

Sri Lanka's Negotiation Position on Agriculture, NAMA and TRIPS at the Doha Round

The current round of multilateral trade negotiations of the WTO was launched at the WTO's fourth Ministerial Meeting in Doha, Qatar in November 2001 with the adoption of the Doha Declarations². As the Ministerial Meeting was held in Doha, the round was named as the Doha Round of Trade Negotiations. It is also called as the Doha Development Round (DDR) since emphasis on development remains to be the key component extending to all the areas under negotiation. According to the time table agreed, the negotiations were expected to be concluded by 1st January 2005, but it went beyond the expectations, so far taking almost eight and half years. Once concluded, the round would set a record as the world's longest trade negotiating Round. It is now expected as expressed by Mr. Pascal Lamy, the Director General of the WTO, the Round would be completed by 2010. However, given the divergence of positions among the key stakeholders over a number of issues and also considering the possibility of inclusion of new issues such as climate change and other environmental issues, labour matters and as well as the underlying issues that led to global economic crisis, it is difficult to say whether the Round could be concluded during the course of the next year. It may be expected that new issues may surface possibly at the forthcoming 7th Ministerial Meeting, which is scheduled to take place in November this year in Geneva.

History of the previous rounds

Since the entry into force of the General Agreement on Tariff and Trade (GATT) in 1947, the predecessor body of the WTO, there were eight trade negotiating rounds until the present Round was launched in 2001³. The main objective in most of the GATT's early trade rounds was to address tariff issues as a continued process of trade liberalization through tariff reduction. However, the Kennedy Round in the mid-sixties, included a new GATT Anti-Dumping Agreement. The Tokyo Round during the seventies was a more

sweeping attempt to extend and improve the system by extending the negotiations to cover non-tariff measures. It took six years of negotiations from 1973 to 1979 with 102 participating countries. Its success was seen from the level of tariff cuts achieved, considerably bringing down the average tariff rates on manufactured products in Developed countries. A series of agreements on non-tariff barriers known as Codes also emerged at the end of the negotiations, in some cases where GATT rules were further interpreted. However, the round failed to resolve the problem affecting farm trade. The longest round before the current one was the Uruguay Round (UR). Launched in September 1986 and concluded in April 1994, it introduced far reaching changes to the international trading rules covering all most all trade issues. Other than tariff, it covered non-tariff measures, rules, services, intellectual property, dispute settlement, textiles and agriculture, and paved the way for creating the World Trade Organization, successor of the GATT.

The achievement of the series of rounds since the first round in 1947 in tariff cuts alone is impressive. The average level of tariffs which was 40% in developed countries when GATT was established declined, as a result of reductions made in successive rounds of negotiations that were held to 6.3% in the Tokyo Round and to 4% after the UR reductions were made.

With the participation of 151 members covering 95% of the world trade, the Doha Round has on its agenda almost 21 subjects for negotiation. The first on the agenda is related to implementation issues and concerns to developing countries. Before the DDA was launched, the Developing countries (DICs) took the position that prior to a new round, issues arising from the UR should be resolved in order to ensure that DICs would be able to reap benefits from the already concluded round for which there should be a strong need and commitment on the part of developed countries to create a

N. C. Magedaragamage

*Former Ambassador
and
Permanent Representative
of Sri Lanka to the WTO in Geneva¹*

better trading environment for them. These issues were related to a number of important areas that were covered under the UR, including certain provisions in the General Agreement of Tariff and Trade of 1994. A list of these issues contain agriculture, sanitary and phytosanitary measures, textile and clothing, technical barriers to trade, trade related investment measures, subsidies and anti-dumping and countervailing action; customs valuation; rules of origin, intellectual property rights and cross-cutting issues namely the special and differential treatment provisions and thus these were listed for finding appropriate solutions under the subject of implementation issues. Doha mandate envisaged creating a better trading environment with greater market access in agriculture and manufacturing and also extending its coverage beyond trade in goods to services. Apart from market access for agriculture and manufactured products, other broad negotiating areas covered are trade-related aspects of intellectual property rights; trade and investment; trade and competition policy; government procurement; trade facilitation; several items under rules, such as, regional trade agreements, subsidies and countervailing, disciplining fishery subsidies; dispute settlement understanding; trade and environment; electronic commerce; small economies; trade, debt and finance; trade and transfer of technology; technical co-operation and capacity building; issues faced by the Least Developed Countries (LDCs) and Special and Differential treatment.

One notable development in July 2004 was that even though the four Singapore subjects were included in the agenda for negotiations, three of them

were removed from the agenda subsequently and under the July Package and only the subject of trade facilitation was included in the agenda.⁴

Four principles underpinning the negotiations

At the outset, it should be mentioned that there are four principles underpinning the negotiations – firstly, it is a single undertaking in that all items negotiated will be considered as an integral part of the final agreement binding all parties (“nothing is agreed until everything is agreed”), secondly, the process should be transparent and inclusive meaning that the entire process of negotiations is open to all, thirdly, taking into account of the particular situations of developing countries, special and differential treatment should be considered to level the playing field and finally, in the context of the sustainable development, relevant aspects of trade and environmental factors should be identified and debated to ensure that such areas have been appropriately covered in the negotiations.

Sri Lanka’s position in the negotiations

As far as Sri Lanka is concerned, in strategizing its negotiation position, like all other members, Sri Lanka has taken into full account both defensive and offensive trade interests. In regard to defensive interests, it seeks to protect its trade frontiers from unfair competition, in particular to provide a certain degree of protection to its local producers both agricultural and manufactured goods. Offensive interest means to seek greater market access in countries particularly for products with high potential for further growth where reasonable market access is denied as a result of high tariff and tariff peaks. As a matter of utmost importance, Sri Lanka is well aware of the need to preserve its national policy space without the country’s commercial policy being completely subjugated to international commitments and obligations. As the WTO process creates an environment with increased global governance, that process itself reduces the commercial policy autonomy for national governments.

While it is important and beneficial for a country to secure a maximum from an international agreement, it is equally important to maintain as much policy space as possible in order to adopt domestic policies to safeguard national interests. This is particularly so for DICs.

Defensive interests in agriculture

Under the agriculture negotiations, Sri Lanka has largely defensive interest, in that, it wants to maintain sufficient policy space to maneuver its tariff regime to be able to provide adequate protection to its agriculture from import competition. Already, with an average binding rate of 50% for its all agricultural products, under its commitments at the end of the UR, Sri Lanka has the lowest bound average for agriculture products in South Asia, while its average applied rate stands at 23.1%. On one hand, due to its vulnerabilities, the agriculture sector which is largely characterized by subsistence farming is required special protection in order to safeguard the interests of its farming communities. However, on the other hand, being a net food-importer, particularly, wheat flour, dairy products, canned fish and sugar, Sri Lanka is also aware of the need to maintain a balance in its tariff policy in consideration of food security requirements. Sri Lanka, in its negotiating strategy, has been a strong partner of the Group of 33 (G-33), a negotiating group of developing countries whose aim is to ensure the issue of food security, livelihood security and rural development needs becomes an integral part of the DDA negotiations.⁵ Therefore, the G-33 emphasizing the need to provide an adequate protection to the local agriculture on the ground that further liberalization would negatively affect the sector, has proposed for recognition of flexible provisions for DICs allowing them to designate certain agricultural products as Special Products (SPs) under which mechanism tariff on such products would be exempted from reduction commitments and also to take special safeguard action under a so-called Special Safeguard Mechanism (SSM).

Special Products (SP) and Special Safeguards Mechanism (SSM)

After years of negotiation, modalities for SPs and SSM have evolved with some flexible provisions. According to

the proposed modalities for SPs in the latest draft modalities text on agriculture⁶, the DICs shall be entitled to self-designate SPs guided by certain indicators, which products should be subjected to no tariff reductions or allowed for minimum reductions. The number of tariff lines as SPs should not exceed 12 per cent. Once the modalities have been agreed, Sri Lanka would be able to identify and designate certain products as SPs. A study undertaken in the past has identified certain products that qualify as SPs as per the guidelines.⁷ To this product basket, some of the qualifying products would be rice and some other cereals, coconut, vegetable oil, poultry, milk, cowpea, chillies, onions, potatoes and some vegetables, and so on. The other instrument is the Special Safeguard Mechanism (SSM). As the normal safeguards available under the prevailing Agreement on Safeguards are considered inadequate as an effective mechanism to protect domestic agriculture from sudden import surges when tariff falls, an SSM is proposed as a remedy⁸. This would allow a country to raise its import duties to a certain level in order to weaken the demand for imports thereby to provide a certain degree of additional protection to the local sector. There had been a strong division between the negotiating partners over the SSM, with many developed countries are opposing to it while some developing countries having export interest in certain agricultural products too are siding with them.

The differences between the two sides were so much so that it was reported that the collapse of the negotiations during the mini-ministerial in July 2008 was due to issues over SSM⁹. The legitimacy for the developing countries including Sri Lanka to seek protection from unfair competition in agricultural trade by way of introducing special provisions like SP and SSM is derived from several factors. Most notable are the high dependence of their population and national income on agriculture, the sector’s sensitive role in supporting low-income groups and the fact that the trade-distorting domestic subsidies for farm products in the developed countries is causing a serious threat to the sustainability of the farming communities in developing countries.

Small, Vulnerable Economies

As mandated by the Doha Declaration¹⁰, issues relating to trade of Small, Vulnerable Economies (SVEs) were given adequate attention during the negotiations. Sri Lanka, which continued to express its support for the positions of the members of this group too was identified under this category¹¹. Within the flexibilities in the current draft modalities for SVEs, Sri Lanka, will have two options in regard to designating SPs and tariff reduction commitments in agriculture. It could apply the tiered formula set out for developing countries, but is entitled to moderate the cuts in that formula by a further 10 ad-valorem points, together with the Special Products entitlement as well. According to the current modalities, 12 per cent of tariff lines is available for Sri Lanka to self-designate as Special Products, with 5 per cent of lines may have no cut. The overall average cut should not be less than 11 percent. Alternatively, Sri Lanka can meet an overall average cut of 24 per cent with the option to designate as many tariff lines as it could choose as SPs. The tariff lines so chosen as SPs are not subject to any minimum tariff cut and need not to be guided by the indicators. These provisions provide greater flexibility for Sri Lanka than what would be available under the normal provisions applicable to other DICs.

In the proposed modalities on SSM, special provisions are also available for SVEs. This category of countries can apply the maximum remedy provided for the SSM even if this would otherwise entail breach of a pre-Doha bound tariff, provided that the maximum increase over a pre-Doha bound tariff does not exceed 20 ad-valorem percentage points or 20 per cent of the current bound tariff, whichever is higher, for up to a maximum of (10-15) per cent of tariff lines in any given period.¹²

Therefore, it could be seen from the above that the provisions for SVEs have greater flexibility than the flexibilities proposed for other DICs in terms of the number of SPs and tariff reduction commitments and SSM as well and, therefore, Sri Lanka would be able to enjoy such benefits.

Non-Agricultural Market Access Negotiations (NAMA)

In the Non-Agricultural Market Access Negotiations (NAMA), Sri Lanka has both defensive and offensive interests. On defensive interests, as mentioned earlier, the objective of Sri Lanka is to ensure that it would enjoy sufficient flexibility to preserve its policy space when undertaking tariff reduction commitments on non-agricultural products. On offensive interests, Sri Lanka is seeking for meaningful tariff reductions in key markets on products of export interest to it, in particular, for the finished garments. This sector has emerged as the number one export-earner contributing over 45% of the total export revenues of Sri Lanka. With a direct and in-direct workforce of over half a million, the sector's contribution to the employment generation is considerable.

Following its successful engagement during the early part of the negotiations in establishing itself as a country with low binding coverage in order to avoid tariff reductions under the Swiss formula applicable to all developing countries across the board, Sri Lanka along with other similarly placed countries negotiated for a separate solution. Had the formula to be applied for tariff reductions for non-agricultural products and subsequent bindings, Sri Lanka would be forced to bind its tariff very much below the binding average of rest of the other developing countries thereby further contracting the scope for its development. Known as paragraph 6 countries¹³, the group engaged itself in intense negotiations with the objective of seeking an outcome that would address their development concerns amidst the insistence by its negotiating partners mainly the developed countries for a commitment to bind a minimum of 95% of their tariff lines at an average of 28.5%.

During the intense phase of negotiations particularly in 2007 and 2008, Sri Lanka continued to work in close rapprochement with each member of the paragraph 6 category of countries to seek additional flexibilities in the tariff reduction modalities. In the modalities text issued in early 2008, it was proposed that these countries would accept [70-90] of their tariff lines

to be bound at an average of 28.5%. The range in the bracket reflected the difference of opinion between the paragraph 6 countries and their negotiating partners. Subsequently, as the disagreement was holding the progress of negotiations in other areas, the group presented a tiered formula in consideration of differing level of development of individual countries where Sri Lanka being in the upper most category, offered to bind 80% of its tariff lines at an average of 28.5% which was in any case in line with Sri Lanka's comfort zone. The average figure of 28.5% was established under the mandate as per paragraph 6 which stated that the binding average would be the average of bound tariff for all developing countries after full implementation of current concessions.

In the meantime, additional work carried out on the tariff average figure of 28.5% established that in the calculation process, the tariff averages of LDCs and the Members of the paragraph 6 countries themselves were not included and that the actual figure, with the inclusion of all of them, should be 32.6%. This revelation paved the way for further negotiations resulting in the conclusion of the modalities with a two-band approach, the first band being the countries with a present binding coverage of 15% committing to bind 75% of tariff lines at 30% and the second band being the countries with a present binding coverage above 15%, committing to bind 80% of their tariff lines at 30%.

The outcome under paragraph 6 negotiations would give Sri Lanka a reasonable flexibility where it could avoid deep tariff cuts resulting from the Swiss formula applicable for all other members. Under the present scenario, Sri Lanka would be able to retain a sufficient policy space in its tariff regime to adapt to its development strategy having the flexibility to tailor the tariffs for the remaining 80% of tariff lines, while maintaining an average level of 30%. Sri Lanka can also exclude 20% of its tariff lines from any tariff reduction for binding commitments. These flexibilities have provided better scope for all paragraph 6 countries including Sri Lanka than those provided for all other developing countries in the current modalities.

Concerns over apparel exports

On the top of Sri Lanka's negotiating agenda are the concerns for market access for apparel exports with a particular emphasis placed upon its largest markets namely the European Community (EC) and the United States (US). Obviously it has been so in view of this sector's dominant role in manufacturing and its contribution to the economic and social transformation in the country. Its linkages in terms of income generation to other manufacturing and business sectors such as banking, shipping and transport, packaging and printing are also important. It is no doubt that this sector would continue to play a vital role in addressing Sri Lanka's development concerns, in terms of employment generation, both in the rural and urban areas, and of women in particular, for years to come. The potential role that the sector could play as a catalyst to new businesses development through investing its surplus either direct or via industrial linkages is also a point to be recognized.

Therefore, Sri Lanka's objective during the current round of trade negotiations is to work out a plan in gaining a meaningful market access for its apparel exports in the EC and US markets. A considerable volume of its fisheries exports too find its way into the EC market. In order for the sector to maintain its sustainability, drastic reduction in high tariffs currently applicable both in the EC and the US markets is a sine-qua-non. While in the EC tariff on textile and clothing ranges from 4% to 15%, in the US, the highest rate goes to 32%. However, Sri Lanka's main interests in tariff reductions in the apparel sector in the EC and the US markets are affected by the issue of 'preference erosion' as countries presently enjoying the long-standing non-reciprocal trade preferences are not in favour of MFN reductions. The countries that benefit from the tariff preferences are the members of the African, Caribbean and Pacific group (ACP) under EC preferences and the African countries under the African Growth Opportunity Act (AGOA countries) in the US, and those countries under the Caribbean Basin Initiative (CBI) also in the US. As the current negotiations aiming at reducing the

tariff would erode the preferential margin those countries are enjoying particularly in the EC and the US markets, they would certainly lose the advantage over MFN exporters. Therefore, preference receiving countries have proposed that any tariff reduction by importing countries on such key tariff lines which are most sensitive to their export revenues should be undertaken over a longer implementation period. As the product coverage also includes Sri Lanka's sensitive exports to the same markets, the proposed remedy would hurt the interest of Sri Lanka and of course several others who are the most competitive suppliers in the world and not benefiting from preferences.

Preference erosion and disproportionate impact on Sri Lanka

During the negotiations, Sri Lanka maintained that while it would recognize the legitimate concerns of the ACP and the Africa group including the CBI countries, Sri Lanka would be disproportionately affected by the longer implementation of tariff reductions on products which includes Sri Lanka's most sensitive export items. Following intense negotiations by Sri Lanka, this specific market access problem of Sri Lanka and of other similarly placed countries was recognized by Members through the identification of a category that is now known as 'disproportionately affected countries'. While earlier modalities sought to address the situation of these countries¹⁴ through reducing the extended period of tariff reductions proposed as a solution to preference erosion, Sri Lanka continued to negotiate for a separate solution that would directly address its concerns. In this context, in November 2007, Sri Lanka proposed that in the case of exports from the disproportionately affected countries, tariff on all products identified as sensitive to preference erosion in the US and EU markets be brought down immediately upon the completion of the DDA negotiations. The text of this proposal is given below:

Quote:

"1. Finding a fair and equitable solution for the problem of preference erosion is one of the difficult areas in the ongoing

negotiations. A trade solution in the form of longer implementation period would negatively affect certain developing countries.

"2. The Chair in his July text has proposed a solution that can address the problem of preference receiving countries but lacks any consideration for those countries that would be disproportionately affected by this proposed trade solution. These countries are at the same, if not lower, level of development as preference-receiving countries and have export concentration in those lines for which a trade solution has been proposed. The Chair's text can only be acceptable if it also addresses the problem of disproportionately affected countries.

"3. With a view to making the Chair's text fair and acceptable to the Membership, the delegation of Sri Lanka would propose the following addition at the end of Para 28 of the Chair's text:

"However, for the disproportionately affected countries both the EU and the US (for their respective tariff lines) would implement the agreed tariff reductions in full at the time of the first installment of reductions".

Unquote:

Sri Lanka delegation followed up on the proposal through active negotiations at the end of 2007, which resulted in the inclusion of a separate solution in the chair's text for those countries identified as disproportionately affected by any solution on the issue of preference erosion¹⁵. The modalities proposed a solution in the form of tariff reductions over five years on five products in the US, for which tariff reductions would only be implemented over 10 years for other countries. In effect, the solution recognized the need to have a specialized solution for Sri Lanka and Pakistan, in the form of speedier tariff reductions on selected products than that which other countries who were not so affected, would enjoy.

While accepting the Chair's recognition of Sri Lanka's concerns and his formulation of a separate solution, attempts by the Sri Lanka Mission to the WTO in Geneva continued to espouse the position that this solution would not adequately address Sri

Lanka's concerns particularly stressing that the time period, though shorter than which other countries would undergo, was not enough to address certain time-specific needs of Sri Lanka¹⁶ and that the product coverage was insufficient to address the specific and overall needs of the industry that dominates Sri Lanka's exports. Moreover, it was also pointed out that

solution extended to cover the EC market though the number of tariff lines was limited to five products. However, given the architecture of the solution already in hand, Sri Lanka should endeavor to push further to expand the coverage and reduction of tariff in an accelerated phase. At present, the proposed treatment covers the tariff lines as follows:

Ministerial Declaration for negotiations. Firstly, the Trade-Related Intellectual Property Rights (TRIPS) Agreement and public health, secondly the notification and registration of geographical indications and extension of Geographic Identification (GI) protection to products other than wine and spirits; and finally, the relationship between TRIPS Agreement and United Nation Convention on Biological Diversity (CBD). A separate Declaration dealing with the first issue was adopted at the Doha Ministerial Meeting to recede the Least Developed countries from the obligations with respect to pharmaceutical products under section 5 and 7 of part II of the TRIPS Agreement until 1st January 2016.

The TRIPS Agreement is one of the WTO instruments, which has become under heavy criticism from developing countries, civil societies and consumers due to its imbalances and most notably its recognition of private rights over public concerns such as health, food security, development and environment. A series of issues that made the developing countries to dissent was listed under implementation issues with the objective of having a focused negotiation seeking a justifiable solution. Among those issues were the examination of the scope and modalities for the application of non-violation complaints (art. 64.2 of the TRIPS Agreement), implementation of mechanisms for enforcement and monitoring developed countries obligations to provide incentives to their enterprises in order to generate technology transfers (art. 66.2), negotiations to extend protection of geographical indications to other products than wines and spirits (art. 23 and 24), interim suspension of granting patents that do not fulfill article 15 of the CBD, non-implementation of the provisions of art. 27.3b until 5 years pass from its review, extension of the implementation period of the TRIPS Agreement for least developed countries, operationalization of art. 7 and 8 of the TRIPS Agreement, clarification that no patents should be granted on life and amendment of article 27.3b in the light of principles of the CBD and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA).

Proposed Tariff lines in the US Market¹⁸

Tariff line	Indicative product description
6110.20.20	Sweaters, pullovers and similar articles, knitted or crocheted, of cotton, nesoi
6203.42.40	Men's or boys' trousers and shorts, not bibs, not knitted or crocheted, of cotton, not containing 15% or more by weight of down, etc
6204.62.40	Women's or girls' trousers, breeches and shorts, not knitted or crocheted, of cotton, nesoi
6205.20.20	Men's or boys' shirts, not knitted or crocheted, of cotton, nesoi
6212.10.90	Brassieres, not containing lace, net or embroidery, containing under 70% by wt of silk or silk waste, whether or not knitted or crocheted

Proposed Tariff lines in the EC market

Tariff line	Indicative product description
0304.10.38	Other fish fillets and other fish meat, fresh or chilled
6109.10.00	T-shirts, singlets and other vests, knitted or crocheted, of cotton
6203.42.35	Men's or boys' trousers, bib and brace overalls, breeches and shorts, of other cotton
6204.62.39	Women's or girls' trousers, bib and brace overalls, breeches and shorts, of cotton, other
6212.10.90	Other brassieres, whether or not knitted or crocheted

the solution has not addressed Sri Lanka's concerns in the EC market.¹⁷ Sri Lanka also continued its bilateral consultations process with several diplomatic missions to the WTO from countries exporting on Most Favoured-Nation (MFN) basis to lobby for Sri Lanka's course.

While Sri Lanka's full requests were not immediately taken aboard, Sri Lanka's proposal in November 2007, and its follow-up negotiations did pave the way for a separate solution which entailed granting tariff reductions under the normal implementation period for those countries identified as disproportionately affected countries for five products. During the mini-Ministerial meeting held in June 2008, Sri Lanka succeeded in getting the

The present solution recognizes the vulnerability of Sri Lanka, and provides a differentiated solution vis-à-vis other developing countries whose economies are not largely dependant on clothing for exports earnings. It should, however, be noted that the solution does not adequately address Sri Lanka's concerns in terms of immediate benefits from this Round through improved market access. Sri Lanka should therefore continue to press for a more meaningful solution in the form of more accelerated tariff reductions for all sensitive products in both the US and EU markets¹⁹.

TRIPS Agreement and Intellectual Property Rights

In the area of trade related aspects of intellectual property rights, broadly there are three issues listed in the Doha

Protecting geographical indications

Sri Lanka continued to stand in support for the course of developing countries on a number of issues concerning the TRIPS Agreement and engaged itself in Geneva with like-minded members in working towards text-based negotiations. The extension of protection of geographical indications beyond wines and spirits is one of the areas where Sri Lanka has an interest that would benefit a range of Sri Lanka's own products such as Ceylon cinnamon, Ceylon teas, Ceylon sapphire and any other products that meet the GI criteria. The establishment of a multilateral register for all such GI products is also a proposal supported by Sri Lanka joining in hands with the Friends of GI, a group of countries pressing for GI extension and for a register. A GI Register would provide countries with a means of reserving such geographic names where warranted, effectively preventing their registration as trademarks by private interests in all WTO member countries.

Protecting genetic resources and traditional knowledge

As mentioned earlier, a critical implementation issue for developing countries is the absence of provisions in the TRIPS Agreement to extend protection to genetic resources and traditional knowledge in which developing countries are inherently rich with knowledge accumulated over centuries. Examples from Sri Lanka are the numerous traditional medicines, including ayurveda and other plant material. In contrast to the market-oriented ownership of patented property rights, traditional knowledge remains to date largely a community owned body of wisdom in many developing countries, including Sri Lanka.

Misappropriation of genetic resources, traditional knowledge and bio piracy is a serious issue, as there is no obligation under the TRIPS Agreement, for disclosure of origin of the genetic material or the source of knowledge. In order to make a consistent and an effective mechanism keeping a balance, developing countries are calling for the inclusion of three fundamental provisions that are recognized in the CBD i.e., (I) disclosure

of the source and country of origin of the biological resources and of the traditional knowledge used in the invention, (II) evidence of prior informed consent through approval of authorities under the relevant national regime, and (III) evidence of fair and equitable benefit sharing under the relevant national regime in the TRIPS Agreement. In July 2008, Sri Lanka along with several countries proposed for the inclusion of the TRIPS related issues (GI Register, TRIPS disclosure requirement, and GI Extension) as part of the horizontal process in order to have modality texts that reflect Ministerial agreement on the key parameters for negotiating final draft legal texts with respect to each of these issues as part of the single undertaking²⁰.

Footnotes:

¹ Mr. Magedaragamage served as Ambassador/PR for Sri Lanka to WTO in Geneva from January 2007 to November 2008.

² WTO document no. WT/MIN(01)/DEC/1 of 20th November 2001, Ministerial Conference, 4th Session, Doha, 9-14 November 2001.

³ The eight negotiating rounds are: (1) 1947-Geneva with the participation of 23 countries; (2) 1949 - Annecy with 13 countries; (3) 1951 - Torquay with 38 countries (4) 1956 - Geneva with 26 countries; (5) 1960-1961 - Geneva/Dillon Round with 26 countries; (6) 1964-1967 - Geneva/Kennedy Round with 62 countries; (7) 1973-1979 - Tokyo Round with 102 countries; and (8) 1986-1994 - Geneva/Uruguay Round with 123 countries.

⁴ The decisions adopted by the General Council of the WTO on 1st August 2004 are known as the "July Package", see for details, WTO document WT/L/579 of 2nd August 2004. Singapore issues are those items contained in the Ministerial Declaration adopted in Singapore in December 1996 (WT/MIN(96)/DEC of 18th December 1996) which were subsequently included in the Work Programme of the DDA. These were:

1. Relationship between trade and investment,
2. Interaction between trade and competition policy,
3. Transparency in government procurement and 4. Trade facilitation.

⁵ The G-33 was established in September 2003 on the eve of the WTO's fifth Ministerial Conference in Cancun. Since its inception Indonesia is the coordinator of the group. Sri Lanka has been a party along with the other members of the group (almost 43 DICs) in making proposals for special products (SP) and a special safeguard mechanism (SSM) in the modalities for agriculture.

⁶ Draft modalities text on agriculture is produced by the chairperson of the Negotiating Committee on Agriculture based on his consultation with the whole membership. The consultations take place with the participation of the entire membership and also he may consult small groups in order to go into intensive discussions on issues concerned to such groups. The latest in the series of Chairperson's draft modalities texts is the one issued by former chair, Ambassador Crawford Falconer of New Zealand on 6th December 2008 (TN/AG/W/4/Rev.4). However, these modalities are not the final.

⁷ A study by Dr. Anura Herath, a former Director at the Department of Export Agriculture, titled "Study on Special Products and Special Safeguard Mechanisms in Sri Lanka" has identified at 6-digit level 61 products to be considered for designating as SPs in line with proposed guidelines. However, as Sri Lanka falls under the SVEs category, it can apply the more flexible provisions without being subject to guidelines. Scope available for Sri Lanka under SVEs category is discussed below.

⁸ Sri Lanka has not enacted national laws to introduce safeguard measures to protect domestic industry from sudden import surges as provided under the Safeguard Agreement of the WTO.

⁹ However, there was no truth in this argument. It was an attempt by certain developed countries to put the blame on developing countries, particularly on China and India, over the collapse of the talks in July 2008 as an escape goat. The real scenario was that there were many other issues that led to the failure of reaching an agreement most notably the lack of commitment by the major players to show flexibility on cutting the overall trade distorting domestic support for agriculture, disagreement over cuts in the top band of high-tariff products of industrialized countries, tariff capping of non-sensitive products, and issues over sensitive products. Moreover, it was also alleged that some of the core issues including the cotton issue were not properly tackled during the mini-ministerial meeting.

¹⁰ It was agreed in paragraph 35 of the Ministerial declaration adopted on 14th November 2001 to examine issues relating to the trade of small economies with the objective of identifying and thus framing responses to facilitate fuller integration of small, vulnerable economies into the multilateral trading system.

¹¹ A Small, Vulnerable Economies (SVEs) is defined as one whose average share for the period 1999-2004, of (a) world merchandise trade does not exceed 0.16 per cent or less, (b) world trade in non-agriculture does not exceed 0.1 per cent and (c) world trade in agriculture does not exceed 0.4 per cent. For further details, please see Annex 1 in the Revised Draft Modalities for Agriculture (TN/AG/W/4/Rev.4) of 6 December 2008.

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¹² For details on the draft modalities on the SSM, refer to paragraphs 132 to 146 in the Revised Draft Modalities for Agriculture (TN/AG/W/Rev.4 of 6th December 2008).

¹³ In the context of NAMA negotiations, these countries were identified as paragraph 6 countries since the July package was released. Paragraph 6 in the annex B to that document has made reference to the condition for the exemption from making tariff reductions through the formula. It was proposed that countries with a binding coverage of non-agricultural tariff of less than [35%] would be exempt from making tariff reductions through the formula. However, these countries were expected to bind [100%] of their tariff lines at an average level that does not exceed the overall average bound tariffs for all developing countries after full implementation of the current concessions.

¹⁴ Following Sri Lanka's initiative, Sri Lanka and Pakistan were initially recognized as disproportionately affected countries through a footnote, but the list remained bracketed. Subsequent negotiations added three more

countries to this list namely Bangladesh, Cambodia and Nepal.

¹⁵ Paragraph 29 in the Draft Modalities for Non-Agricultural Market Access: TN/MA/W/103 dated 8th February 2008, WTO, Geneva.

¹⁶ One of the arguments Sri Lanka expounded during the negotiations was that Sri Lanka is in a demographic transition where its ageing population negatively affects the availability of labour within a particular age group usually employed in the clothing sector. As a result it was demonstrated that the delayed tariff reductions would not give much scope for Sri Lanka in terms of market prospects and capital formation.

¹⁷ Although Sri Lanka already benefits under tariff preferences under GSP-Plus, such preferences have a market access limitation under Rules of Origin of that scheme. Better market access can be obtained under MFN reductions without exports being subjected to unfair rules.

¹⁸ As the list stands, the five products cover 61% of Sri Lanka's exports to the United States of the products which are selected as most

sensitive to preference erosion contained in the Annex 3 to the NAMA modalities Text or 43% of total garments exports to the US, representing 35% of total exports to the US.

¹⁹ The Performance Report of the Director General of Commerce for the year 2008 says that "Sri Lanka delegation continued to work with other delegations to lobby for Sri Lanka's case and to ensure that the architecture of the present modalities for disproportionately affected countries was maintained, while leaving open the possibility for a more expanded and effective solution. At present, Members continue to support the need for a solution for disproportionately affected countries, and have agreed to consider support for the more effective solution espoused by Sri Lanka".

²⁰ Draft Modalities for TRIPS Related Issues, TN/C/W/52 of 19th July 2008, communication from Albania, Brazil, China, Ecuador, the European Communities, Iceland, India, Indonesia, the Kyrgyz Republic, Liechtenstein, the Former Yugoslav Republic of Macedonia, Pakistan, Peru, Switzerland, Thailand, Turkey, the ACP Group and the African Group.