

National Policy Space in the WTO General Agreement on Trade in Services

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VALORISATION ADDENDUM

The legal and policy analysis relating to the availability of national policy space in the WTO GATS, encapsulated within this thesis at this point of time (January 2020), can be considered a useful contribution to the discussion of the mechanisms of the liberalization of services in international trade law, with special reference to the role of public health services, from the perspective of societal values and human rights-based approaches.

The discussion supports policy space for States to protect and further develop public health services as an important feature of the interaction of rights and responsibilities of citizen and State, and of members of a modern society to each other. The ongoing Covid-19 pandemic situation further drives home the value of national public health services as a fundamental need and human right. This is applicable to developed countries as well as developing countries and least developed countries (LDCs). The Covid-19 crisis has revealed even more clearly that while the negative economic effects of the protective public health measures taken by governments are borne by all countries, the costs in human lives have varied and can at times be correlated in terms of the attitudes towards ethical social responsibility, the implementation of State social welfare and the provision of public health services and the strength of public services in general, within countries.

In the course of assessing the policy space in the GATS, certain provisions which have not yet been authoritatively interpreted and which are of concern with regard to the protection of public health services, were discussed in depth in this thesis, with reference to WTO dispute settlement jurisprudence. This includes Article 1:3 of the GATS, which includes the concept of exemption of “services supplied in the exercise of governmental authority” (understood usually as a ‘public services exemption’) and Article XIV of the GATS, the general exceptions provision of the GATS which includes “public morals” and “life or health” recognized as legitimate policy objectives. The thesis also analyzes provisions on non-discrimination, the scheduling of commitments and domestic regulation and their implications for national policy space and critically discusses whether developing countries and LDCs have any extra leeway under the GATS in light of their special needs.

The target groups of this thesis are primarily legal academics, scholars and students from different legal specializations, but also those in social science specializations, as well as public policy experts and policy makers, political scientists, health economists, medical professionals with an interest in international trade law, and government officials involved with foreign affairs, trade or commerce departments or health ministries.

One of the main underlying motivations for embarking on this research was to attempt to build bridges between those trained primarily in international human rights law and those trained primarily in international economic law, international trade law or WTO law. This book is born from my own need to find in one place, an objective analysis of the interconnections between these two fields, that would assess the details of WTO case law as well as include the broader concepts of human rights and public policy.

There are already many academics who have made significant contributions on specific areas and issues discussed in this research, as demonstrated by the publications cited in this thesis. What this thesis aimed to do in addition, was to bring together the different viewpoints and debates and place them in the context of a detailed analysis of the provisions of the GATS which deal with national policy space and their interpretation, while constantly touching base with the larger picture of socio-economic policy choices, the right to health and practical national approaches. Although it has been suggested by

previous scholarship that it is possible to harmonize WTO law and human rights concerns, this thesis cautions against overconfidence or oversimplification, and the analysis highlights drawbacks in trying to insert concepts from another regime without sufficient ‘bilingualism’ in both the fields of human rights law and WTO law. In this aspect, while drawing together existing scholarship and jurisprudence, the thesis includes innovative elements in its framing and discussion of the issues.

Currently being a member of the academic staff of the Department of Public and International Law, Faculty of Law, University of Colombo, Sri Lanka, I am in a position to continue to prepare activities and disseminate my findings to the academic community in Sri Lanka and abroad. I would hope to publish a commercial edition of the book, and continue with seminar and conference presentations and academic articles, based on and inspired by this research. I would also consider greater engagement with blogs and social media networks concerning my research in the future, as a way to publicize my findings and analysis and engage with colleagues interested in this area of research, both regionally and internationally.

During the course of my research for this thesis, I prepared presentations and short papers on my area of study for the University of Colombo and Sri Lanka Law College, as well as conferences and academic sessions at the University of Kelaniya, the Sir General John Kotelawala Defence University (KDU) and the Open University of Sri Lanka. One of these presentations was later published as a paper for the *Indian Journal of International Economic Law* (Vol.9, 2018). A co-authored chapter on the interconnection between women’s right to health and international trade was published by Intersentia in 2012 and is being updated for its second edition in 2020.

The research into the interconnections between economic and social rights and the institutions of economic globalization and international trade has also been very relevant for postgraduate courses, lectures and academic advising I have been involved in, such as the regional Master of Human Rights and Democratization (Asia Pacific) Programme; the LL.M Programme, Faculty of Law, University of Colombo; the Masters in Human Rights, Faculty of Graduate Studies, University of Colombo. In the future, I would hope to engage more closely with colleagues for further lectures and developing course material for new programmes, workshops and lecture series.

As Executive Editor of the *Sri Lanka Journal of International Law*, I have been on the Editorial Board from 2015-2020, using my training to peer review submissions on areas in my expertise for the journal, and to encourage young researchers in Sri Lanka and India with their queries and research activities in these areas. I hope that with the finalization of my thesis I can continue this trend, and encourage more colleagues and students to engage with and debate the issues raised in this research, as well as with multidisciplinary approaches regarding globalization and trade law topics in general.

I also hope that a much shorter and more layman–friendly version of certain parts of this thesis can be prepared and translated into Sinhala and be published in Sri Lanka, perhaps in monograph form, since there is generally a keen interest in and appreciation of the protection of the public health services system and the implications of globalization and international trade on the part of the Sinhala-speaking university student population and the general public.