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WTO: Implications for Sri Lanka and South Asia

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Preface

The Law & Society Trust is a non-profit making organisation committed to improving public awareness on civil, political, social, economic and cultural rights, and equal access to justice. The Trust was established in 1982 to initiate studies and activities on law, its processes and institutions and was incorporated as a non-profit making body under the provisions of the Companies Act of 1982.

The Trust differs from other institutions for legal research in that it attempts to promote an interdisciplinary approach to the problems posed by the complex legal cultures of the developing societies of South Asia. The Law & Economy Programme of the Trust, which was formulated to analyse the legal implications of economic reform in Sri Lanka and in the region, is an integral part of this broader approach.

This publication comes out of the new World Trade Organisation Unit set up under the Law & Economy Programme following the launch of a new round of WTO negotiations in Doha, and in recognition of the importance of raising awareness about multilateral trade and development concerns in Sri Lanka.

The Author

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Introduction

After two years of intensive lobbying between governments, divisive debate and no small amount of hand wringing, trade ministers agreed in Doha last November to launch a new round of multilateral trade negotiations. The new round will start this year and has the ambitious completion target date of 2005. The Doha meeting, which took place amidst the pall of the September 11 terrorist attack and the gloom of global economic slowdown, was a crucial opportunity to get the multilateral trading system back on track after the aborted 1999 Seattle Ministerial. The stakes were high. Another failure would have been a bitter (some say fatal) pill for the World Trade Organisation (WTO), at a time when the world's disrupted economy was almost at a standstill and a cooperative, international trade push so very necessary.

In addition to confirming the international community's commitment to global trade liberalisation, and the viability of an inclusive, consensus-driven organisation like the WTO, the meeting had far-reaching implications for the economies of South Asia: first, as the US's razor-sharp Trade Representative Robert Zoellick so forcefully reminded Asia Pacific Economic Cooperation (APEC) Trade Ministers in Shanghai last June, it is developing countries that have the most to lose from a stalled WTO, and the most to gain from a strong rules-based international trading system – like it or not, the big guns can go it alone; and second, ministers in Doha were forced to grapple with a number of issues close to the heart of South Asia Association for Regional Cooperation (SAARC) economies, such as agriculture, Trade-Related Aspects of Intellectual Property Rights (TRIPS), the so-called new issues of competition and investment policy, implementation, anti-dumping and the environment.

Most of the hard bargaining took place in these areas. The results show that through effective prosecution of interests, developing countries – including SAARC members - can meet national objectives. The negotiations themselves will, of course, be the litmus test, and the extent to which developing country concerns are now accepted as a legitimate part of the multilateral trading fabric will only be determined by their outcome. The challenge for Sri Lanka now is to formulate positions on the agenda for negotiations and to prepare to take advantage of opportunities created by progressive multilateral trade liberalisation and potential improved access to markets.

In practical terms, what does the WTO, and a new round of multilateral trade negotiations, mean for Sri Lanka and its South Asian neighbours ? The perennial contention that the principal beneficiaries of international trade liberalisation are countries of the developed world, is one that has dogged the WTO. It's unlikely to recede. There are undoubtedly winners and losers from trade liberalisation and many argue convincingly that there is an increasing gap between the richest and poorest people in the world – and that this gap is widening as a result of trade liberalisation.

There were several key messages from the 1999 Seattle WTO Ministerial, which broke up amidst widespread acrimony, tear gas and publicity. One of the clearest was that the framework for further liberalisation must take account of the particular needs of developing economies, and support their economic development. The majority of WTO members are today developing countries, including the 45 new members who have joined since the Uruguay Round began. Although global trade, which has expanded fifteen-fold since the 1950s, has been an essential factor driving an unprecedented increase in quality of life for much of the world's population, the stark reality is that there are still almost three billion people trapped in poverty.

Despite glowing optimism 20 years ago, the first world's record in raising the developing world to a level of material well-being has not been good. In 1983, the World Bank predicted that developing nations' average Gross Domestic Product (GDP) would grow 3.3% a year for 15 years. In fact, it barely grew at all. The extent of poverty is shocking. While there has been a modest decline in the proportion of those who are poor, in absolute numbers, they have risen sharply. Today, the number of people earning just US$2 a day includes almost half the world's population – 2.8 billion people. In 1820, the richest country had only three times as much income per person as the poorest; today, the richest nation has 30 times the income.

Why is this the case ?

A number of theories have been posited, ranging from the eminently dubious "cultural attitudes" cliché (that is, developing countries do not have the wherewithal to drag themselves out of poverty), to more credible arguments about misguided development strategies. One major reason is that the international community has not ensured that developing countries have full access to the world trading system. The Managing Director of the International Monetary Fund (IMF), Horst Kohler, has identified the essence of the problem: "protectionism in industrial countries is the core problem in the fight against poverty." The World Bank estimates that Organisation for Economic Cooperation and Development (OECD) tariffs and subsidies cause annual welfare losses in developing countries of about US$ 20 billion; about the same amount as aid flows in 1998. The message is clear: industrial countries must open their markets more completely to developing economies, and the latter must be prepared for WTO negotiations.

Benefits of multilateral trade

At the Seattle Ministerial, a marked reluctance on the part of many countries to make necessary concessions destroyed an opportunity to launch a new round of world trade negotiations. As Doha shows, however, international support for the WTO remains strong. Membership has grown by close to 40% since the curtain fell on the Uruguay Round, and countries are still lining up to join. A hugely significant outcome of Doha was the accessions of China and Taiwan. Every one of these new members is either a developing or a transition economy. That indicates one thing: growing recognition of the benefits of free trade and membership of a rules-based trading system.

Why is a new round important ? And what benefits will it bring South Asia's economies?

There is a very strong consensus among economists that developing countries, particularly the poorest, have a great deal to gain from free trade. Development requires growth, and a greater access to world markets is a powerful necessary condition for more rapid growth. Therefore, poor countries have the most to gain from a more freely functioning world market, or – stated in the negative – poor countries have the most to lose from a failure of the WTO.

The benefits for both developed and developing countries in removing barriers to trade are enormous. A 50% reduction in protection globally, in agriculture, services and manufacturing, is estimated to deliver an annual gain to the world economy of over US$400 billion. The elimination of all barriers would result in an annual gain to the world economy of US$ 750 billion. Overall, developing countries typically gain the most in proportion to their GDP.

Countries that have pursued open-economy, export oriented growth and development strategies have almost always done well (for example, the Asian "tiger" economies: Japan, Taiwan, Korea, Hong Kong, Singapore, Malaysia and Thailand). Rapid growth in many Latin American countries in the late 1980s and 1990s came about with domestic policy liberalisation and open-economy models, which reduced trade barriers. On the other hand, most African countries have persisted with inward-looking, protectionist models and have done poorly.

The new round is the best way of opening up international trade to benefit the poor at a time when they most need it. The incipient recession makes it hard to feel confident about short-term world economic growth and prosperity, while the September 11th attacks, and assorted terrorism-related disruptions, make it even harder. The IMF forecasts a decline in world trade growth to only 2.4 percent in 2001 and 2002, a sharp downward revision from previous forecasts. The poorest will be the hardest hit and any thought of meeting the target of halving world poverty by 2015 can be abandoned. Progress in multilateral trade policy, which takes account of developing country concerns is, therefore, more important now than ever before.

For Sri Lanka and its South Asian neighbours, market access for agricultural products (and textiles too, of course) has been a key issue, and is a good example of the benefits free trade can bring. Agricultural exports from Sri Lanka - as well as other developing countries – are subject not only to tariffs and quotas, but also compete against subsidized goods. Tea is one of Sri Lanka's main export earners and gaining unfettered access to overseas markets is an important challenge. A 50% reduction in agricultural protection in all regions is projected to increase global economic welfare by about US$ 90 billion a year. By comparison, the removal of all agricultural protection would result in an annual gain for the world economy of around US$ 150 billion and an increase in trade six times that forecast under the 50% scenario.

The establishment of a more level playing field would enable developing economies – some of whom may be less ready to join the so-called "new economy" – to benefit more equitably from increased trade and economic growth. Of the 522 million people living in poverty – that is, on less that US$ 1 per day – 392 million or three-quarters live and work in rural areas. Indeed, agriculture provides an average 60% of employment and 40% of output in developing countries. With a majority of Sri Lankans earning a living from agriculture, access to a freely functioning market for agricultural products is absolutely vital to their development.

In this regard, it is a stark reminder to note from the OECD's annual report on agricultural policies that total agricultural support in OECD countries in 1999 rose to a staggering US$ 361 billion. That means farm protection in the

OECD cost approximately seven times as much as the aid OECD members give to developing countries in the form of Official Development Assistance. Government support to farmers has returned to levels not seen for more than a decade. During recent years, industrialised countries have spent, on average, about US$ 7 billion each year subsidizing exports of agricultural commodities such as wheat, flour, cheese, butter, poultry and beef. These programs typically work in the following way: the government buys agricultural commodities at above-market prices, benefiting their own farmers. Those commodities then flood into international markets, pushing down prices worldwide. Urban consumers around the world may benefit, in the short run, from the supply of cheap food. The harm to producers, however, far outweighs the benefit. Agricultural production can be crippled in countries that need it most.

Time and again in various international fora, leaders have declared their commitment to helping developing countries reap the full of benefits of global trade. But the resurgent level of trade-distorting support in the agricultural sector in recent years contrasts sharply with this rhetoric. For developing countries such as Sri Lanka to benefit fully from a rules-based system, market openings must be available in areas where they have export potential and the capacity to supply. This is where the WTO can help. The same body that has been vilified as a tool of multinational corporations and rich countries may be third world farmers' best hope in the battle against unfair competition from subsidized agricultural exports.

The message is simple: given the extremely high existing levels of protection in wealthy countries' agriculture, the potential gains from WTO liberalisation are extremely high.

WTO faultlines: developing country concerns

If the case for potential gains for developing economies from trade liberalisation is so strong, why has the developing world appeared so loath to embrace the WTO ? The fact remains that developing countries – in large part led by India – have had profound misgivings about the WTO and the process of multilateral trade liberalisation, which has been regarded as inimical to developing country interests. These misgivings were most starkly revealed in Seattle. There, developing countries voiced objections to the broad ("kitchen sink") agenda sought by the EU and Japan, the "Green Room" process whereby they were excluded from critical discussions, and to the treatment of a range of specific issues, including labour standards, implementation of WTO Agreements, anti-dumping, investment and competition.

In the lead up to Doha, Murasoli Maran, India's Minister for Commerce and Industry, delivered a blistering speech that foreshadowed doubts about whether member countries would succeed in agreeing on an agenda for a new round, and hinted strongly that India would use its power to block a new round: "The only conclusion that could be drawn is that the developing countries have little say in the agenda-setting of the WTO", he said, referring to a draft declaration that had disappointed a number of developing countries.

Implementation and anti-dumping

Two issues in particular have been at the heart of developing country and SAARC concerns: implementation and anti-dumping. Implementation issues involve concerns raised by developing countries virtually since the coming into force of the Uruguay Round Agreement. It is generally regarded to mean the difficulties some developing countries experience in implementing agreements they had entered into in the Uruguay Round of negotiations, in particular on trade-related investment measures, intellectual property and anti-dumping.

In the lead up to Doha, a number of developing countries - led by India and Pakistan - insisted that no new round could be launched unless their "implementation" demands were satisfactorily treated. They argued that difficulties they faced in implementing and complying with *existing* WTO agreements needed to be addressed before they agreed to new negotiations that went beyond the mandated talks on agriculture and services. The August 2001 Joint Statement by SAARC Commerce Ministers noted,

> *deep disappointment.....on the lack of any meaningful progress [on implementation] despite a clear decision in May 2000 by the WTO General Council that these issues have to be addressed and decisions taken for appropriate action not later than the 4th WTO Ministerial Conference.*

The use of anti-dumping measures to keep out or penalise the import of goods claimed to be sold for less than the cost of production has been a similarly vexing issue for developing countries and SAARC members. The measures are highly controversial – calculating such costs is fraught with difficulties – and the

US's frequent use of them in recent years has infuriated many, who see them as little more than backdoor protectionism. The US has been under intense pressure from several developing countries to offer concessions on anti-dumping, but Robert Zoellick, America's chief negotiator, has had little room for manoeuvre because President Bush has not secured trade-promotion authority, or fast-track – vital if the Bush Administration is to be able to negotiate a trade deal without Congress having the right to examine every clause in detail.

It is clear that while developing countries including SAARC members will focus their negotiations on reducing trade harassment and market access restrictions to the greatest extent possible, others such as the US will seek to maintain trade remedy laws. Although these contradicting aims are likely to diminish absolute developing country gains, it is noteworthy that trade remedies are on the agenda for the new round at all.

Doha

Despite what appeared to be firmly entrenched positions in both the developed and developing camps, ministers in Doha succeeded in agreeing on an agenda for a new round (albeit at the twelfth hour and after India threatened to walk out of the meeting).

The outcome is, on balance, positive for developing economies. While throughout the meeting traditional faultlines were evident, the final declaration proves that through effective and concerted negotiating, developing countries can achieve at least some of the results they seek. Knowing that their agreement was vital for a new round to be launched, they drove a tough bargain, led by India. They skillfully – and stubbornly – held out until there was enough on the table to persuade them to go ahead with an agreement. Many Ministers, and most commentators, are describing the Doha agreement as designed mainly to benefit developing countries.

There is no doubt that the Declaration contains more development-friendly language than any of its predecessors. Whether this is enough, however, to qualify the negotiations as a "development round" remains to be seen. While many developing countries have endorsed the result, many others still regard the post-Doha agenda as favouring industrialised country interests, particularly as they obtained few immediate gains on implementation. Most importantly, little obvious progress was made on market access for textile products. Also, interpretations of the documents adopted by ministers vary so widely that, even now, it is still far from clear what exactly they have committed to.

Three priority areas for South Asian economies are included in the "single undertaking". Implementation is an issue for negotiations in its own right, although an overlap in different mandates is already creating some confusion. Anti-dumping and subsidy reform will be negotiated under the heading of WTO rules. While the launch of negotiations on these topics is a major achievement for developing economies and SAARC members, the "single undertaking" suggests concessions in other areas in order to advance the implementation agenda. The United States' political difficulties with weakening trade remedy laws, as well as the increasingly ambivalent position of many countries as both users and targets of anti-dumping measures, will make for complex negotiations whose outcome is anything but a foregone conclusion.

The Doha Declaration contains unusually substantial sections on such topics as technical assistance, capacity-building and least-developed countries. References to capacity-building and respect for special situations in developing countries, are also evident throughout the paragraphs dealing with other topics. This is particularly true in the case of the controversial Singapore issues, where some developing countries, including SAARC members, draw a link between effective technical assistance and an eventual agreement to start negotiations.

TRIPS is an unambiguous win for the developing world. Central to the arguments in this area was whether exceptions to patent protections could be made for public health concerns; that is, whether developing countries could breach drug patents because of the high cost of buying patented drugs for their populations. India, and others, argued for the broadest definition of TRIPS exemptions, while the US, Canada and Switzerland wanted exceptions to be much more limited, largely restricted to health crises such as AIDS. As a result of concessions from the US, the amendments to the original negotiating text all went in the direction of earlier proposals of developing countries.

The result of negotiations in other areas has been, by and large, positive for developing economies: in addition to TRIPS, WTO members agreed to the "phasing out" of agricultural export subsidies; developing countries (led by India and Pakistan) forced a meaningful compromise on the "new" Singapore issues (investment and competition) so that negotiation in these areas will not begin until after the next ministerial meeting (and even then only on an **explicit consensus basis**); and consideration of labour standards has been dropped altogether. WTO capacity building efforts for developing countries are to continue.

The *quid pro quo* for the EU's concessions on agriculture (and to a lesser extent competition and investment), was agreement to stronger language on linking trade rules to the environment; the fear among developing countries was that the link may lead to discrimination, on environmental grounds, against their imports.

Disappointingly, the result in textiles doesn't go as far as South Asian economies would have liked. Making textile-importing countries speed up the phase-out of import quotas allowed until 2005 under Agreement on Textiles and Clothing, was a major issue for Sri Lanka, India, Pakistan and Bangladesh. The Indian Commerce Minister claimed the issue might be a "deal breaker". While early drafts of the Implementation Decision appeared ready to broach the issue, by instituting a compounding growth-on-growth calculation enlarging textile quotas, the final Decision saw these gains removed, largely due to US and Canadian resistance. Instead, the Council for Trade in Goods will "examine" speeding up textiles liberalisation with the aim of making recommendations for action by July 2002.

Sri Lanka has a particular stake in the issue: textiles and garments are the island's largest export earner bringing in about 50% percent of export revenues. The proposed tariff cuts to Pakistan's textile exports by the US and EU in exchange for Pakistan's assistance in military action in Afghanistan will be of additional concern to Sri Lanka, which is currently involved in talks with the US on obtaining tariff concessions.

Implications for Sri Lanka and the region

The agreement to launch a new round of WTO negotiations is an enormous boost to global trade. A failure would have been disastrous and after just six years, the WTO might have found itself eclipsed by regional trading blocs in Asia, Europe and North and South America. The agreement lays to rest – for the time being at least – doubts about the multilateral trading system which Seattle so obviously exposed, and which the anti-globalisation movement has so enjoyed repeating. It also restores confidence that diverse, and at times combative, members of the WTO can indeed still work together to dismantle trade barriers.

But Doha will not stop criticisms of the WTO and global trade reform. Key issues such as anti-dumping, the implementation of existing WTO agreements, market access for textiles and investment and competition are likely to continue to divide developing from developed countries. As reflected in the demonstrations at Seattle in September 1999, debates between governments now also take place against a backdrop of growing domestic concern about the globalisation of economic activity. Powerful coalitions of NGOs argue that in addition to the negative impact on the poor, the WTO is a threat to the environment – water and air, food security, forests, endangered species and food safety. Finally, there is a strongly expressed fear of multinational corporations.

The world's socio-economic indicators are not good, but there may be some faint light at the end of what will admittedly be a long and dark tunnel. The evidence shows that international income equality has narrowed over the past 30 years when countries' population sizes and the purchasing power of local incomes are considered. In countries that have embraced the opportunities created by integration with world markets, globalisation has enabled stronger income growth.

The importance of sound domestic policy to complement multilateral trade liberalisation should not be shied away from. Growth with equity requires positive public policies that focus on the poorest of the poor, investing in education, health, infrastructure, and properly functioning institutions. Most progress has taken place in developing countries that have reformed their policies, institutions and infrastructure to become the "new globalisers". Around three billion people live in these countries which, spurred by their choice to open up trade and investment, are slowly catching up on the living standards of wealthy nations. During the 1990s, their growth in gross domestic product per person was five per cent a year compared with two per cent for wealthy nations.

Further reductions in poverty remain a challenge for the "new globalisers". But far more serious challenges confront the countries that have not integrated with the global economy - countries that account for up to two billion people. Often experiencing internal conflict and suffering poor governance, anti-business policies and (for a variety of reasons) low participation in international trade, these countries have not been able to join the process of globalisation, with the consequence of slowly growing incomes or even declining incomes and growing poverty.

For Sri Lanka, sound policy choices are crucial to make further inroads into poverty and inequality. Policy choices that enable Sri Lanka and South Asians to take advantage of global opportunities provided by further trade liberalisation, and national measures to mitigate inequality, supported by well-targeted development assistance, will be the keys to accelerating progress. While international trade and open economies have played a crucial role in alleviating poverty and increasing the well-being of many, no ironclad case can reasonably be made for the total deregulation of trade in any and all circumstances. Liberalisation may not always produce immediately favourable results for developing countries and any moves towards greater liberalisation should, therefore, be undertaken with some care and with adequate safety nets for those likely to be adversely affected.

That said, SAARC economies rely on trade for growth. Sri Lanka was one of the first in South Asia to adopt an open market economic framework which emphasised outward-looking and liberal economic policies. Earlier successes have, nonetheless, not been matched in recent times and Sri Lanka has been overtaken by a number of other Asian developing countries that started reforming much later. Today, the region's future prosperity is critically dependent on integration in the global market and maintaining a rules-based world trading system that runs smoothly. The bottom line of nearly unanimous conventional economic thinking is that developing countries have a greater stake in multisectoral, comprehensive and fair set of WTO proceedings than do developed countries.

Pessimists may doubt that the WTO can protect the interest of developing countries, pointing out that a handful of the world's wealthiest nations set up the WTO and continue to play the dominant role in its operations. But the WTO at least provides a system of rules for world trade (rules which, through the WTO's dispute resolution mechanism, developing countries have benefited from). If countries are to pursue an open-economy strategy, they must have access to markets where they can express their comparative advantage. And there has to exist a trading system that is open, transparent, rules-based and perceived as fair. Developing countries need an international system of rules which are enforceable against larger, developed countries because they lack economic bargaining power in bilateral negotiations with the likes of the US or the EU. The rules may not be perfect, but they are certainly better than no rules at all. When all that counts is raw power, the small and less advanced are likely to suffer the most.

Sri Lanka appears on the surface at least to pay too little attention to the WTO. India is the flag bearer and there are good and obvious reasons for this. A coordinated, coalition approach to WTO matters of importance to South Asia is sensible. But India's size and voice should not be allowed to render Sri Lanka a passive player: its interests may not always accord with India's; and no government can afford to be hazy in its understanding of key global trade policy issues or exclusively preoccupied with the domestic front. With negotiations scheduled to begin this year, it is crucial that Sri Lanka lifts the level of engagement on WTO issues. Its ability to participate effectively in the multilateral trading system will be a key factor in its status as a winner or loser of multilateral trade reform.

This means improving the current level of debate on WTO matters which, with some few notable exceptions, lacks refinement, and ensuring that the right people with the necessary skills and experience can negotiate for Sri Lanka. It also means community awareness. Today more than ever, governments have to align the right words and marshal the facts and arguments required to restore some balance to the debate over globalisation and the role that trade and investment liberalisation plays in it, alongside other forces of structural change. Against this backdrop, the core messages Sri Lankan policymakers need to convey to the public at large are simple yet powerful:

- trade and investment liberalisation is a means of helping societies and individuals cope with change and take advantage of the opportunities afforded by closer economic integration.

- a sustained commitment to international economic cooperation and to a process of progressive, orderly opening of markets more often than not forms part of the answer to the concerns of citizens, rather than being their root cause.

- it is difficult to find a contemporary case of a country which has experienced rapid and sustained economic development without being relatively open to trade.

- open trade and investment are necessary, but not sufficient, conditions for sustained economic development. Trade liberalisation should be accompanied by growth-oriented policies – capacity-building, skills enhancement, adequate social protection. The need above all is for good governance.

Mike Moore, outgoing Director-General of the WTO, has often referred to trade liberalisation and the WTO's multilateral rules system as essential for the growth of the world's developing countries. However, he has also commented,

> *trade liberalisation is essential for growth and development. But it is not enough. A new WTO round will do little for a*

nation that is torn apart by war or that spends all its export revenues on weapons. Nor will it be much use if governance is missing or crippling debt overhangs. Nor will a round help those poor countries who have no domestic capacity or infrastructure to take advantage of new market access opportunities."

(Mike Moore, Director General of the WTO, speech, 17th May 2001).

The challenge for Sri Lanka is clearly great – more than most countries face – but the potential benefits provided by a new round of trade negotiations are something Sri Lanka cannot afford to let pass by.

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