South Centre Analytical Note
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COMPARATIVE ANALYSIS OF RELEVANT WTO SAFEGUARD PROVISIONS FOR AGRICULTURE NEGOTIATIONS

Item/parameter	Art. XIX of GATT 1994 and Agreement on Safeguards	Special Safeguard Provisions (Art. 5 AoA)	Agricultural Special Safeguard (Proposal by developing countries)	Comments
• Country coverage	All WTO Members	39 members of the WTO[1]	All developing countries	
• Product coverage	All non-agricultural products	- Agricultural products in respect of which measures referred to in paragraph 2 of Art. 4 of the AoA have been converted into an ordinary custom duty (i.e. products that underwent tariffication in the Uruguay Round) and which is designated in the Schedule of the Member concerned with the symbol "SSG" as being the subject of a concession in respect of which the provisions of Art. 5 of the AoA -Special Safeguard Provisions- may be invoked.	Available for all agricultural products as per Annex I of the Agreement on Agriculture. Or - Food security and staple crops as per each Member's Schedule (SSM)	
• Conditions for the	A determination by the competent	The provisions on special	The provisions on Agricultural	- The current SSG and the

[1] Special Agricultural Safeguard. Background Paper prepared by the WTO Secretariat (G/AG/NG/S/9/Rev.1). 19 February 2002.

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application of safeguard measures	authorities have been made, that increased imports have caused or threatens to cause serious injury to a domestic industry that produces like or directly competitive products **and** that there is a causal link between increased imports of the product concerned and serious injury or threat thereof. Such a link must be established in the course of an investigation and be based on objective evidence.	safeguard may be invoked if: a) the volume of imports of the product concerned entering the custom territory of the Member granting the concession during any year exceeds a trigger level which relates to the existing market access opportunity as set out in para. 4 (of Art. 5 of the AoA); **or, but not concurrently**:	Special Safeguard may be invoked when: i) the import level increase over a year represents X per cent of the average import level of the last three years; **or** ii) the import price falls below a trigger price to be determined.	proposed SSM can be automatically applied based on objective criteria with no further requirement by means of authorization by the CoA. - The Agreement on Safeguards, on the other hand, requires the Member imposing the measure to undertake an investigation to determine injury to the domestic industry or threat thereof, and that a causal link exists between the increase in imports and such injury or threat thereof.
		b) the price at which the imports of that product may enter the customs territory of the member granting the concession, as determined on the basis of the c.i.f. import price of the shipment concerned expressed in terms of its domestic currency, falls bellow a trigger price equal to the average 1986-1988 reference price for the product concerned.		- Many developing countries lack the institutional and legal capacity to administer the disciplines on Safeguards. In addition, the investigation process might lead to costly delays for the vulnerable agriculture sector of developing countries. - In many respects, Art. XIX of GATT and the Agreement on Safeguards were developed for industrial goods. It doesn't provide for the particularities of the agriculture sector.

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• Triggers	- In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry… the competent authorities shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate of and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.	*Volume trigger*: the trigger level is based on the market access opportunities defined as imports as a percentage of the corresponding domestic consumption during the three preceding years for which data are available: a) where market access opportunities for a product are less than or equal to 10 per cent, the base trigger level shall equal 125 per cent[2]; b) where such market access opportunities for a product are greater than 10 per cent but less than or equal to 30 per cent, the base trigger level shall equal 110 per cent;	*Volume trigger*: the increase in imports of any particular year represents -as a minimum- a percentage (to be determined in the negotiations) of the average import levels of the last three years.	*Volume trigger:* - The trigger volume for the current SSG (Art. 5 AoA) is related to the change in consumption levels of the product concerned over the most recent year data is available and the share of imports to consumption for the last three years. - The rationale for establishing this link was to avoid the use of the SSG in situations in which imports are increasing due to an increase in domestic demand, in which case such imports might not harm domestic producers. - The proposed SSM does not take into account consumption levels for the determination of the volume trigger.

[2] Where domestic consumption is not taken into account, the present base level should be used.

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		c) where such market opportunities for a product are greater than 30 per cent, the base trigger shall equal 105 per cent. The additional duty may be imposed in any year where the absolute volume of imports of the product concerned entering the customs territory of the Members granting the concession exceeds the sum of *(x)* the base trigger level set out *supra* multiplied by the average quantity of imports during the three preceding years for which data are available and *(y)* the absolute volume change in domestic consumption of the product concerned in the most recent year for which data are available compared to the preceding year, provided that the trigger level shall not be less than 105 per cent of the average quantity of imports in *(x)*.		- An important constraint for the use of the volume trigger of the current SSG by developing countries stems from the lack of data on domestic consumption, in particular in a disaggregated basis.

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		Price triggers: a reference price for the product concerned defined as the average c.i.f. unit value of that product for the period 1986-1988, expressed in domestic currency.	*Price triggers*: The trigger price shall be defined as the average c.i.f. import price over the last three years or the average domestic price for that product the year the measure is adopted.	*Price trigger:* - Trigger prices are based on historical 1986-1988 data on import prices **expressed in domestic currency**. This has made that currency devaluation and/or inflation undermine the applicability of this measure in some countries. - Taking this into account, the new safeguard mechanism proposed by a group of developing countries provides as the basis for the price trigger the average import price for the last three years or the average domestic price for the year the measure is adopted.
• Type of measures	Additional duties and quantitative restrictions.	Additional duties for both, volume and price triggers.	Additional duties and quantitative restrictions.	

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• Restrictions as to the level of compensation admissible	- Safeguard measures shall apply only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment (the competent authorities, based on objective evidence, define the appropriate remedy). - If quantitative restrictions were imposed, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury. - Provisional safeguard measures shall take the form of additional duties.	_Volume trigger_: the additional duty imposed shall not exceed one third of the level of the ordinary custom duty (i.e. applied rate) in effect on the year in which the action is taken. _Price trigger_. The additional duty imposed should be set according to the following schedule: a) if the difference between the c.i.f. import price of the shipment expressed in terms of the domestic currency and the trigger price is less or equal to 10 per cent of the trigger price, no additional duty shall be imposed; b) if the difference between the import price and the trigger price is greater than 10 per cent but less or equal to 40 per cent of the trigger price, the additional duty shall equal 30 per cent of the amount by which the difference exceeds 10 per cent;	_Irrespective of the trigger used_: - The level of the quantitative restriction should be such as to provide for the average import level of the last three years. - If quantitative restrictions were to be applied, approved TRQ imports shall be excluded from the application of the measure. - The extra duty to be applied will be determined by the difference between the trigger price or the domestic price as defined *supra* and the import price. The maximum extra duty shall be Y per cent (to be determined in the negotiations) of the bound rate for that product.	- The safeguard agreement provides for the establishment of QRs. The level of the QR should not reduce imports below the level of the average of imports in the last three years. The proposed SSM suggests a similar approach. - According to the proposed SSM, TRQ imports will be subject to the application of safeguard measures. However, the approved TRQ volumes by the time the measure is imposed will be excluded from the application of the measure. - One of the weaknesses of the current SSG is that it does not allow for the complete compensation of the effects of the external shocks. There are restrictions to the level of the additional duties to be imposed and this level is set by reference to the applied rate. Since developing countries apply low tariffs, such restrictions would not provide for adequate relief.

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		c) if the difference is greater than 40 per cent but less than or equal to 60 per cent of the trigger price, the additional duty shall equal 50 per cent of the amount by which the difference exceeds 40 per cent, plus the additional duty allowed under (b); d) if the difference is greater than 60 per cent but less or equal to 75 per cent, the additional duty shall equal 70 per cent of the amount by which the difference exceeds 60 per cent of the trigger price, plus the additional duties allowed under (b) and (c);		- The proposed SSM suggests limiting the additional duties to a percentage of the bound rate rather than the applied rate for the product concerned.

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		e) if the difference is greater than the 75 per cent of the trigger price, the additional duty shall equal 90 per cent of the amount by which the difference exceeds 75 per cent, plus the additional duties allowed under (b), (c) and (d). f) - Members undertake, as far as practicable, not to take recourse to the price trigger safeguard provisions where the volume of imports of the products concerned are declining.		

Chemin du Champ d'Anier 17
Case postale 228, 1211 Geneva 19
Switzerland

Telephone : (41 22) 791 8050
Fax : (41 22) 798 8531
Email : south@southcentre.org

Website:
http://www.southcentre.org