

**PROPOSALS ON A SPECIAL SAFEGUARD FOR DEVELOPING COUNTRIES
IN AGRICULTURE**

	Safeguard provisions under Art. 5 of the AoA	Chairman's Draft as of 7 March 2003	Proposal on a Special Safeguard Mechanism for Developing Countries (JOB(02)177 and Rev. 1)¹	Proposal on a New Special Safeguard 'Safety Valve' (JOB(03)/48)²	Comments
Country and Product Coverage					
Country coverage	- Developed and developing countries, for products in which they undertook tariffication and for which the right to invoke the SSG was	- In principle all developing countries, as long as certain conditions are met. Consultations on 'criteria' are under	All developing countries.	Developing countries and LDCs with bound tariffs below an X per cent (25%) would be entitled to use the safeguard measure.	- Consider criteria regarding the level of <u>actual</u> domestic support provided by developing countries to agriculture as a benchmark to decide whether a particular country may be in need to

¹ Proposal presented by Cuba, Dominican Republic, Grenada, Honduras, Nicaragua, Nigeria, Pakistan, Sri Lanka and Venezuela, dated 18 November 2002.

² Proposal presented by Chile dated 4 March 2003.

	<p>specified in the Schedule of the country concerned.</p> <ul style="list-style-type: none"> - Most developing countries excluded <i>de facto</i> by the link established between the tariffication process and access to the SSG. 	<p>way.</p>			<p>have access to the SSM. For example, using a percentage of domestic support expenditures to the value of agricultural production.</p>
<p>Product coverage</p>	<ul style="list-style-type: none"> - Agricultural products that underwent tariffication and were designated in the Schedule of the member concerned with the symbol 'SSG' - No restriction as regards the number of products designated with the symbol SSG. Wide variety among countries. - No provisions regarding the level of detail for the designation of products under the SSG. - No restrictions 	<ul style="list-style-type: none"> - Certain products which meet certain conditions and are designated in the Schedule of the country concerned with the symbol 'SSM'. 'Conditions' to be developed. - Products to be designated limited to a number to be decided, in addition to other criteria to be devised. - Designation of products at the HS 8-digit level. - Processed products to be excluded from the 	<ul style="list-style-type: none"> - All agricultural products as per Annex 1 of the AoA which meet the conditions established for the measures to be triggered. 	<ul style="list-style-type: none"> - Net importable products. - Products whose bound rate is above X per cent (e.g. 25 per cent) will not have access to the safeguard measure. - No specific restriction on the number of products to be designated provided the criterion regarding the level of bound tariff is met. - Products to be designated at the HS (x)-digit level (to be determined). 	<ul style="list-style-type: none"> - Developing countries may insist that strategic/special products should automatically have access to the SSM. - The idea to exclude processed products from the application of the safeguard measure is justified by saying that the SSM should be link to food security. Developing countries may consider insisting on a broader perspective, linked to their overall development requirements and the realization of the potential of the agricultural sector. In that sense, the SSM should be available for processed products which contribute to employment and to add value to the production and export

	<p>regarding the type of products to be designated SSG. Any agricultural product as per Annex 1 of the AoA which underwent tariffication would have access to the SSG.</p> <p>- No distinction made among WTO members.</p>	<p>designation of SSM, in addition to other criteria that may be devised for the designation of SSM products.</p> <p>- NFIDCs and LDCs will have the flexibility to designate more SSM products than other developing countries.</p>			<p>base of developing countries.</p> <p>- For the SSM to be effective, the product coverage should include close substitutes/competing products of those which are of main interest or concern to the each member.</p> <p>- Leverage the position in favour of broad product coverage for the SSM, on pressing for a review of the product coverage of the current SSG applying the same criteria imposed on the SSM. Although most developing countries did not tariffied during the Uruguay Round, they apply a tariff only regime much the same as any other WTO member. Therefore, <u>all</u> WTO members share the same concerns regarding the vulnerability of their agricultural sectors in the context of a tariff only regime.</p>
<p>Effects on 'current' trade flows</p>	<p>Imports under current and minimum access commitments (i.e. TRQs) shall be counted for the calculation of the</p>	<p>- Safeguard measures whether volume or price triggered, may not be applied in a manner that results</p>	<p>- Imports under TRQs will be subject to the application of the safeguard measure.</p> <p>- Additional duties not to exceed a percentage</p>	<p>- Measures operating as a complement to tariff reduction commitments to be agreed in the Doha Round.</p> <p>- Additional duties</p>	<p>- The draft by the Chairman does not indicate how the SSM will be implemented as regards TRQs. For developing countries that has the right to use TRQs, it may be important</p>

	<p>volume of imports required for invoking the volume-triggered safeguard, but shall not be affected by any additional duty imposed under either the price or the volume based safeguard.</p>	<p>in import access opportunities being reduced below a level corresponding to average annual imports in the period 1999-2001.</p> <p>- Imports originating in other developing countries exempt from the application of the safeguard measure</p>	<p>of the bound rate for the product concerned.</p> <p>- Quantitative restrictions not to affect the average import level of the last three preceding years.</p> <p>- Special provisions in relation to imports originating in other developing countries.</p>	<p>imposed on a Most Favoured Nation basis without prejudice to exclusions pursuant to bilateral free trade agreements.</p> <p>- Additional duty not to exceed the final Uruguay Round bound rate for the product concerned.</p>	<p>to clarify that imports under minimum and current access commitments will be counted for the purpose of determining the volume of imports required for invoking the volume-based safeguard as currently done under the SSG. Furthermore, developing countries had proposed to apply the safeguard measure to imports under the TRQ. This will be particularly relevant if the TRQ volumes are expanded.</p> <p>- The proposal by Chile of restricting the additional duty to the Uruguay Round final bound rate would not provide any comfort to the importing country, in particular to those that already have low bound rates.</p>
<p>Country coverage as relates to the origin of imports</p>	<p>Imports of designated products from all sources may be subject to the application of the Special Safeguard.</p>	<p>Imports of designated products originating in other developing countries shall be exempt from the application of safeguard measures.</p>	<p>- Measures shall be applied on a non-discriminatory manner to all imports from all sources. However,</p> <p>- Imports originating in a developing country member shall be exempt from the</p>	<p>- Measures to be imposed on a Most Favoured Nation basis (i.e. to imports from all origins), without prejudice to exclusions pursuant to bilateral free trade agreements (i.e. depending on the obligations under bilateral</p>	<p>- Developing countries may insist on the application of the SSM to all imports from all sources. The proposed S&D provisions regarding the partial exclusion of imports from developing countries have nor been discussed.</p> <p>- In the context of bilateral or</p>

			<p>application of the safeguard measure as long as its share of imports of the product concerned in the importing country does not exceed 3 per cent and that all developing country members with less than 3 per cent share, collectively account for no more than 9 per cent of total imports of the product concerned.</p>	<p>free trade agreements, trading partners to those agreements will be excluded from the application of the safeguard measure).</p>	<p>regional trade agreements some developing countries have adopted ambitious language to avoid the imposition of any barrier to trade. Chile's proposal aims at carving out such arrangements from the application of the safeguard measure as an exception to the most favoured nation treatment.</p>
<p>Other trade relief measures</p>	<ul style="list-style-type: none"> - Measures may be applied concurrently with any countervailing or anti-dumping duties imposed in accordance with WTO agreements. - Nothing prevents a member to apply the SSG in conjunction with measures under the Agreement on Safeguards. - For measures applied in conformity with the provisions of 	<ul style="list-style-type: none"> - Measures may be applied concurrently with the application of any countervailing or anti-dumping duties applied in accordance with WTO agreements. - Measures may not be applied in conjunction with the measures under the Agreement on Safeguards. - Measures may not be applied in 	<ul style="list-style-type: none"> - Measures may be applied concurrently with any countervailing or anti-dumping measure applied in accordance with the WTO agreements. - Provisions on SSG under Art. 5 of the AoA shall cease to apply as from the date of entry into force of a revised AoA. - For measures imposed in conformity with the provisions on a SSM – exporting- members 	<p>Not contemplated.</p>	<ul style="list-style-type: none"> - Under the current SSG, nothing prevents the country applying a special safeguard measure to invoke the general safeguard clause under Art. XIX of the GATT 1994. The Chairman's text on the other hand, explicitly prohibits members to invoke both measures concurrently. - It would be important to insist on having recourse to the countervailing and antidumping measures, even when the SSM has been invoked. The first two, attempt to address problems

	<p>Art. 5 of the AoA, - exporting- members undertake not to suspend concessions or other obligations under GATT 1994 granted to the member imposing the safeguard measure.</p>	<p>conjunction with measures under Art. 5 of the AoA.</p>	<p>undertake not to suspend concessions or other GATT 1994 obligations granted to the member imposing the safeguard measure</p>		<p>related to unfair competition stemming from government subsidisation and business practices. The safeguard measures represent a legitimate respond to market instability and import surges. - According to paragraph 8 of Art. 5 of the AoA –exporting- members undertake not to withdraw concessions granted to the importing country in case consultations on the implementation of the safeguard measure have failed to lead to an amicable arrangement. This provision provides security to the importing country imposing the safeguard measure. Developing countries may consider proposing the incorporation of a similar provision with respect to the SSM. Furthermore, the formulation should be such as to provide for a binding commitment of exporting members not to retaliate against those members that take action under the SSM.</p>
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Volume safeguard					
Trigger mechanism	Defined in relation to three variables: i) imports as a percentage of domestic consumption; ii) average level of imports during the last three years for which data is available; iii) absolute change in domestic consumption over the most recent year for which data is available.	Defined in relation to one variable: average volume of imports in the immediately preceding three-year period.	Defined in relation to one variable: the average import level of the three last preceding years.	Volume safeguard not contemplated	
Sensitivity of the trigger mechanism	- The trigger level will be set according to the following schedule of market access opportunities (i.e. percentage of imports to domestic consumption): a) where market access opportunities for a product are less than or equal to 10 per cent, the base	The safeguard measure may be invoked when imports exceed 125 per cent of that average import level over a recent three-year period.	For the safeguard measure to be invoked, imports of the product concerned may be in excess of X per cent (e.g. 105 per cent) of the average level of imports of the last three preceding years.		- Current safeguard provisions indicate that when imports as a percentage of domestic consumption stands at 10 per cent or less, the base trigger level used should be 125 per cent. Lower base trigger levels are stipulated the higher the percentage of imports to domestic consumption. Such base trigger level should be used as well when domestic consumption is not taken into

	<p>trigger level shall equal 125 per cent;</p> <p>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;</p> <p>c) where market access opportunities are greater than 30 per cent, the base trigger shall equal 105 per cent.</p> <p>- The trigger level will be higher (i.e. it will be more difficult to invoke the safeguard provisions) the larger the three-year average of imports, the lower the share of imports in domestic consumption, and the faster the growth in domestic</p>				<p>account for calculating the trigger. The higher the base trigger level, the more difficult it will be to invoke the volume based safeguard. Therefore, the 125 per cent base trigger level represents the extreme condition for triggering the safeguard measure envisaged in the current provisions under Art. 5. The extreme condition imposed on those countries which are 'penalised' for having low import levels or for not disclosing the domestic consumption figures.</p> <p>- The Chairman has proposed that this highest threshold be used for triggering the SSM. It could be argued that this is too stringent a condition because suggest that the percentage of imports to domestic consumption in developing countries, in all circumstances, is less than 10 per cent, which may not be the case. If imports represent already a significant percentage of domestic consumption then the volume-based safeguard may be triggered only after imports</p>
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	<p>consumption.</p> <ul style="list-style-type: none"> - If domestic consumption is not taken into account, the base trigger level used should be 125 per cent 				<p>have reached quite a large percentage of domestic consumption. Developing countries apply low tariffs and do not have access to TRQs and other measures to control import flows. Therefore this is not correct to assume that they have closed markets and that only small levels of imports have historically being allowed.</p> <ul style="list-style-type: none"> - A low trigger, such as 105 per cent may be insisted upon.
<p>Remedy action</p>	<p>Additional duty not exceeding 1/3 (i.e. 33.33 per cent) of the level of the applied tariffs. <u>Ad valorem</u> or <u>otherwise</u>.</p>	<p>Additional duty of no more than 30 per cent <u>ad valorem</u>.</p>	<ul style="list-style-type: none"> - Additional duty imposed on the bound rate for the product concerned or quantitative restrictions. - Irrespective of the trigger (i.e. volume or price trigger), the additional duty shall not exceed Y per cent (e.g. 165 per cent) of the bound rate of the product concerned. - Irrespective of the trigger (i.e. volume or price trigger), quantitative restrictions 		<ul style="list-style-type: none"> - Provisions under current SSG do not establish any condition as to the form of the additional duty to be imposed. Therefore, members are free to impose additional duties either expressed in <i>ad valorem</i> terms, specific tariffs or a combination or sum of both. The Chairman's text specifies that for the proposed SSM the additional duty may only be expressed in <i>ad valorem</i> terms. - The additional duty may be imposed on the applied tariff for the product concerned. This may result in an

			shall be applied in a manner as to guarantee that imports will not fall below the average import level of the last three preceding years.		ineffective relief from imports to those countries that already apply low tariffs. - There is no reference to quantitative restrictions.
Timeframe for implementation	The measure shall only be maintained until the end of the year in which it has been imposed.	The measure shall not be applied beyond the end of the year in which it has been imposed.	The measure shall only be maintained for a period of one year from the date the measure was imposed, but could be renewed if the conditions that led to the imposition of such measure continue to exist.		- The reference to the year that the measure was implemented may relate to the civil, financial or marketing year, depending on each country. - Developing countries may insist in the possibility to re-invoke the safeguard measure after a year of implementation. Another suggestion could be to establish a time period (e.g. one year) before members can invoke a new safeguard measure for the same product.

Price safeguard					
Trigger mechanism	- Defined as a trigger price equal to the average c.i.f unit value of the product	- Defined as a reference price representing the monthly average import price of the product	- Defined as a trigger price equal to the average c.i.f unit value of the product	- Defined as a historical international average price level to be determined based	- Why a price-based safeguard? To protect the income level of farmers and viable local production.

	<p>concerned for the period 1986-1988.</p> <p>- Or, an appropriate price in terms of the quality of the product and its stage of processing.</p> <p>- It shall, <u>following its initial use</u>, be publicly available to the extent necessary to allow other members to assess the additional duty that may be imposed.</p>	<p>concerned over a recent three-year period <u>excluding the three highest and three lowest monthly averages</u>.</p> <p>- In the absence of monthly average import price data for a specific product, the reference price may be constructed on the basis of published representative export price quotations, provided that details of the prices and methodology employed are <u>notified in advance</u> to the Committee on Agriculture.</p>	<p>concerned over the last three preceding years, or</p> <p>- Defined as a trigger price equal to the average domestic price of the product concerned over the last three preceding years, adjusted by inflation.</p> <p>- The importing country is to decide on a case by case basis how to define the trigger price.</p>	<p>on information regularly provided to members by the WTO or FAO Secretariats.</p>	<p>Developing countries do not have the means to provide direct support (i.e. financial transfers) to farmers to maintain their income levels. Furthermore, the vast majority of developing countries do not have access to market-based, sophisticated mechanisms to deal with risks associated with agricultural production, in particular the volatility of prices.</p> <p>- The Chairman's text proposes to exclude the three highest and three lowest entries of monthly average prices for the calculation of the reference price. This would render the mechanism unresponsive to the very same disruptions that such mechanism is intended to address.</p> <p>- In case monthly average prices are not available, the Chairman's text provides that the reference price should be established on the</p>
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				<p>basis of a 'published representative export price' which should be notified in advance. The current SSG allows members to use, at their discretion, an 'appropriate price in terms of the quality of the product and its stage of processing' which only after its initial use needs to be notified.</p> <ul style="list-style-type: none"> - Developing countries may consider suggesting a similar formulation for the definition of the price trigger which would allow them to judge issues such as the quality of the import product and its price. - Developing countries may be interested in clarifying that any discussion within the CoA regarding the reference price used should not preclude the importing member from taking action under the SSM. This clarification would be particularly relevant in case that as proposed by the Chair, the reference price should be notified in
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					<p>advance. Delays in the implementation of the measure would have important implications as regards its effectiveness to stall import surges.</p> <p>- Given the current distortions in world markets, developing countries may consider insisting upon the use of the average domestic price for determining the price trigger.</p>
<p>Sensitivity of the trigger mechanism</p>	<p>Measures to be triggered when the c.i.f. import price of the shipment concerned <u>express in domestic currency</u>, falls below the trigger price as defined above <u>by more than 10 per cent.</u></p>	<p>Measures may be invoked to compensate <u>any</u> positive difference the c.i.f. import price of a shipment <u>expressed in terms of domestic currency</u> of the importing developing country concerned and the reference price as defined above.</p>	<p>Measures to be triggered to compensate <u>any</u> difference between the c.i.f. import price of the shipment concerned and the trigger price as defined above.</p>	<p>- The measure would be available upon a drop in international prices, and be reversed if prices recover. Parameters (i.e. provisions to determine the historical international average price) to be defined.</p> <p>- The measure will be triggered when the import price falls by more than X per cent (to be defined) of the historical international average price level as defined above.</p>	<p>- The Chairman's text would allow full compensation of the price drop once the measure is triggered. In that regard, the SSM would be more flexible than the current SSG provisions which allow a ten per cent drop in prices before any action can be taken.</p> <p>- The condition to express the price of imports in terms of the domestic currency specified under the current SSG has been carried out in the Chairman's text for the SSM. This is problematic due to the vulnerability of developing countries to</p>

					<p>inflation and currency misalignment which may prevent these countries to reach the trigger price simply by the working of these factors. A better approach would be to use as a reference the c.i.f. price in the currency the transaction was made.</p> <p>- The proposal by Chile is not very clear as to the exact way the mechanism will function. According to what has been presented, the mechanism would establish a 'multilateral' trigger price which will indicate that world prices have drop to a level which may require action by WTO members. Each country would then be able to invoke the safeguard clause when the import price falls by more than a certain percentage of that 'multilateral' reference price.</p>
Remedy action	The level of the additional duty, <u>imposed on the applied rate</u> for the product	- The level of the additional duty, <u>imposed on the applied rate</u> for the product concerned,	- Additional duty imposed on the bound rate for the product concerned <u>or</u>	- Additional duty imposed on the bound tariff which shall not exceed X per cent	- Under the Chairman's text, as it stands now, the additional duty may be imposed at a level which

	<p>concerned, will depend on the degree to which the import price falls below the trigger price.</p> <ul style="list-style-type: none"> - The greater the decline in the import price below the trigger price, the higher the duty that may be imposed - The level of the additional duty defined according to a schedule which does not completely offset the fall in the import price. 	<p>will depend on the extent to which the import price of the shipment concerned falls below the reference price.</p> <ul style="list-style-type: none"> - The steepest the decline in the import price below the reference price, the higher the additional duty. - The additional duty may be set at a level that would fully offset the fall in the import price. 	<p>quantitative restrictions.</p> <ul style="list-style-type: none"> - Irrespective of the trigger (i.e. volume or price-based safeguard), the additional duty shall not exceed Y per cent (e.g. 165 per cent) of the bound rate of the product concerned. - Irrespective of the trigger (i.e. volume or price-based safeguard), quantitative restrictions shall be applied in a manner to guarantee that imports will not fall below the average import level of the last three preceding years. 	<p>(e.g. 25 per cent).</p> <ul style="list-style-type: none"> - The additional duty will be established at the level required to compensate for the drop in prices measured as an average of the three most recent representative years. - The additional duty should not exceed the Uruguay Round final bound rate. 	<p>fully offsets the fall in prices. In the proposal by a group of developing countries the additional duty should not exceed a percentage of the bound tariff for the product concerned. That is, the additional duty could not exceed that level even if the additional duty should be higher to fully offset the price fall.</p> <ul style="list-style-type: none"> - The proposal by Chile is very restricted since it would not allow members impose additional duties above the final Uruguay Round bound tariffs. Under such circumstances the mechanism would be useless. Some countries have as low bound tariffs as 35 per cent. What relief would provide to such members a safeguard measure that would not allow the tariff (i.e. the apply rate <u>plus</u> the additional tariff imposed under the SSM) to go beyond 35 per cent?
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					- There is no reference to quantitative restrictions.
Timeframe for implementation	Measures imposed on a shipment by shipment basis.	Measures imposed on a shipment by shipment basis.	Measures imposed on a shipment by shipment basis.	One year.	
Transparency requirements					
Review and notification requirements	<ul style="list-style-type: none"> - The operation of the special safeguard shall be carried out in a transparent manner. - Members implementing the provisions on special safeguards shall give notice in writing, including relevant data, to the CoA as far in advance as may be practicable and in any event within 10 days of the implementation of the measure. - For price-triggered safeguard, notification shall be made within 10 days of the implementation of such first action. - For perishable and seasonal products, notification shall be 	Appropriate and full notification requirements to be developed at the appropriate stage.	<ul style="list-style-type: none"> - Provisions on special safeguards shall be implemented in a transparent manner. - Any developing country member taking action under the SSM shall give notice in writing to the CoA as far in advance as may be practicable and in any event within 30 days of the implementation of the measure. - Members taking action under the SSM shall afford any interested member the opportunity of consultations with respect to the conditions of application of such action. 	<ul style="list-style-type: none"> - Mechanism should be transparent and predictable. - Mid-term review of the measures imposed after six month of its entry into force. 	<ul style="list-style-type: none"> - Developing countries may consider insisting on members not having recourse to provisions under the safeguard agreement and the general safeguard provision of GATT 1994 to withdraw concessions to members taking action under the SSM. - Developing countries may wish to highlight the need for the notification requirements not becoming an additional administrative burden on them and avoiding conditioning the implementation of the safeguard measures to the presentation of the notification.

	<p>made within 10 days of the implementation of the first action in any period.</p> <p>- Members taking action under the special safeguard provisions shall afford any interested members the opportunity to consult with it in respect of the conditions of application of such action.</p>				
<p>Duration of the measure</p>	<p>- Provisions to remain in force for the duration of the reform process as determined under Art. 20 of the AoA.</p>	<p>To be developed at the appropriate stage.</p>	<p>Not provided for.</p>	<p>Provisions to remain in force during the implementation period of the new reduction commitments plus 3 additional years, subject to review.</p>	<p>- Developing countries may consider suggesting a formulation for the duration of the SSM on the same lines as those provided by current provisions under paragraph 9 of Art. 5 of the AoA. That is, provisions under the SSM should remain in force for the duration of the reform process or on a permanent basis. Such formulation would guarantee that the SSM provisions are available to developing countries for subsequent rounds of trade liberalization</p>

					if such rounds are envisaged.
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