

CONTROVERSIAL POINTS IN THE DISCUSSION ON SPECIAL SAFEGUARD MECHANISM (SSM) IN THE DOHA ROUND

SYNOPSIS

The Special Safeguard Mechanism (SSM) is often quoted as one of the main controversial points that lead to the failure to the WTO mini-ministerial process in July 2008. Technical divergences relate to key aspects of the design and operation of the mechanism but also strong political divergences among exporters and importers. The purpose of this note is to explain the rationale and origins of the SSM and the main contentious issues in the current debate.

November 2008
Geneva, Switzerland

This Analytical Note is produced by the Trade for Development Programme (TDP) of the South Centre to contribute to empower the countries of the South with knowledge and tools that would allow them to engage as equals with the North on trade relations and negotiations.

Readers are encouraged to quote or reproduce the contents of this Analytical Note for their own use, but are requested to grant due acknowledgement to the South Centre and to send a copy of the publication in which such quote or reproduction appears to the South Centre.

Electronic copies of this and other South Centre publications may be downloaded without charge from:
<http://www.southcentre.org>.

CONTROVERSIAL POINTS IN THE DISCUSSION ON SPECIAL SAFEGUARD MECHANISM (SSM) IN THE DOHA ROUND

TABLE OF CONTENTS

INTRODUCTION.....	1
I. RATIONALE FOR AN SSM	1
II. SCOPE OF PROVISIONS ON SSM FOR DECISION	4
A. Provisions contained in the Revised Draft modalities dated 10 July 2008	4
1. <i>Volume-based SSM</i>	4
2. <i>Price-based SSM</i>	5
3. <i>Conditions for the use of the SSM</i>	5
B. Additional ideas presented before and during the July 2008 Mini-ministerial	6
C. Controversial points	7
CONCLUSIONS	9
GLOSSARY	10

CONTROVERSIAL POINTS IN THE DISCUSSION ON SPECIAL SAFEGUARD MECHANISM (SSM) IN THE DOHA ROUND

INTRODUCTION

1. The Special Safeguard Mechanism (SSM) is often quoted as one of the main controversial points that lead to the failure to the WTO mini-ministerial process in July 2008. Technical divergences relate to key aspects of the design and operation of the mechanism but also strong political divergences among exporters and importers. The purpose of this note is to explain the rationale and origins of the SSM and the main contentious issues in the current debate.

I. RATIONALE FOR AN SSM

2. Agricultural markets are volatile and unstable. Price depressions tend to last longer than price spikes. Price fluctuations create uncertainty and act as a disincentive for producers to invest in agriculture development, in any country. Developed countries however, have at their disposal a variety of measures to create a more stable conducive environment for agriculture production, have good rural infrastructure, highly developed financial markets and technology, as well as budgetary resources to provide eventually direct income support to their farmers. The agriculture population in the developed world represents no more than 3% of the economically active population.

3. The situation facing developing country governments and producers is very different. The agriculture sector is highly underdeveloped (with the exception of certain countries and specific sectors in Latin America and Asia, and South Africa) and infrastructure in the rural areas is poor. Financial markets are incipient and governments lack the financial strength to provide direct income support to their agriculture population which represent in certain cases, as much as 70% of the economically active population. Therefore, developing countries are ill equipped to address import surges and price depression yet they are the most vulnerable to these events due to the importance of agriculture for their economies.

4. The experience of developing countries with trade liberalization in agriculture shows that these countries have faced instances of import surge and price depression with severe social and economic consequences such as displacement of domestic producers and lower income in rural areas already plague

by high poverty levels. Cheap imports are the result, many times, of subsidies provided by trading partners in the North. In other occasions, competitive developing countries are able to produce at very low prices including matching the subsidized prices of produces in the industrialized world, out competing local producers.

5. During the Uruguay Round, members agreed to adopt a Special Safeguard (SSG) to prevent risks of import surges in sectors where non-tariff measures were eliminated. This process was called tariffication. Most developed countries made use of this facility and inscribed in their Schedule of commitments the right to have recourse to the SSG for a large number of products. The large majority of developing countries, on the other hand, had unilaterally tariffied before the Uruguay Round Agreements entered into force. Thus since access to the SSG was linked to the tariffication process, they were denied access to this mechanism. This imbalance in the rules have meant that the poorest and most vulnerable members of the WTO and producers in these countries were left with no practical options to prevent and halt import surges and the effects of low prices in their domestic markets. The General Safeguard measure under article XIX of GATT 1994 is available to all members but it is difficult to use by developing countries, especially with respect to agricultural products, since it requires prove of injury to the domestic industry.

6. The G33 led by Indonesia, have made a number of contributions to the process including a legal draft of a new article on SSM for the revised agreement on agriculture¹. Key features of the proposal include: the possibility to have recourse to the SSM for all agricultural tariff lines; the ability to respond to situations of price depression and import surge by incorporating both price and volume triggers; remedy measures will take the form of additional duties and should be proportionate to the problem at hand: the deeper the import surge and the lower the import price, the higher the additional duty. The Hong Kong Ministerial Declaration² establishes that developing country Members will have the right to have recourse to a SSM based on import quantity and price triggers, with precise arrangements to be further defined.

7. The design and operation of SSM (as proposed originally by G33 in March 2006, as discussed since then and as reflected in several decision-making documents such as the Hong Kong declaration) was based on article 5 to the Agreement on Agriculture. This article refers to the SSG.

¹ WTO. Document No. JOB(06)/64 dated 23 March 2006

² WTO. Document No. WT/MIN(05)/DEC dated 22 December 2005

8. Both the SSG and the SSM were based on the principle of automaticity: i.e. if certain conditions are met (import surges increase to a certain level or prices fall below a certain level), the measure is triggered and the remedies provided for, apply. This automaticity feature facilitates access to the mechanism, as compared to the general safeguard, where showing injury or threat of injury is required.

9. G33 proposal based on the SSG, but with improvements reflecting developing country conditions and experience. It is important to note in this sense that, out of the 22 developing countries which were granted the right to invoke SSG, only 6 of them used it.

Table 1: Developing countries access and use of SSG

	Had access to SSG	Invoked SSG during implementation period of Uruguay Round
1	Barbados	Yes
2	Botswana	
3	Colombia	
4	Costa Rica	Yes
5	Ecuador	
6	El Salvador	
7	Guatemala	
8	Indonesia	
9	Korea, Rep. of	Yes
10	Malaysia	
11	Mexico	
12	Morocco	
13	Namibia	
14	Nicaragua	Yes
15	Panama	
16	Philippines	Yes
17	South Africa	
18	Swaziland	
19	Taiwan	Yes
20	Thailand	
21	Tunisia	
22	Venezuela	

10. The following reasons have been cited for not triggering SSG more often, in the case of developing countries:

- (a) Because they did not undertake tariffication, hence they could not reserve their right to invoke SSG,

- (b) Limited capacity to collect data and
- (c) The complexity of the safeguard process made it difficult to use.

II. SCOPE OF PROVISIONS ON SSM FOR DECISION

A. Provisions contained in the Revised Draft modalities dated 10 July 2008

11. The latest WTO decision-making document compiling potential provisions on SSM is the Revised Draft Modalities for Agriculture dated 10 July 2008³. This document contains details about specific arrangements for the volume and price-based SSM, specifically the circumstances in which these instruments can be used, the way they can be used and the restrictions to their use.

1. Volume-based SSM

<i>Step 1: In which circumstances can SSM be used? (Trigger)</i>			<i>Step 2: How can it be used? (Remedy - Additional duty to be imposed on applied tariff)</i>
Scenario 1	Where the volume of imports during any year exceeds...	110 per cent of base imports	<ul style="list-style-type: none"> • 25 percent of the current bound tariff • 25 percentage points • Whichever is higher
	...but does not exceeded	115 per cent of base imports	
Scenario 2	Where the volume of imports during any year exceeds...	115 percent of base imports	<ul style="list-style-type: none"> • 40 percent of current bound tariff • 40 percentage points • Whichever is higher
	...but does not exceeded	135 percent of base imports	
Scenario 3 (most severe import surge)	Where the volume of imports during any year exceeds...	135 percent of base imports	<ul style="list-style-type: none"> • 50 percent of the current bound tariff • 50 percentage points • Whichever is higher

³ WTO. Document No. TN/AG/W/4 Rev. 3 dated 10 July 2008

2. Price-based SSM

Price SSM	Price SSM
<ul style="list-style-type: none"> • When CIF import price of shipment falls below trigger price • Trigger price = 85% of the average monthly MFN-sourced price⁴ 	<ul style="list-style-type: none"> • 85% of the difference between the import price of the shipment concerned and the trigger price • To be applied on shipment by shipment basis

3. Conditions for the use of the SSM

12. Remedies would not be applied if the triggers are met but the absolute level of imports is “manifestly negligible in respect to domestic production and consumption”, (para. 124 a.)

13. Remedies are capped: the final duty (after imposition of the remedy) shall not exceed: the pre-Doha bound tariff (Uruguay round tariff) (para. 133). However,

- (a) Least-Developed Countries (LDCs) can exceed this cap by 40 percentage points or 40 percent of the current bound tariff (whichever is higher)
- (b) Small Vulnerable Economies (SVEs) can exceed the cap by 20 percentage points or 20 percent of the current bound tariff (whichever is higher)
- (c) Other developing countries can exceed the cap by 15 percentage points or 15 percent of the current bound tariff (whichever is higher), for a maximum of 10 to 15 tariff lines.

14. The price-based SSM will not be invoked when the volume of imports is declining or is at “manifestly negligible level incapable of undermining the domestic price level” (para 128). This condition is often referred to as “cross check mechanism”

15. Preferential trade will be excluded from calculation of triggers and application of safeguard measures.

16. Cannot be imposed on imports under tariff rate quota commitments.

17. The maximum period for use of SSM is 12 months, from the initial invocation of the measure and 6 months in the case of seasonal products.

⁴ For the most recent three-year period preceding the year of importation

B. Additional ideas presented before and during the July 2008 Mini-ministerial

18. Besides the provisions included in the most recent Draft modalities text, the following ideas were proposed and discussed in July 2008, using the same structure of an automatic safeguard, based on the principles of the SSG.

- (a) Notification of intention to introduce a safeguard measure to Permanent Group of Experts, who will review the necessity, level and duration of the measure. Such Group of Experts would make a decision, which cannot be subject to appeal.
- (b) Determination a “base import volume” which has to be exceeded, to be subject to additional duties going beyond the pre-Doha bound rate. The idea would be to avoid imposing safeguard due to imports that are considered “normal growth of trade”.
- (c) Higher thresholds and lower remedies for volume-based SSM, in the case of developing countries other than LDCs and SVEs. In the event of domestic price decreases of a greater extent, higher remedies could be envisaged.
- (d) Differential limits for invocation: SSM cannot be invoked for more than 1 per cent of tariff lines per year in certain cases and for more than 2.5 percent of tariff lines in other cases.
- (e) Shorter SSM duty imposition periods (for instance, 6 months) and impossibility of invoking SSM for two consecutive years (“year on / year off” provision)

19. In addition, it is worth noting that in July 2008, a proposal (Lamy proposal of 28 July) suggested changes to the structure and operation of the SSM. In this sense it introduced the principles of causality and proportionality, which are similar to article XIX safeguard provisions. However the proposed text did not include the idea of “threat to cause” injury. This latter proposal also included the idea of a Permanent Group of Experts to review the necessity, level and duration of SSM measures.

20. Although Mr. Lamy’s proposal was not adopted, it is important to note that, when examining the experience of developing countries with the general safeguard, a low rate of imposition can be noted, particularly with respect to LDCs and SVEs. The lengthy investigation, the recent statistical data and solid institutional and legal framework required to prove injury are often quoted as main challenges in the use of these safeguards. In view of this, the requirement to improve injury (prior to imposing remedies) is likely to affect access to the mechanism, particularly for smaller developing countries. In addition, the text proposed by Mr. Lamy aims at addressing import surges only. It is not clear how the proposed provisions could be applied to price depression situations, as provided for in the Hong Kong Declaration.

C. Controversial points

21. Failure to agree on precise arrangements for the SSM was said to have contributed to the collapse of WTO mini-Ministerial in July 2008. In his report to the Trade Negotiations Committee⁵, the Chairman of the Committee on Agriculture suggested “unbridgeable differences” with respect to thresholds to bridging the pre-Doha (Uruguay) bound rate.

22. Behind the issue of terms and conditions to breach the pre-Doha Bound rates, these divergences translate two conflicting views on the conceptualization of this mechanism:

- (a) Those that fear that the SSM will significantly hinder market access and may be used in an indiscriminate manner, for instance Argentina, Paraguay and Uruguay (APU countries), members of the Cairns Group and the United States.
- (b) Those that fear that having so many restrictions will lead a mechanism that is not accessible nor effective to address specific problems of import surge and price declines affecting developing countries, such as members of the G-33, ACP, LDCs, African Group and SVEs groupings⁶.

23. The opponents to the SSM support restricting the scope and defining stricter rules for the SSM. In the current context they advocate for:

(a) High thresholds with respect to triggers, low remedies and caps on allowable remedies. The view of the opponents is that current tariff bindings (previous to the implementation period of the Doha Round) should be preserved, by:

- Increasing the level of triggers, thus requiring a higher level of imports to invoke the mechanism.
- Introducing caps to remedies and
- Limiting the extent to which countries can exceed caps and breach UR, by narrowly defining such circumstances

24. It is important to note that the appropriate level, to which a tariff should be increased, in order to prevent an import surge, is not easily foreseeable. Caps are particularly prejudicial in the case of countries with low bound tariffs.

Table 2: Example: Cote d’Ivoire – Poultry (HS 0207 11)

According to the latest modalities text:

⁵ WTO. Document No. JOB(08)/95 dated 11 August 2008. Report to the Trade Negotiations Committee by the Chairman of the Special Session of the Committee on Agriculture, Ambassador Crawford Falconer.

⁶ The G20 supports the concept but can not agreed in the details

Applied Tariff	+	Additional duty	=	Final duty	Is the cap exceeded?
4 (Pre-Doha)	•	Option 1: 50 percentage points ○ 50		• Option 1= 53	Cap for SVEs: Pre-Doha bound tariff = 4
3 (Post-Doha)	•	Option 2: 50% of current bound tariff ○ Current bound tariff = 3 ○ 50%= 1.5		• Option 2= 4,5 Option 1 is higher	• + 20 percentage points = 24 • + 20 percent of the current bound tariff = 4,6 Cap exceeded, hence cap applies

25. When comparing these provisions with SSG provisions, it is important to note that, in the case of SSG, the additional duty was capped⁷ (for the volume-based SSG) but the final duty was not capped. SSG was also silent on whether remedies should be imposed on bound or applied tariffs. In practice, SSG allowed importing countries to increase tariffs above their bound rates

(b) Suggesting that import surges have to happen simultaneously with price depression in order to invoke the mechanism (market tests or cross-check mechanisms). These provisions are problematic as links between import volumes and price depression are not always symmetrical. Import surges do not have to coincide with price depressions to create harm in domestic markets. Thus, having such provisions imply that additional harm will be done before the mechanism can be invoked. In addition, when comparing these provisions with SSG provisions, it is important to note that, in the case of SSG, market test provisions are drafted, in SSG, with best endeavor language.

(c) Provisions that differ from current SSG provisions. Proposed provisions for SSM also differ with existing SSG provisions in the sense that:

- SSG does not differentiate between MFN trade and regional trade
- Information required to implement SSG is for the most recent period for which data is available
- Transparency provisions with respect to SSG are less demanding than proposed provisions for SSM
- The preservation of normal trade flows is not provided for in the SSG.

⁷ Final duty shall not exceed one third of level of ordinary custom duty (applied tariff) in effect in the year in which action is taken

CONCLUSIONS

26. The SSM was proposed to respond to problems, confronted by developing countries, due to volatility and instability of agricultural markets that pose challenges from the perspective of livelihood security and rural development. This instrument is expected to “level the playing field” in terms of future provisions of an Agreement of Agriculture as the right to use agriculture-specific safeguards was not available for most developing countries during the Uruguay Round.

27. The design and operation of SSM, as proposed originally by G-33 and reflected in several decision-making documents is based on the agriculture-specific safeguard of the Agreement on Agriculture.

28. Some of the provisions that are currently under negotiation have the potential to affect the access and effectiveness of the SSM, high thresholds with respect to triggers and market tests are likely to negatively affect access to SSM. While on the other hand, caps on allowable remedies (particularly in the case of countries with low tariffs) and shorter SSM duty imposition periods are likely to affect the effectiveness of the mechanism. In addition many of the proposed provisions go beyond SSG provisions.

GLOSSARY

- **Current bound tariff:** tariff resulting from the Doha Round, after tariff cuts have been implemented
- **Applied tariff:** Most Favored Nation tariff after the Doha Round.
- **Least Developed Countries (LDCs):** Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Congo (Democratic Republic), Djibouti, Gambia, Guinea, Guinea Bissau, Haiti, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Senegal, Sierra Leone, Solomon Islands, Tanzania, Togo, Uganda, Zambia-
- **Small and Vulnerable Economies (SVEs)** Albania, Antigua and Barbuda, Armenia, Barbados, Belize, Bolivia, Botswana, Brunei Darussalam, Cameroon, Cote d'Ivoire, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Fiji, FYR Macedonia, Gabon, Georgia, Ghana, Grenada, Guatemala, Guyana, Honduras, Jamaica, Jordan, Kenya, Kyrgyzstan, Macao - China, Mauritius, Moldova, Mongolia, Namibia, Nicaragua, Nigeria, Panama, Papua New Guinea, Paraguay, Republic of Congo, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sri Lanka, Suriname, Swaziland, Trinidad and Tobago, Uruguay and Zimbabwe.

READERSHIP SURVEY QUESTIONNAIRE
South Centre Analytical Note

Controversial points in the discussion on Special Safeguard Mechanism (SSM)
in the Doha Round

An important objective of the South Centre is to provide concise and timely analytical inputs on selected key issues under ongoing negotiation in the WTO and other related multilateral fora such as WIPO. Our publications are among the ways through which we try to achieve this objective.

In order to improve the quality and usefulness of South Centre publications, we would like to know your views, comments, and suggestions regarding this publication.

Your name and address (optional): _____

What is your main area of work?

- | | |
|---|--|
| <input type="checkbox"/> Academic or research | <input type="checkbox"/> Media |
| <input type="checkbox"/> Government | <input type="checkbox"/> Non-governmental organization |
| <input type="checkbox"/> International organization | <input type="checkbox"/> Other (please specify) |

How useful was this publication for you? [Check one]

- Very useful Of some use Little use Not useful

Why? _____

What is your assessment of the contents of this publication? [Check one]

- Excellent Very Good Adequate Poor

Other comments: _____

Would you like to be on our electronic and/or hardcopy mailing lists? [] Yes [] No

If yes, please indicate:

- Electronic** – please indicate your name and email address:
 Hardcopy – please indicate your name and mailing address:

Personal Information Privacy Notice: Your personal contact details will be kept confidential and will not be disseminated to third parties. The South Centre will use the contact details you provide solely for the purpose of sending you copies of our electronic and/or hardcopy publications should you wish us to do so. You may unsubscribe from our electronic and/or hardcopy mailing lists at anytime.

Please return this form by e-mail, fax or post to:

South Centre Feedback
Chemin du Champ d'Anier 17
1211 Geneva 19
Switzerland

E-mail: south@southcentre.org

Fax: +41 22 798 8531



**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>**