



The Proposed Special Safeguard Mechanism (SSM) in the WTO: Is it still ‘Special’?

(Draft)

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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 proposal of a large group 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 the unpredictable levels of imports and their 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 the current draft negotiating texts (TN/AG/W/4/Rev.4 and TN/AG/W/7, December 2008) are agreed upon.

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

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

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 – Dairy 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 surges¹ 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, Indonesia recorded 249 cases per year on average between 2004 and 2007; and El Salvador has had 200 cases on average per year.²

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 can also affect local economies if the prices of these imports are falling. As a result, domestic farmers are squeezed out of their local markets. These import price drops are particularly prevalent for small economies. For example Botswana experienced 191 instances of import 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 130.³

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

3. What is the Special Safeguard Mechanism?

The Special Safeguard Mechanism (SSM) has been proposed by the Group of 33 (G33), a grouping of 46 developing countries. They have been supported by the African Group, African, Caribbean and Pacific (ACP) group, and the Least Developed Countries (LDCs). The SSM would allow the imposition of an additional duty to support developing countries in dealing with volume import surges and price volatilities.

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% of the average imports of the preceding 3 years, 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 the exporters).

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 (SSM remedy) in order to address the price gap so that domestic producers are not undercut by the price decline in the imported product.

¹ Defining an import surge as 110% increase in imports compared to the preceding 3-year average

² 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.

³ These numbers are based on the 85% trigger price level as in the Agriculture Chair’s December 2008 text.

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.

4. What are the Aspects of Current Texts⁴ that Make the SSM Unworkable?

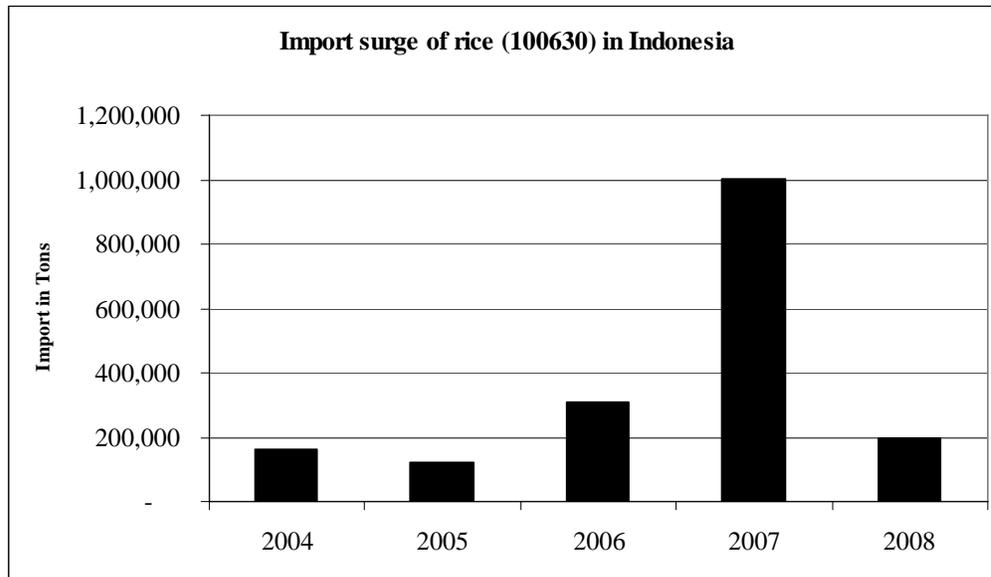
4.1 Proposals on the volume-based SSM

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 2009⁵

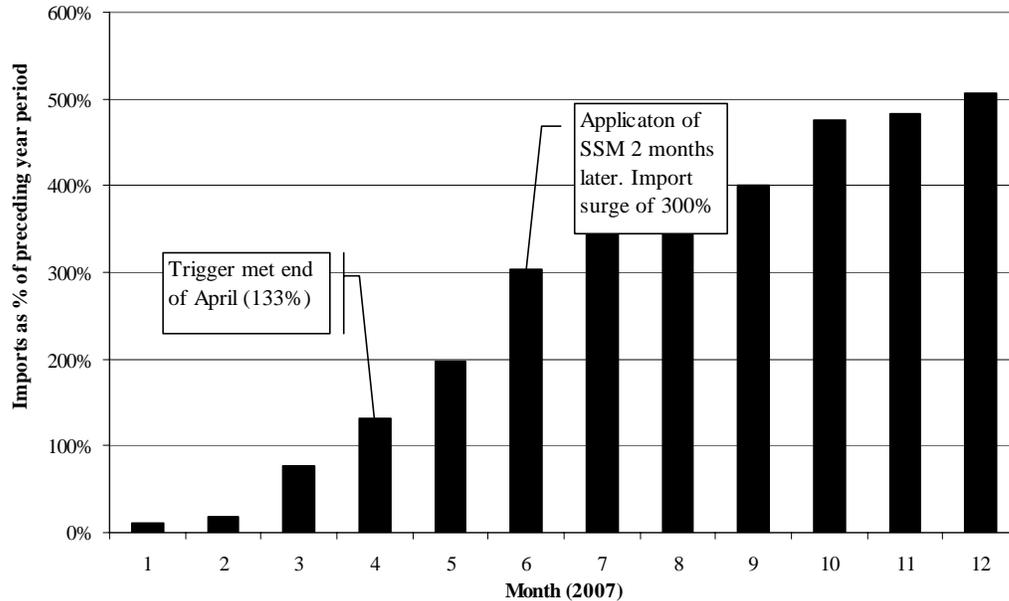
As Graph 1 shows, the 110% trigger is breached in April. However, the authorities would only know this and invoke the SSM at best 2 months later (since customs statistics would

⁴ TN/AG/W/4/REV.4 AND TN/AG/W/7

⁵ 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.

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.⁶

The country's bound tariff is around 83%⁷. In 2004 -2005, the country raised its duty from 300 CFA per kg to 1000 CFA.⁸ This translates into a new duty of about 134%.⁹

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

However the final tariff is over 50 percentage points 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.

Another problem with the proposed¹⁰ 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).¹¹ 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%.

⁶ FAO 2007 'FAO Briefs on Import Surges. Countries no.12. Insights on rice, poultry and sugar imports into Cote d'Ivoire'.

⁷ Based on Ad valorem bound tariff rate

⁸ 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>

⁹ 100 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).

¹⁰ TN/AG/W/4/Rev.4

¹¹ OECD 2002 'Agriculture and Trade Liberalisation: Extending the Uruguay Round Agreement', Table 1.5, p. 34.

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 proposal¹² 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 proposal¹³ 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.

Table 2: Proposed remedies		
TN/AG/W/R/ Rev.4:		
Import surge as % of base imports (average of preceding 3 years)	Remedy added to <i>applied</i> 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
115-135%	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)

¹² TN/AG/W/4/Rev.4

¹³ TN/AG/W/7

> 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%	1/2 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
<i>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.</i>		

Applying the Remedies will be too Difficult: Cross-Check, Seasonality, Pro-rating, Exclusion of Negligible Trade

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”¹⁴, 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.¹⁵ 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 text¹⁶, 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 proposal¹⁷ 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.

¹⁴ TN/AG/W/7

¹⁵ For details, see South Centre Analytical Note SC/TDP/AN/AG/9, November 2009.

¹⁶ TN/AG/W/4/Rev.4

¹⁷ TN/AG/W/7

Conditions are even more stringent for seasonal and perishable products – limiting coverage to only 6 months in one text.¹⁸ 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.

Another way in which current proposals compare unfavourably to the SSG is dealing with “negligible” levels of imports. The text¹⁹ 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).²⁰

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 proposal²¹ 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 proposal²² 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.

4.2 The Price-Based SSM

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

¹⁸ 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.

¹⁹ TN/AG/W/4/Rev.4

²⁰ For details, see South Centre Analytical Note SC/TDP/AN/AG/9, November 2009.

²¹ TN/AG/W/4/Rev.4

²² TN/AG/W/7

Remedies Offer Insufficient Protection

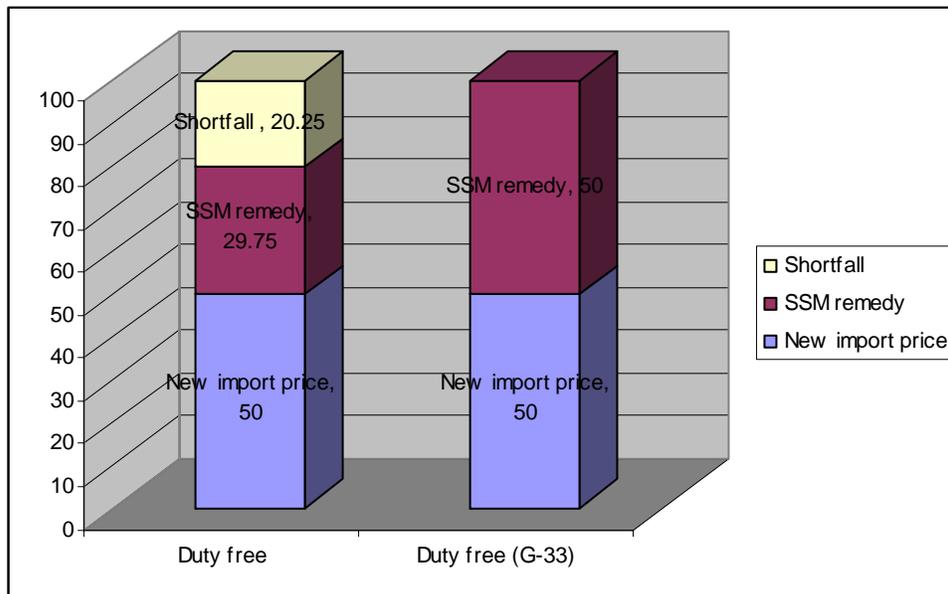
The chair’s proposal is that the remedy will only partially address the price decline, meaning that domestic products are still likely to be out-competed by the cheap imports.

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 years²³. The remedy is 85% of the difference between the new import price and the trigger price.

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

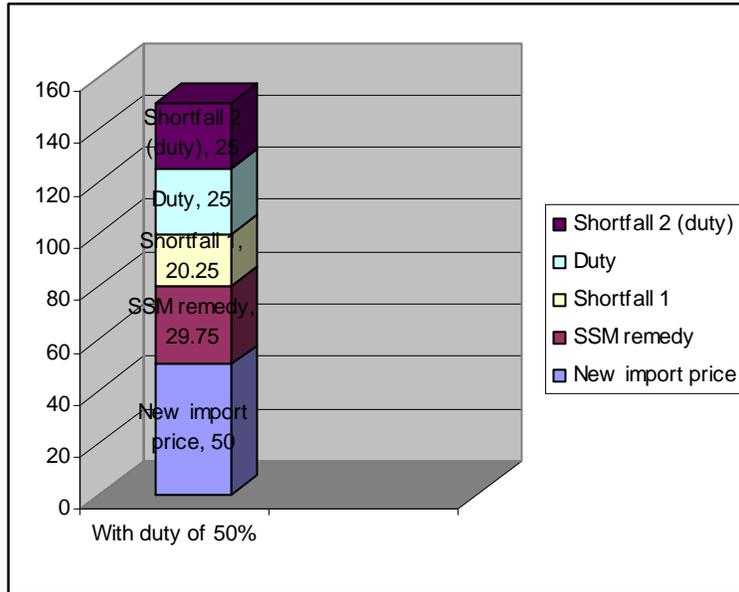


Members, however, have also overlooked the situation where a product may have an ad valorem tariff. These are tariffs that are calculated as a percentage of the value of the

²³ 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.

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 SSM²⁴. See Graph 4 for an illustration of this:

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: No price-based SSM in Effect as En Route Shipments are Excluded from SSM use; Cross-Check Mechanism

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

²⁴ 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 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).

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”.

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 proposals²⁵ 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.

²⁵ 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.

5. 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 these reasons, effective safeguards for the poorest populations in developing countries are a crucial element of the Doha negotiations.