance management plan should be included in the findings section.
- Appendices – will include SOW, bibliography, list of individuals and agencies contacted; interview questions, questionnaires, and other data collection instruments.

U.S. Government Logistics Support

Such support may include:

- Providing access to data, project documents, particularly those which are not in the public domain
- Assistance for getting visas and security clearances to team members, if needed

The provision of secure transport services is not likely needed in Sri Lanka. We don’t anticipate security challenges impeding collection of data in the field.