Left in the cold by the WTO

APRODEV POLICY BRIEF
on the Special Safeguard Mechanism in the WTO

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This paper is based on South Centre Research on the Volume and Price-Based SSM

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Unfair competition ruins smallholder farmers in Africa

Introduction

"I can rationalise my broiler production as much as I want and invest in the most modern technologies, I will never be able to compete with the cheap chicken meat imports coming into Ghana", Kenneth said at the occasion of the World Poultry Show in Hannover 2008.

Today, Ghana's entire poultry sector, that provides an income and a living for thousands of farmers and families stands ruined by the import floods of chicken parts entering the country at devastatingly low prices from Europe and Brazil.

Up to the ´80s, development policies and programmes had as a major goal to increase the production of food by farmers in developing countries and to improve technology. After the 1980s focus shifted to integrating developing country agriculture into world markets. At the same time, support institutions and programmes for domestic producers in Africa and Asia were cut to make the sectors more commercially "competitive". This exposed small-scale producers to cutthroat competition in world agricultural markets. Developing international competitiveness rather than raising levels of production became the primary objective for developing country agricultural markets.

Competitiveness is a very ambiguous concept. Imported deep frozen chicken parts might be cheap, but they are not necessarily competitively or fairly priced. This is because the price at which this meat is being sold in West Africa does not reflect the real cost of producing it in Europe. Government support to the broiler industry in Europe, price differentiation by the slaughter houses, the EU ban on meat meal animal fodder[1], and high costs of disposing of brown meat, not favoured by European Consumers, as well as other factors, mean that chicken

[1] In December 2000,the EU introduced a ban on almost all animal products (meat and bone meal) in animal feed in response to the mad cow disease. Fodder containing animal products is a key suspect in spreading the disease. The ban was expected to be very costly due to loss of meat and bone meal production and expenditures for destroying beef meat through incineration.

producers in Europe find it viable to export these parts below the costs of production. [2]

For the Ghanaian farmers it is impossible to understand how European farm policy affects the price of imports. All they know is: The cheap imports mean that they do not have a fair chance to compete in the local market. And their government has to act fast, before the last and most efficient domestic producer closes down.

The most effective way to end this nightmare for the African chicken producers would be: to restrict this import flood. This can happen in many ways, for instance by increasing the import tariffs or by only allowing a certain amount of imports to enter.
However international trade rules and other international treaties limit trade related actions by governments considerably. Ultimately, the government of Ghana has to decide to whom they want to be more loyal: their own farmers or to the international trade rules to which they have committed.

1) Trade policy plays a dual role in the situation faced by Ghanaian farmers: First, it determines on what terms the devastating imports enter the Ghanaian market;
2) Second it determines the options or “policy space” that the Government of Ghana has to stem influx of the cheap imports?

Trade Liberalisation Makes the Agricultural Sector More Vulnerable

Although agriculture is the backbone of many Africa’s economies, it has been weakened by the previous liberalisation and reforms undertaken by many African governments under the Structural Adjustment Programmes (SAPs) which indebted developing countries had to undertake in return for grants and loans from the International Monetary Fund. Under these reforms, most of the protective and supportive measures had to be eliminated, these included trade restrictions, state marketing boards and most government subsidies. Tariff levels were also drastically reduced.

Many of the world's poorest nations in Africa now have the most liberal agricultural trade regimes. Their applied tariffs are mostly far below 40 %, - the tariff level considered as the threshold to distinguish between an “open” and a “closed” economy.

Import Surges can be Destructive

Borders open to cheap agriculture imports makes an economy very vulnerable to import surges. Import surges are sharp sudden rises in import volumes above a trend level, or at prices way below average. Import surges have little to do with

[2] See Buntzel, R. and Mari, F. (2008) The Global Chicken. Frankfurt.

the efficiency of the producers. Import surges can happen as a result of many circumstances in the world: production shortfalls, unfavourable weather conditions and natural disasters, macroeconomic instability such as foreign exchange fluctuations, or change of policies in a major exporting country. Whatever the reason, import surges have far reaching implications on local production and on farmers' livelihood. They have a significant impact on food security, because sudden increases in import volumes or drops in prices can threaten otherwise viable and efficient domestic economic sectors.

Although import surges may be short term in nature, their effects can be long lasting because of the low resilience of small scale farmers in developing countries. For example, falling prices can have long term severe economic and social consequences as the income of farmers will fall so that they many even have to sell their land, equipment and livestock, losing their very means of livelihood. The same applies to a surge in imports that displaces local production, affecting the capacity of a country to feed itself and to not become dependent on imports.

Defence from Import Surges is Essential

Countries have a special interest to defend their producers from this kind of sudden and unreasonable trade price and volume fluctuations. Even when they are of a short term nature, a whole sector may have been wiped out, that might have had an important social role.

There is overwhelming evidence of increasing numbers of import surges of various agricultural products in developing countries. Developing countries tend to be the victims of import surges, not just because their markets are very exposed to imports, but also because of the high overall levels of support and protection in Europe, North America, Japan and Korea. There is a global imbalance between the global North and South in matters of agricultural support. The agricultural sectors of the North are still well cushioned by tariff walls and by subsidies. Those countries have managed to avoid deep subsidy cuts under the provisions of the WTO. They have simply shifted their support to what the WTO defines as "non trade distorting subsidies".

Safeguards are not a Panacea

One provision of the WTO Agreement of Agriculture, the "Special Safeguard" was considered to be especially hypocritical by developing countries.

In the WTO, safeguards are contingency restrictions on imports taken temporarily to deal with special circumstances that cause harm to the domestic industry, such as sudden import floods or price declines.

However, the possibilities for developing countries to use this mechanism are in reality very restricted or even non-existent.

This is because the WTO has attached stringent conditions to making use of safeguards.

To be able to use it governments have to prove injury or threat of injury. This requires statistical and juridical capacities that are beyond the reach of many developing countries. There are very few examples of developing countries being able to make effective use of safeguards. Another condition is that countries must undertake negotiations for compensation for other countries that will be affected by the safeguard. Finally countries must provide objective evidence that there is a causal link between the increase in imports and the injury or threat of injury to the domestic industry.

To circumvent the problems of the general safeguard, the current WTO Agreement on Agriculture introduced a “Special Agricultural Safeguard (SSG)”, which can be triggered by import surges or price declines without a need to prove injury or negotiate compensation.

However the SSG can only be applied to products that had quotas and other quantitative protection replaced by tariffs when the WTO was created in 1995. Only a few developing countries undertook this process. However even the eligible developing countries have difficulty in using this mechanism, while the industrialised countries have had the benefit of SSG protection for a large number of products, often for extended periods. For example, the EU has had around 500 agricultural products under SSG protection for more than 10 years.

A New Hope for Developing Countries: The Special Safeguard Mechanism

The inaccessibility and inadequacy of the general safeguard and SSG led a number of developing countries to put forward proposals for an effective and appropriate “Special Safeguard Mechanism (SSM)” at the WTO. This would guarantee the protection of developing country agricultural sectors and their small scale farmers in the context of escalating agriculture liberalisation.

The key aspects of the proposals put forward under the Special Safeguard Mechanism (SSM) are:

1. The **Product Coverage**:
   Proponents of the SSM propose that the mechanism should be available to all agricultural products, given the volatility of the agricultural markets.

2. The **Triggers** to invoke and initiate the safeguard measures:
   The trigger defines the circumstances under which the SSM can be invoked. If the trigger is poorly designed, the effectiveness of the mechanism will be

undermined. Yet if it is too flexible, it would be activated very frequently leading to the disruption of trade. The proposal put forward by a large group of developing countries (the G33) in the WTO is that the mechanism be triggered by both volume and price without proving injury to the domestic industry. This is similar to the way the SSG works

3. The Remedy Action that may be allowed under the mechanism: how additional duties could be used to halt import surges and address falling prices. The proposal is that the extent of the remedy should be commensurate and proportionate with the depth of the import surge or the fall in prices; for example the higher the increase of imports above the trigger, the higher the additional duty that may be imposed.

4. The **Duration** of the SSM:
   The proposal by the opponents of the SSM is that the additional duties will last for a period not exceeding 12 months from the date the measure was invoked.

The Political Debate around the Special Safeguard Mechanism

These proposals are still under discussion, and some other WTO members have put forward counter proposals. The politicised debate in the ongoing WTO negotiations on the SSM makes it difficult to come to constructive results. However, it should be noted that the Hong Kong WTO Ministerial Declaration, categorically states that developing countries "will have the right to have recourse to both volume and price –based triggers."

The developing country proponents of the SSM are puzzled by the extreme stance of some developed countries and agricultural exporting developing countries on the SSM. At the heart of the battle is the issue of whether the trade regime must move towards increased liberalisation. Yet, even ardent liberalizers could advocate in favour of an SSM, because it makes countries much more willing to enter into further trade liberalisation, knowing that there is a way out in times of difficulties.

Developing countries have come a long way on this issue. When the Doha Round was launched, the prevailing idea was to adopt a "Development Box". This was a comprehensive list of exceptions, under which they could accommodate many of their major concerns relating to how to protect and foster rural development, move towards sustainable agriculture, support small scale farmers and provide food security. This idea mirrored the concept of the "Green Box" from the Agreement on Agriculture, which accommodated the concerns of the developed countries with respect to their support to their agricultural sectors.
However as the Doha Round proceeded from the Ministerial of Cancun through Hong Kong and later to the Mini-Ministerial of summer 2008, ideas for supporting

developing country agricultural sectors have greatly changed, culminating in the latest text produced by Mr Falconer, chair of the negotiations.

The South Centre Study on SSM

The text for an SSM currently on the table has been analysed by the South Centre. This work has partially been support by APRODEV and its member agencies. As the South Centre's analysis reveals, SSM proposals have been watered down to the extent that they will no longer provide effective protection of food security and small scale farmers.

It is urgent that developing countries, the G 77 and G 90, become alert to the dangers of these attempts to undermine the SSM. APRODEV agencies must and will raise the issue of the SSM as a major development concern with the European Commission, the EU Parliament and the Member States. The EU cannot be allowed to make such minimal concessions, at the cost of the interests of small-scale farmers in the South.

For the boiler producer Kenneth from Ghana any agreement on the SSM comes too late. He has given up producing chicken meat, and he has shifted to keeping layers for egg production. Ghana´s poultry sector has been driven out of business. But other West African countries are still in need of an SSM for their own poultry sectors. Senegal, Nigeria and Cameroon have introduced WTO-incompatible measures to defend themselves from floods of poultry imports. They need the SSM to avoid legal challenges. Besides poultry, the South Centre´s Study proves that many other agricultural import surges threaten poor countries. There is an urgent need to undertake action to check their disastrous impacts.

As Christian development agencies we have the obligation to uphold the rights of the hungry and oppressed. Foremost we have the responsibility to strive to avoid harm from our own economic policies on the small-scale producers and the world's poor. We do not have the option to ignore this complex issue.

Policy Brief on the Special Safeguard Mechanism Negotiations at the WTO

December 2009
Based on South Centre Study on SSM [3]

1. Introduction

The need for a Special Safeguard Mechanism (SSM) to enable poor countries to protect their important and vulnerable agricultural sectors has been a key proposals of developing country World Trade Organisation (WTO) members since even before the Doha round of trade talks was launched in 2001.

Having the SSM would help to support the livelihoods of millions of poor farmers who make up the majority of the world's poor but who are currently prevented from earning a stable living and discouraged from profitably investing in their small-holdings because of unpredictable levels and volatile prices.

Yet, negotiations on the Special Safeguard Mechanism have become heavily politicised and used to stall talks when they were not going in favour of major WTO members. Developing country proposals have become so drastically watered down during horse-trading of negotiations that the mechanism would be practically useless to developing countries if current potential outcomes are to be realised.

This brief therefore recommends that a special safeguard mechanism must be agreed as an essential component of the Doha round of negotiations. This SSM must be workable and effective and non-burdensome. This means that current texts which impose conditions on its use - limiting when it can be invoked and the usefulness of remedies - need to be rejected and more constructive proposals made by developing countries themselves should become the basis of any negotiated agreement.

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[3] South Centre, **Analytical Note** SC/TDP/AN/AG/8 October 2009, The extent of agriculture import surges in developing countries: what are the trends?
South Centre, **Analytical Note** SC/TDP/AN/AG/9 October 2009,The price-based special safeguard mechanism (SSM): Trends in agriculture price declines and analysis of the conditionalities in the December 2008 WTO Agriculture Chair's text
South Centre, **Analytical Note** SC/TDP/AN/AG/10 October 2009, The volume-based special safeguard mechanism (SSM): Analysis of the conditionalities in the December 2008 WTO Agriculture Chair's texts

2. Rebalancing Agricultural Trade Rules

After the Uruguay Round, many developing countries were disheartened by what they perceived as a very imbalanced Agreement on Agriculture (AoA) in the WTO.

Developing countries had agreed to open their agriculture markets, on the understanding that developed countries would do the same.

However, the gains in access to those rich markets did not materialize. Developed countries maintained very high tariffs on imports of a range of products that they deemed too sensitive to liberalize, but many of which were of export interest to developing countries.

In addition, many developed countries negotiated the use of a special safeguard provision (SSG) to protect their agricultural sectors against the effects of rising imports. This is an instrument created for (mostly developed) countries that converted other means of restricting imports – such as quota limits – to tariffs. Although, some developing countries have access to the SSG, few have used it. On the other hand, the United States and the European Union have used it regularly to curb imports from other WTO members, including developing countries. These safeguards have become quasi-permanent on some sensitive products such as sugar for the EU and beef, butter and dairy products for the US. This special safeguard compares favourably to current proposals for an SSM to be used by developing countries, as it is quick and easy to use, relying on trigger levels of rising volumes of imports or falling prices. (See the section on remedies below.)

Finally, developed countries were able to maintain, and even increase, subsidies to their agricultural sectors, artificially increasing the competitiveness of their producers and exporters and lowering prices. These both made it more difficult for poor country exporters to compete in rich markets, and also led to dumping of food products across the developing world.

Allowing developing countries to make use of a special safeguard would go some way to rebalancing the outcomes of the Uruguay Round and would provide much-needed stability to developing country farmers and traders.

3. Import Surges: A Risk to Rural Livelihoods and Employment

All WTO members have acknowledged the validity of a development case for an SSM, including in formal declarations. (See box 1 on political support for the SSM.)

Due to structural adjustment programmes of the 1980s and 1990s, many developing countries have low applied tariffs. As a result, many have been very vulnerable to surges in agricultural imports, some of which are artificially cheap due to subsidisation in the exporting country. A large part of these import surges have come from developed countries. However, import surges from competing developing country neighbours have also occurred.

These surges can devastate the livelihoods of small-scale farmers in the importing countries. This exacerbates poverty levels as alternative sources of employment and income are not easily available and also raises the risk of food insecurity, as many lose their land and are no longer able to produce foodstuffs for the local markets.

Many developing countries that previously were net-food exporters, are falling into the category of net-food importing countries, leading to strains on government budgets.

The United Nations' Food and Agriculture Organisation (FAO) has documented the extent of the problem, showing how steep increases in imports have resulted in a decline in production by local smallholders (see table 1).

Table 1: FAO Research Documenting Import Surges and Impact on Local Production

Country / Commodity	Imports Increased by:	Local Production Decreased by
Senegal- Tomato Paste	15 times	50%
Burkina Faso – Tomato Paste	4 times	50%
Jamaica – Vegetable Oils	2 times	68%
Chile – Vegetable Oils	3 times	50%
Haiti - Rice	13 times	small
Haiti – Chicken Meat	30 times	small
Kenya – Diary Products	“dramatic”	Cut local milk sales
Benin – Chicken Meat	17 times	Declined

Source: FAO 2003 “Some Trade Policy Issues Relating to Trends in Agricultural Imports in the Context of Food Security”, Committee on Commodity Problems, CCP 03/10, 2003.

Data for 56 developing countries from 2004 – 2007 shows that food import surges[4] are extremely commonplace. For Least Developed Countries (LDCs) food import surges account for 23% of total agricultural imports. For Small and Vulnerable Economies (SVEs) the figure is similar at 21% of their agricultural trade, and for other developing countries it is 15%. For individual countries, this can amount to over 200 cases of volume import surges per year. For example,

[4] Defining an import surge as 110% increase in imports compared to the preceding 3-year average

Indonesia recorded 249 cases per year on average between 2004 and 2007; and El Salvador has had 200 cases on average per year.[5]

Worryingly, a disproportionate number of these import surges in LDCs and SVEs affect the cereals sector, crops that are cultivated by the small-scale farmers of these countries.

Imports also affect local economies by causing a drop in prices that farmers can get for their produce. These price drops are particularly prevalent for small economies. For example Botswana experienced 191 instances of price declines on average per year between 2004 and 2007; Honduras had 158 instances and Tanzania, 110 instances. Some bigger economies are also affected: Indonesia had 123 instances of price drops; and the Philippines had 130.[6]

Liberalisation policies in many developing countries have left them both vulnerable to import surges and without the tools to cope with them.

Box 1

WTO Ministers' support for a development-friendly SSM

The idea that developing countries' agricultural sectors should be given special treatment, because of their economic importance and role in poverty reduction, has been reiterated by WTO Ministers at every Ministerial meeting since the launch of the Doha Round.

The Doha Ministerial Declaration (2001)[7] launching the Doha Development Agenda negotiations did not specifically mention the Special Safeguard Mechanism. However, it did state that

'We agree that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development.' (paragraph 13)

In **the July Package (2004)** the "Special Treatment" that should be accorded to developing countries in the agriculture negotiations was reiterated:[8]

[5] For details, see South Centre Analytical Note 'The Extent of Agriculture Import Surges in Developing Countries: What are the Trends?', SC/TDP/AN/AG/8, November 2009.
[6] These numbers are based on the 85% trigger price level as in the Agriculture Chair's December 2008 text.
[7] WT/MIN(01)/DEC/1, 14 November 2001

‘The final balance will be found only at the conclusion of these subsequent negotiations and within the Single Undertaking. To achieve this balance, the modalities to be developed will need to incorporate operationally effective and meaningful provisions for special and differential treatment for developing country Members. Agriculture is of critical importance to the economic development of developing country Members and they must be able to pursue agricultural policies that are supportive of their development goals, poverty reduction strategies, food security and livelihood concerns.’

At the **Hong Kong WTO Ministerial Conference**[9] the same assurances were provided to developing countries.

‘We also note that there have been some recent movements on the designation and treatment of Special Products and elements of the Special Safeguard Mechanism. Developing country Members will have the flexibility to self-designate an appropriate number of tariff lines as Special Products guided by indicators based on the criteria of food security, livelihood security and rural development. Developing country Members will also have the right to have recourse to a Special Safeguard Mechanism based on import quantity and price triggers, with precise arrangements to be further defined modalities and the outcome of negotiations in agriculture.’

4. How Will the SSM Help?

At the outset of current trade talks, developing countries proposed two main instruments to address the problems their agriculture sectors had experienced and to redress the imbalance of the Uruguay Round's Agreement on Agriculture (AoA). These were:

3) The right to nominate “Special products” which would face lower tariff cuts or no tariff cuts compared to other, less sensitive agricultural products
4) The Special Safeguard Mechanism that would allow the imposition of an additional duty to support developing countries in dealing with volume import surges and price volatilities.

As proposed by developing countries, the SSM would allow developing countries to impose additional tariffs to stem harmful import surges when these lead to foreign goods flooding their markets or steep price declines on local markets.

[8] WT/L/579,2 August 2004. Annex A on ‘Framework for Establishing Modalities in Agriculture’ paragraph 2
[9] WTO Hong Kong Ministerial Declaration, paragraph 7, WT/MIN(05)/DEC 18 December 2005

Box 2

The SSM in more detail – volume and price based triggers

There are two variants of the SSM - a volume-based SSM and a price-based SSM.

The volume-based SSM
When imports in a current year surpass 105% or 110% over the average imports of the preceding 3 years[10], countries have the right to put in place the SSM which would allow them to levy an additional duty (the SSM remedy) on the imports. The level of the remedy will increase in step with the volume of the import surge. (Currently, the 105% trigger level has been rejected by exporting countries).

The price-based SSM
When the price of an import declines below a certain trigger level, an additional duty can be levied on the product in order to address the price gap so that domestic producers are not undercut by the price decline in the imported product.

In order to work well, the SSM also needs to be quick and easy to use, so that it can be invoked before harm is done and so that it is within the administrative capacity of developing countries.

Unfortunately negotiating tactics and delays have meant that a meaningful SSM is still a distant prospect at the WTO. (See box 3 below.)

Box 3

Development tool or political football: a history of negotiations on the SSM

Whilst the contours of the SSM mechanism had already been proposed before the launch of the Doha Round negotiations, and its workings subsequently developed by developing countries, it took until the WTO's July 2008 mini-Ministerial in Geneva for negotiations on this issue to begin in earnest.

It therefore came as a surprise to several WTO trade negotiators that the talks collapsed at that stage, apparently due to irreconcilable differences on the SSM – most had not envisaged the SSM to be a 'make or break' issue. Some maintain

[10] This means a rise or surpass of 5% or 10% over the average.

that the US used the SSM as an excuse to orchestrate a breakdown before negotiations could move on to the bigger hot potato issue – cotton.

It was only the volume-based SSM that was discussed at that meeting. The US insisted that the volume trigger had to be 140% (that is, imports levels had to be 140% over the preceding 3-year average) before the SSM could be invoked. India, together with one hundred other developing countries rejected this figure[11].

In December 2008, the Chair of the Agriculture negotiations of the time, Crawford Falconer, issued revised draft modalities texts, including on these SSM. These texts[12] were loaded with conditionalities for using the SSM that would make it ineffective.

A developing country delegate commented that: 'The 'Special' in the SSM means that the instrument is easy and quick to be implemented as well as effective. The conditionalities should not be burdensome, as with the WTO Safeguard agreement.' He concluded that the mechanism was no longer "special".

Whilst the December texts[13] drafted by the Chair of the Agriculture negotiations incorporate both a volume-based SSM (triggered when import volumes increase) and a price-based SSM (triggered when price decline), to date negotiations on the price-based SSM have not even begun. The text as it currently stands would actually prevent countries from being able to invoke the price-based safeguard.

[11] 'Statement of G33, African Group, ACP and SVEs on Special Products and Special Safeguard Mechanism, 27 July 2008
[12] TN/AG/W/4/Rev.4, TN/AG/W/7
[13] TN/AG/W/4/REV.4 AND TN/AG/W/7

5. What are the Aspects of Current Texts[14] that Make the SSM Unworkable?

5.1 Proposals on the volume-based SSM

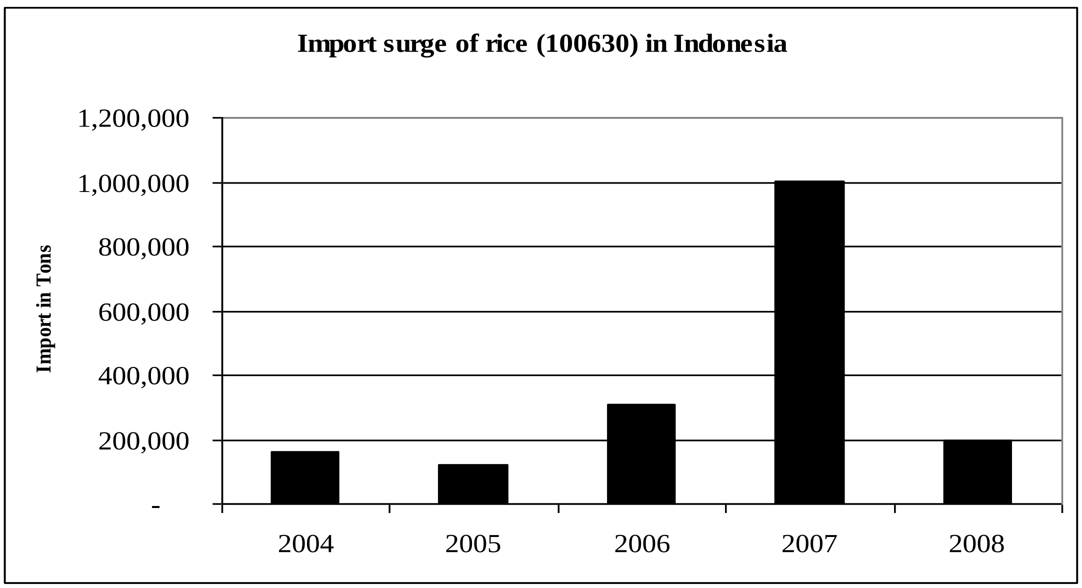
Volume trigger – Too High, too late

In order for the volume-based SSM to be triggered, imports must reach at least 110% over the preceding 3-year average or a 120% for a better remedy. These trigger levels are too high and too late.

Why? The trigger is calculated based on the average volume of the preceding 3 years' imports (the reference period).

The case of Indonesia is illustrative. Indonesia experienced an import surge in 2007.

Graph 1: Import Surge of Rice in Indonesia



Source: South Centre Import Surge Database 2009[15]

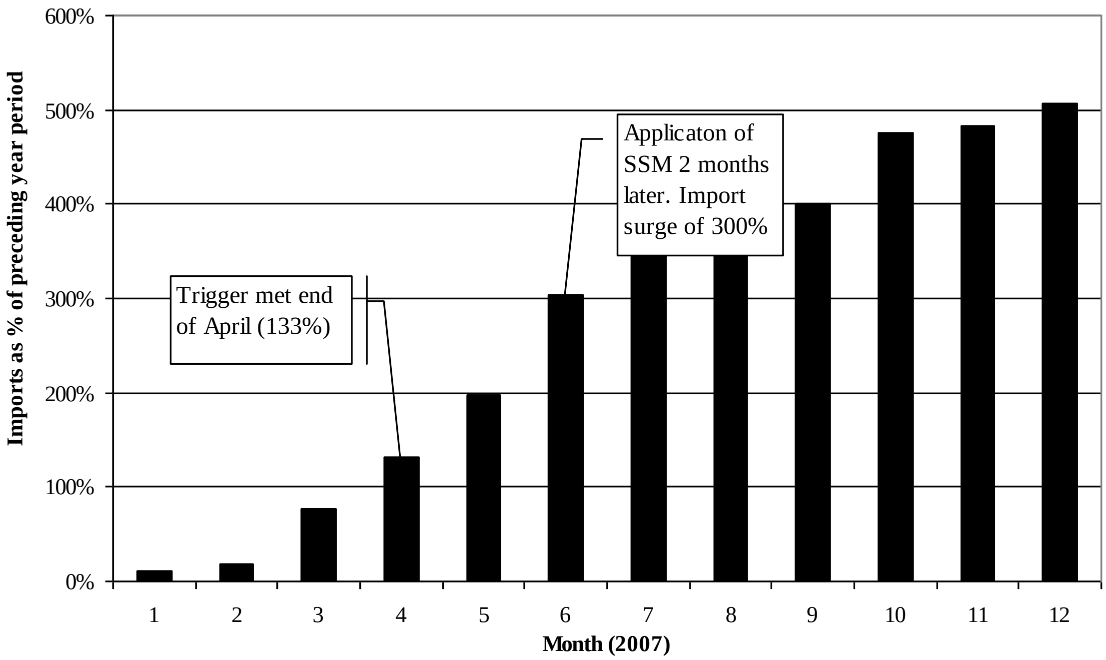
As Graph 1 shows, the 110% trigger is breached in April. However, the authorities would only know this and invoke the SSM at best 2 months later

[14] TN/AG/W/4/REV.4 AND TN/AG/W/7

[15] The South Centre Import Surge Database uses import statistics obtained from TradeMap, managed by the International Trade Centre (ITC). Only countries that reported their trade statistics to the UN in all of years between 2001 and 2007 have been considered. The resulting representative sample consists of 56 developing countries. Products in HS Chapter 1 (live animals), 6 (plants and flowers) and HS Code 2402 (cigars, cigarettes) have not been considered due to incomparability across years (units vs tons). No other data modifications have been performed on the data received.

(since customs statistics would have to be collated). Even more realistically, this process could be 3-4 months. For some lower-income countries, it could take even up to the rest of the year.

Graph 2: Indonesia's Cumulative Rice Imports in 2007 as a Percentage of the Preceding 3-Year Period



In the best case scenario then, the SSM would be implemented in June. By this date, imports have already hit 300% of the preceding 3-year period. If, more realistically, the process of collecting data and implementing the SSM takes 4 or 5 months, the actual imports would already be 400% over the imports of the preceding 3-year period.

It is therefore important that the trigger be set at the lowest level possible – even at 100%. Countries will not invoke the SSM at these levels, but the triggers are an early warning signal, and countries can already begin the process of putting an SSM in place. By the time the SSM is actually implemented, import volumes would have surpassed these trigger levels, possibly by large amounts as in the case above.

Volume Triggers are a Moving Target

Since developing countries' food import volumes are increasing very quickly, the volume trigger of 110% or 120% of imports of the preceding 3-year period means that the trigger level is also increasing. That is, more and more imports must be flooding into the country before the volume safeguard can be used. This limits the effectiveness of the SSM to safeguard domestic farmers' livelihoods.

Remedies Offer Insufficient Protection

The SSM remedies – that is the additional duties to be applied - need to be sufficient to stop the import surge that is taking place. Unfortunately, the SSM remedy currently crafted is extremely limited and may not be sufficient to stop the damage the imports are causing to domestic producers (see table 2 below for detailed proposals).

On a positive note, both current texts propose that bigger remedies should be available for bigger import surges. However, these bigger remedies are severely limited by 'caps' on the SSM additional duty. These 'caps' limit the extent to which the addition SSM duty can breach countries' tariffs which they had bound in the Uruguay Round.

Past experience of developing countries suggest that these remedies are likely to be insufficient (see box 4 below).

Box 4

Cote d'Ivoire's experience dealing with import surges

Poultry imports in Cote d'Ivoire rose from 1 815 tonnes to 17 226 tonnes between 1997 and 2003. Between 2001 and 2003, imports increased more than 650 per cent. During this time, FAO reported that over 1,500 poultry producers ceased production.[16]

The country's bound tariff is around 83%[17]. In 2004 -2005, the country raised its duty from 300 CFA per kg to 1000 CFA.[18] This translates into a new duty of about 134%.[19]

The additional tariff has been quite successful and has stemmed the rise in poultry imports.

However the final tariff is over 50 percentage points[20] above their Uruguay Round bound rate and is beyond the caps for Small and Vulnerable Economies (SVEs) that are contained in either of the current texts.

[16] FAO 2007 'FAO Briefs on Import Surges. Countries no.12. Insights on rice, poultry and sugar imports into Cote d'Ivoire'.
[17] Based on Ad valorem bound tariff rate
[18] International Egg and Poultry Review, Cote d'Ivoire Increases Poultry Import Tariff, 17 May 2005, http://www.thepoultrysite.com/poultrynews/7807/international-egg-and-poultry-review
[19] 100 CFA francs = 0.152449 Euros. 1000 CFA duty is equivalent to a duty of €1,524.49 per kg. The average unit value in 2005 was €1,134 (ITC Trade Map).
[20] On the difference between percentage points and percentage: 50% of duty means adding a further 10% or 20% to the duty of the product. 50 percentage points means adding 50 to the duty, e.g. 50 + 20 =70

Another problem with the proposed[21] remedies is that the additional duty is to be added on to countries' applied rates and not their bound rates.

This compares unfavourably with the SSG, which is applied to out-of-quota tariffs, also their bound tariff levels. For the EC and the US, on average, the bound tariff levels for their sensitive out-of-quota tariff lines are 97.33% and 90.82% respectively (2002 levels).[22] The SSG remedy of 33.3% of these bound tariff rates are added over and above the high out-of-quota tariffs. For comparison, the EC's average applied rate is 15%. Another example is Norway which has an average bound agricultural tariff of 135.8% but an applied rate of 57.8%.

Some developing countries do have high bound tariff rates for agriculture (for example Kenya has rates of 100%), but many have low bound tariff rates on average (e.g. 39.6% for the Dominican Republic). Applied rates are even lower – 13.1% for the Dominican Republic; 15.8% for China (their bound rate is the same); 9.2% for Botswana (their average bound rate is 38.4%).

To make developing countries apply the SSM remedy from their applied tariffs would be equivalent to providing Special and Differential Treatment to developed countries which can apply a 1/3 bound tariff SSG remedy to already high out-of-quota tariffs.

Another condition that will weaken the SSM mechanism is the limitation on the number of tariff lines that can be covered. One proposal[23] is that developing countries could cover only 2-6 products (a maximum of 48 lines) within a year, whilst SVEs could cover 10-15% of tariff lines. Another proposal[24] is that only 2.5% of tariff lines could be covered by the SSM in any 12 month period.

Data (see table 3) shows that on average 22% to 34.2% of tariff lines are affected by import surges in a year. This means that developing countries would not be able to stem imports of all products they needed to in order to protect vulnerable sectors from harm.

In contrast, developed countries have a larger percentage of tariff lines covered under the SSG, as shown in Table 4 below.

[21] TN/AG/W/4/Rev.4
[22] OECD 2002 'Agriculture and Trade Liberalisation: Extending the Uruguay Round Agreement', Table 1.5, p. 34.
[23] TN/AG/W/4/Rev.4
[24] TN/AG/W/7

Table 2: Proposed remedies
TN/AG/W/R/ Rev.4:

Import surge as % of base imports (average of preceding 3 years)	Remedy added to *applied tariffs* (Rev.4)	Final duty cap
110% - 115%	25% of pre-Doha bound rate or 25 percentage points (pp), whichever higher	LDC: 40% of pre-Doha bound rate or 40pp, whichever higher [SVE: 20% of pre-Doha bound rate or 20pp, whichever higher Max 10-15% of tariff lines] (i.e. approximately 76 – 114 lines) Other developing country: 15% of pre-Doha bound rate or 15pp, whichever higher Max 2-6 products on HS6 level (i.e. max. 48 lines)
115-135%	40% of pre-Doha bound rate or 40pp, whichever higher	
> 135%	50% of pre-Doha bound rate or 50pp, whichever higher	

TN/SG/W/7:

Import surge as % of base imports (average of preceding 3 years)	Remedies / cap	Limit on tariff lines in 12 month period
120% - 140%	1/3 of pre-Doha bound rate or 8 percentage points (pp), whichever higher	Max 2.5% of tariff lines (i.e. 18-19 tariff lines)
>140%	½ of pre-Doha bound rate or 12pp, whichever higher	

Table 3: The Average Percentage of Tariff Lines Experiencing Import Surges for Each Developing Country Grouping (2004 – 2007)

Country group	2004	2005	2006	2007	Average 2004-2007	Unique 2004-2007
LDCs	19.4%	20.1%	24.0%	25.8%	**22.3%**	45.1%
SVEs	27.4%	27.8%	27.9%	31.0%	**28.5%**	56.2%
Other developing countries	31.6%	33.0%	35.0%	37.2%	**34.2%**	62.5%
All developing countries	27.2%	28.1%	29.5%	32.1%	**29.2%**	56.1%

Source: South Centre Import Surge Database, using trade statistics from ITC Trademap. For more details, see South Centre Analytical Note SC/TDP/AN/AG/8, November 2009.

Table 4: Percentage of Developed Countries' Tariff Lines Covered by the SSG

Country/Current total agriculture tariff lines	**No. of tariff lines under the UR allowed to use SSG**	**% of agricultural tariff lines covered by SSG**
EC-12 EC -27 : 2,205 tariff lines	539	31
US : 1,777 tariff lines	189	9
Japan: 1,344 tariff lines	121	12
Switzerland: 2,179 tariff lines	961	59
Norway: 1060 tariff lines	581	49

Source: Information in columns 2 and 3 are from the WTO Secretariat paper TN/AG/S/12, 2004. Countries' tariff lines in column 1 are taken from more recent WTO data.

Applying the Remedies will be too Difficult

Not only is the availability and level of remedy insufficient, developing countries will need to check that certain conditions are fulfilled before they are able to apply them. This will make the SSM unworkable in many circumstances.

For example, they will not be allowed to apply remedies that exceed the pre-Doha bound rate "unless domestic prices are actually declining"[25], known as the "cross-check".

Research by the South Centre shows that in 85% of cases, volume import surges (110% trigger level) are *not* accompanied by import price declines.[26] Therefore it would seem that with a cross-check, the volume SSM could not be invoked.

The Chair's texts also impose conditions on how long remedies can be used and how soon they can be reinstated once removed. According to one text[27], when a remedy has been in place on a product for 2 consecutive periods, it cannot then be used for a subsequent 2 consecutive periods. The other proposal[28] is even more constraining, stating that the SSM should only be applied for a maximum of [4/8] months, and shall not be reapplied thereafter for the same number of months.

The SSG did not have such conditions. In fact, the US and EU use the SSG (particularly the price-based SSG) permanently for a list of sensitive products.

Conditions are even more stringent for seasonal and perishable products – limiting coverage to only 6 months in one text.[29] Although not explicitly stated, seasonal products in the SSM discussions refer to the products which are seasonal for the exporters. The exporting countries want to ensure that their seasonal products are not being blocked by the SSM.

The SSG has a completely different approach to seasonal products – referring to seasonal products for the importing country. The treatment provided in the SSG for seasonal products is very favourable to the importer – allowing countries to change their reference periods so that the SSG can more easily be invoked to protect the domestic producers of seasonal and perishable products of the importing country.

25 TN/AG/W/7

26 For details, see South Centre Analytical Note SC/TDP/AN/AG/9, November 2009.

27 TN/AG/W/4/Rev.4

28 TN/AG/W/7

29 TN/AG/W/4/Rev.4 states that the SSM for seasonal products can only be applied for 6 months. TN/AG/W/7 further suggests that if the SSM has been in place for 2 consecutive 12 month periods (eg. 6 months in one year, than another 6 months in another year), the SSM cannot then be used for another 12 months.

Another way in which current proposals compare unfavourably to the SSG is dealing with "negligible" levels of imports. The text[30] would not allow countries to apply SSM remedies when imports are 'manifestly negligible in relation to domestic production and consumption'. Such a clause does not exist for the SSG. The US has used the price-based SSG to block trade for amounts as small as 14kgs (maple sugar and maple syrup) and 40 kg (glucose and glucose syrup).[31]

Finally, "pro-rating" is introduced for the SSM, a retrograde innovation as compared to the SSG. This condition effectively imposes a higher trigger on developing countries if they have previously used the SSM on those tariff lines. For example, one proposal[32] states that should a previous SSM application have lowered import volumes (hence lowering the volume trigger level), the next application of the SSM should use the previous, higher SSM trigger level. A more drastic proposal[33] is that proxy import figures should be used to calculate the trigger if the SSM has been applied within the last three years. These proxy figures would disregard the period for which the SSM was applied and therefore should produce a higher trigger. (If this should not be the case, then the original higher figure would be used).

This means that if an SSM application has previously been effective, countries are essentially punished in any future use. It also means that the volume trigger can never be lowered – even if total imports due to SSM usage have declined.

5.2 The Price-Based SSM

The price-based SSM is similarly disabled by inadequate remedies and unworkable conditions.

Remedies Offer Insufficient Protection

The chair's proposal is that the remedy will only partially address the price decline, meaning that domestic products are still likely to be out-competed by the cheap imports.

The chair proposes that the trigger price should be 85% of the reference price, which is defined as the average price of the last 3 years[34]. The remedy is 85% of the difference between the new import price and the trigger price.

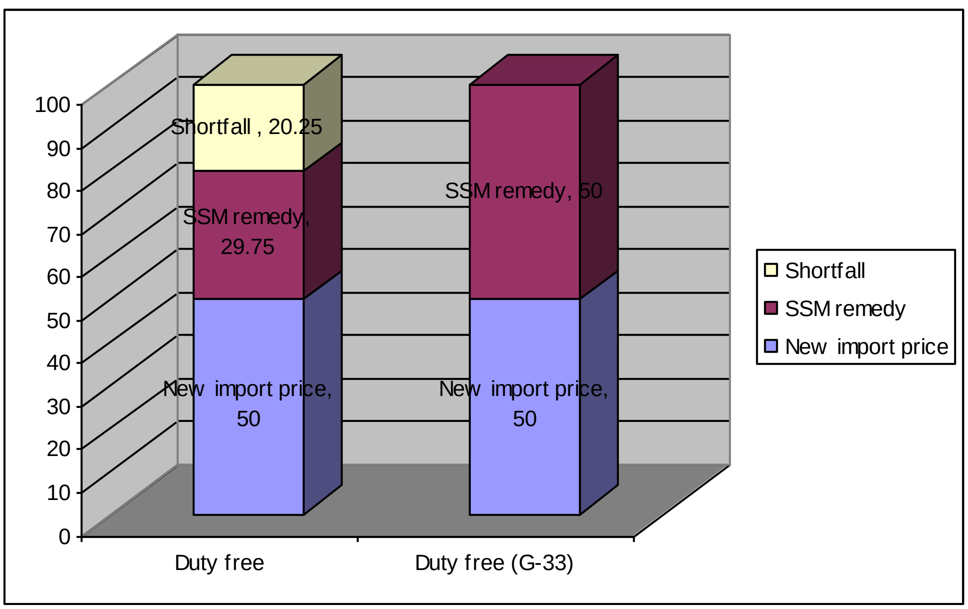
[30] TN/AG/W/4/Rev.4
[31] For details, see South Centre Analytical Note SC/TDP/AN/AG/9, November 2009.
[32] TN/AG/W/4/Rev.4
[33] TN/AG/W/7
[34] The issue of whether there should be a fixed reference period (as with the price-based SSG), or a moving reference period has not actually been discussed.

For example, a product which used to be imported at $100 would have a trigger price of $85. If the new import price is $50 the SSM remedy would be 85% of the difference between $85 (trigger price) and $50 (the new import price). In such a scenario, the remedy would be $29.75, bringing the import price and SSM remedy to $79.75, still $20.25 less than the original. If the domestic product is still selling at $100 or even less, the SSM would do little to shield them from injury.

The G33 has proposed that the remedy should make up 100% of the difference between the import price and the reference price, hence bringing the import price back to $100 in the case above.

The difference between the Chair's text and the G33 position is illustrated in Graph 3 below. The hypothetical example used is one where the product imported faces no duty.

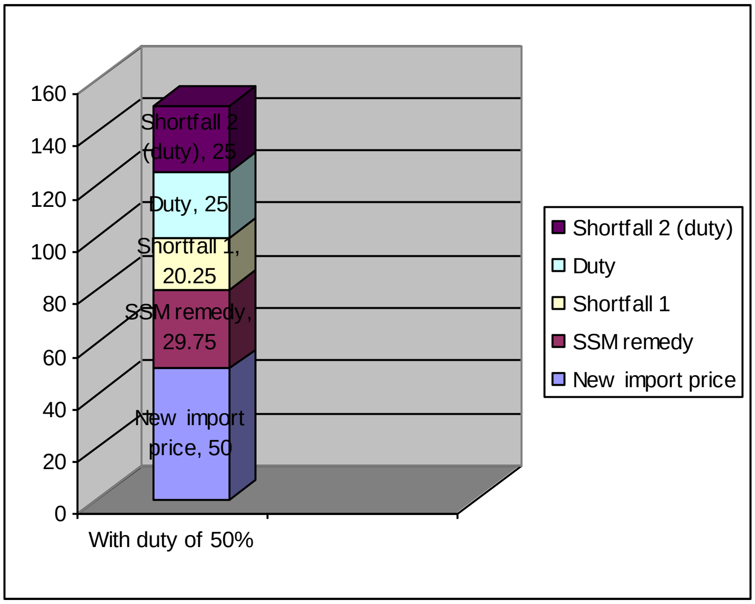
Graph 3: The Price-based SSM Remedy: Comparing the Chair's Text and the G33 Position



Members, however, have also overlooked the situation where a product may have an ad valorem tariff. These are tariffs that are calculated as a percentage of the value of the product. For example a 50% tariff for a product costing $100 would be $50. When prices fall, the ad valorem tariff in price terms also falls. If the $100 product has a tariff of 50%, when prices fall to $50, the tariff would also drop from $50 to $25. This decline has not yet been factored into the price-based SSM[35]. See Graph 4 for an illustration of this.

[35] One way of doing so is by defining the reference price as the price encompassing the c.i.f. price (cost, insurance and freight price) and also the duty in price terms. When prices (and tariffs

Graph 4: Shortfalls in the Chair's Price-based SSM Remedies



The Chair has also stated that the pre-Doha bound tariff level (i.e. for most countries, this is the bound tariff ceilings they have committed to in the previous Uruguay Round) should be the ceiling level for the remedy. Since most developing countries have their pre-Doha tariffs expressed in ad valorem terms, the ceiling level in price terms actually declines, as prices decline. In the example above, if the pre-Doha bound level is 80%, then the maximum remedy would be 30% (taking the applied tariff as 50%). When the price falls to $50, the maximum remedy would be $15. If prices drop further to $25, the 30% remedy ceiling is reduced to a paltry $7.50.

Logically, in order for the instrument to be effective, remedies should increase not decrease, as prices decline, in order to make up for the increasing shortfall.

Applying the Remedies will be too Difficult

As was the case for the volume-based SSM, stringent conditions make the price-based SSM practically impossible to implement.

Again, "cross check" conditions are imposed. In this case, this means that developing countries cannot use the price-based SSM when the volume of imports is in decline. They also cannot use it when the imports are at a "negligible level incapable of undermining the domestic price level'.

in price terms) drop, the remedy will have to bridge the difference between the new import price (c.i.f. plus duty) and the old import price (c.i.f. plus duty in price terms).

There are three main problems here.

First, price declines are not always accompanied by import surges and therefore the cross-check condition would not be fulfilled. This would apply in 20% of cases of price drops.

Second, it is impossible for countries to know, as shipments arrive, whether the levels of imports are increasing or declining overall, since data would not yet have been collated.

Third, if challenged, developing countries would bear the burden of proof that import levels were not "manifestly negligible". This is especially difficult as these terms are undefined.

A final problem with the SSM is that en route shipments are excluded from coverage. The text notes that any shipments that "have been contracted for and were en route after completion of custom clearance procedures in the exporting country, either under the price- or volume-based SSM, shall be exempted from any such additional duty". Yet, the text also notes that the price-based SSM will apply on a shipment-by-shipment basis.

Due to this contradiction, countries have on paper, a price-based SSM, but in effect cannot invoke the instrument.

Box 5

What are the implications for trade under regional trade arrangements? – the case of EPAs

As a significant amount of trade now takes place under the terms of regional trade agreements, the relationship between WTO safeguards and safeguards provided in these deals is critical for developing countries.

Current proposals[36] limit the application of the SSM (price and volume) to MFN trade (that is trade that takes place under WTO terms, not between trading partners subject to a bilateral or regional deal). This restriction does not apply to the SSG.

In fact, the EU has included the SSG in the Economic Partnership Agreement (EPA) texts signed with various African, Caribbean and Pacific (ACP) countries, although it pledges not to use it for the first five years. This concession will be reconsidered after the 5 years.

[36] TN/AG/W/4/Rev.4

In addition to this, EPAs provide inadequate safeguards for developing countries in their bilateral trade with the EU. The EPA bilateral safeguards are more restrictive than the safeguards that the EU has been enjoying under the WTO (under the SSG) in three important regards: Firstly, the safeguards can be applied to volume increases but the language remains unclear if it can also be applied in cases of price declines. Secondly, the safeguards allow duties to be invoked only up to the MFN rate, while such a restriction does not exist under the SSG or the WTO's Agreement on Safeguards. Thirdly, the EPA bilateral safeguard is not automatic in the way the SSG has been.

The EU is currently negotiating bilateral trade deals with many other developing countries. ACP countries and other developing countries could find themselves in the situation in the future whereby they have undertaken further liberalization under a regional trade deal and whilst the EC has recourse to the SSG, they do not have access to an equivalent instrument, due to exclusion of preferential trade from the SSM text and inadequate bilateral safeguards.

VII. Conclusions

The ineffective remedies and stringent conditions in current texts would make both the price-based and volume-based SSM inadequate for developing countries' needs. Particularly in the case of the price-based SSM, developing countries have a safeguard on paper, but not in practice.

The current proposals for the SSM compare unfavourably to the terms of the SSG enjoyed by developed countries such as the EU and US, and would therefore do little to redress the imbalances of the Uruguay Round deal.

These inadequacies are important and must be urgently addressed if the current WTO round is to earn the development credentials to which it aspires.

Many developing countries have realised in the last two years that food security cannot be secured by sourcing food on world markets and ignoring the role of small-holder farmers in guaranteeing supplies. Neither have developed countries themselves followed this prescription – using subsidies to prop up their own agricultural sectors and domestic food supplies. The food crisis of 2008 showed that it was not feasible for many low income countries to be highly dependent on the world market. They just may not be able to afford to eat should prices escalate. A basic level of food self-sufficiency is thus very important. In fact, the less financially endowed a country is, the more important it is to have a decent level of domestic food production.

For liberalization of agricultural markets to work for developing countries, the competitiveness of local producers in their local/regional markets or the availability of alternative livelihoods needs to be assured. These conditions do not hold true for many of the low-income or small and vulnerable economies.

For these reasons, effective safeguards for developing countries are a crucial element of the Doha negotiations.

These may be difficult issues to raise in the context of trade talks, and clearly do not lend themselves to traditional horse-trading and power play of negotiations.

Nevertheless they are crucial to the impact of a future WTO deal on the development prospects of the poorest countries.

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