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WTO's MC10:
Agriculture Negotiations – Special Safeguard in Agriculture for Developing Countries

Summary

The agricultural safeguard is important for developing countries. Most developed countries already have access to a special agricultural safeguard as a result of the Uruguay Round negotiations, and some of them have actively utilised this Special Safeguard Provisions (SSG) through the past 20 years.

Developing countries require a similar instrument because of the many agricultural import surges taking place. In fact, import surges has been such a major problem that it has led to structural changes in developing countries' agricultural production and trade, with far-reaching and often devastating implications for developing countries' small farmers.

This note touches upon the negative impact of import surges on developing countries; the Special Safeguard Provision (SSG) and its use; a summary of the Special Safeguard Mechanism negotiations, including touching on the 9 December SSG proposal of the G33; and reasons why an agricultural safeguard if provided will not be 'over-used'.

Furthermore, developed Members providing large amounts of domestic supports have still not been forthcoming in delivering on the Doha promise of *'substantial reductions in trade-distorting domestic supports'*. The safeguard is therefore important for developing countries in the overall context of imbalanced agricultural trade rules.

A safeguard which can be used by developing countries, and which is effective in its remedy, if agreed to, would be a concrete development outcome.

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SPECIAL SAFEGUARD IN AGRICULTURE FOR DEVELOPING COUNTRIES

Ahead of the Nairobi Ministerial Conference, the G33 (group of 46 developing countries) have put forward an automatic safeguard instrument for adoption at the Ministerial. They have also said that this instrument would be a way to give 'balance' to the export competition package that might be adopted in Nairobi.

Why A Safeguard: The Rural Crisis in Developing Countries Due to Import Surges

It is a well-known fact that developing countries' agricultural sector in the past few decades have been in a state of crisis because of the imports (often subsidised) that have flooded their markets. In the period 2004-2013 developing countries have experienced between 50 – 270 import surges yearly[1] - using a threshold of 110% of the preceding three years.

In fact, the imports of the recent decades have led to structural changes in developing countries' agricultural sector. Where before, many developing countries were food self-sufficient, the level of food production for domestic consumption has dropped drastically. Today, many developing countries depend to a significant degree on the world market for their food.

This situation has caused hardship to many small farmers in developing countries who remain dependent on agriculture as a source of employment. Yet the domestic markets available to them, infiltrated with imports (often subsidised), are often not viable markets. At the same time, the promise of free trade and access to external markets remains, for many small farmers, a distant dream, due to all the hurdles around standards, not to mention others measures including tariffs and tariff-rate quotas.

This situation has led to rural poverty, food insecurity, and the loss of rural employment at the small-holder level. At the macro level, developing countries are now spending much more on food, which is a drain on national resources. This had very problematic consequences in 2008 when world food prices spiked.

Some examples taken from earlier FAO studies are captured in the box below. Whilst somewhat dated, the consequences still persist, and import surges still continue today.

Examples of Import Surges that Had Debilitating Consequences on Developing Countries' Producers

Ghana - Tomato Paste: Tomato paste imports from the EU increased by a staggering 650 percent from 3,300 tons in 1998 to 24,740 tons in 2003. Farmers lost 40 percent of the share of the domestic market and prices were extremely depressed.

Cameroon - Poultry: Poultry imports increased nearly 300 percent between 1999 and 2004. Some 92 percent of poultry farmers dropped out of the sector. A massive 110,000 rural jobs were lost each year from 1994 to 2003.

Cote d'Ivoire – poultry: poultry imports increased 650 percent between 2001 and 2003,

[1] South Centre calculations

causing domestic production to fall by 23 percent. As a result, prices dropped, forcing 1,500 producers to cease production and the loss of 15,000 jobs.

Mozambique – vegetable oils: vegetable oil imports (palm, soy and sunflower) saw a fivefold increase between 2000 and 2004. Domestic production shrank drastically, from 21,000 tonnes in 1981 to 3,500 in 2002. About 108,000 smallholder households growing oilseeds have been affected, not to mention another 1 million families involved in substitute products (soy and copra). Small oil processing operations have closed down, resulting in the termination of thousands of jobs.

Jamaica – Dairy: Dairy imports saw 50 percent of diary farmers selling their animals and going out of business during the liberalisation of the 1990s. Employment in the sector in 2004 had fallen by two-thirds that of 1990 levels.

Sri Lanka – Dairy: Dairy imports in Sri Lanka increased from 10,000 tonnes in 1981 to 70,000 tonnes in 2005, consuming 70 percent of the domestic market. Domestic producers were not been able to develop and expand their market share. During this period, local production expanded by less than 15 percent.

Senegal – Poultry: Senegalese imports of poultry grew dramatically rising from 506 tonnes in 1996 to 16 600 tonnes in 2002. This growth, in conjunction with declines in domestic production, has increased the share of imports in domestic consumption from only 1 percent in 2000 to an estimated 19 percent in 2002. The composition of these imports is predominantly frozen cuts (86 percent), supplemented by frozen carcasses (13 percent) and fresh meat (1 percent). About 62 percent of these imports came from the Netherlands and Belgium.

Other examples of import surges as a result of liberalisation of the importing country and subsidies of exporters are: soy in Indonesia; maize, and milk in Malawi; dairy and maize in Tanzania; tomato paste in Senegal; soy and cotton in Mexico; poultry in the Gambia; rice in Haiti etc.

Sources: Various FAO Briefs on Import Surges 2006; Sharma R 2005, 'The Impact of Import Surges: country case study results for Senegal and Tanzania', FAO Commodity and Trade Policy Research Working Paper No. 11; ActionAid 2008 'Impact of Agro-Import Surges in Developing Countries'.

The case of Haiti – Rice

In the early 1980s, Haïti was self-sufficient in rice production. The 1980s however say the introduction of two structural adjustment programmes by World Bank and International Monetary Fund. In this context, rice tariffs were reduced from 50% to 3%. The result of this market opening was that subsidised rice imports mostly from the US increased from 15,000 tonnes to 350,000 tonnes between 1980 and 2004. As a result, local production decreased from 124,000 tonnes to 73,000 tonnes between 1981 and 2002. The Government was obliged to spend some 80% of export earnings for food imports. At the same time, the country witnessed a high rural exodus as the domestic rice and other sectors (that were subjected to similar liberalisation policies) collapsed. In 2008, when the food crisis hit, the price of rice increased by 40%. This led to serious worsening of the food situation, and contributed to a political crisis.

In 2010, when Haiti was hit by earthquakes, the toll was severe because of the urban poor that were living in slums in the city.

The Special Safeguard Provision (SSG) in the Agreement on Agriculture

It has widely known that the general safeguard agreement in the WTO is not easy to use, takes time to invoke (a detailed investigation process must be conducted) and is therefore not suitable when responding to the needs of the agricultural sector and the nature of agricultural goods.

For this reason, developed countries in the Uruguay Round pushed for the introduction of the Special Safeguard Provision (SSG) for those products which they undertook 'tariffication' – where a quantitative restriction was converted into a tariff.

The SSG is only available to 39 developed and developing WTO Members (those that had 'tariffied'). No LDC is part of this list of 39, and from Sub-Sahara Africa, only some of the countries that are in the customs union with South Africa have the SSG – South Africa; Namibia; Swaziland; Botswana.

The SSG is scheduled on a line-by-line basis. Some key developed countries have a large number of products/ tariff lines which enjoy the SSG: EU – 539 products (23.9% of their agriculture tariff lines); Norway 581 products; Switzerland-Liechtenstein 961 products.

Special safeguards: who has reserved the right?

39 WTO members currently have reserved the right to use a combined total of 6,156 special safeguards on agricultural products. The numbers in brackets show how many products are involved in each case, although the definition of what is a single product varies.

Australia (10)	*Indonesia (13)*	*Poland (144)*
Barbados (37)	*Israel (41)*	*Romania (175)*
Botswana (161)	*Japan (121)*	*Slovak Republic (114)*
Bulgaria (21)	*Korea (111)*	*South Africa (166)*
Canada (150)	*Malaysia (72)*	*Swaziland (166)*
Colombia (56)	*Mexico (293)*	*Switzerland-Liechtenstein (961)*
Costa Rica (87)	*Morocco (374)*	*Chinese Taipei (84)*
Czech Republic (236)	*Namibia (166)*	*Thailand (52)*
Ecuador (7)	*New Zealand (4)*	*Tunisia (32)*
El Salvador (84)	*Nicaragua (21)*	*United States (189)*
EU (539)	*Norway (581)*	*Uruguay (2)*
Guatemala (107)	*Panama (6)*	*Venezuela (76)*
Hungary (117)	*Philippines (118)*	
Iceland (462)		

Source: https://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd11_ssg_e.htm

Developed Countries Use of the SSG Today

Up until today, developed countries actively use the SSG as a protective mechanism:

Japan submitted on 30 November 2015, their notification (G/AG/N/JPN/207) that they are applying the Volume-based Special Safeguard on food preparations of flour, meal or starch from 1 December 2015 to 31 March 2016.

The EU's notification of 18 May 2015 (G/AG/N/EU/23) shows that it had used the price-based SSG for 20 tariff lines in the marketing year 2013/2014 for very sensitive products: *'The price-based special safeguard system has been made operational for the following products'* and the list includes 20 tariff lines: chicken carcasses 70% frozen; chicken carcasses 65% frozen; boneless cuts of fowl; legs and cuts of chicken frozen; boneless cuts of turkey; dried egg yolks; dried eggs; uncooked fowl; and a range of sugar tariff lines.

In the Rev.4 text, the SSG is envisioned to be eliminated by developed countries and there was to be a reduction in SSG coverage for developing country Members (paras 126 – 128, Rev.4).

Doha and Pre-Nairobi Negotiations on the Special Safeguard Mechanism (SSM)

Given that most developed countries have access to the SSG, as an S&D, developing countries in the Doha Round requested for a Special Safeguard Mechanism (SSM).

The SSM is strongly anchored in the Doha negotiation mandate and consequent Declarations and Decisions:

The **July 2004 framework** (WT/L/579), Paragraph 42 states that: *"A Special Safeguard Mechanism (SSM) will be established for use by developing country Members."*

The **Hong Kong Ministerial Declaration (WT/MIN(05)/DEC, para 7)** says that :
"Developing country Members will also have the right to have recourse to a Special Safeguard Mechanism based on import quantity and price triggers, with precise arrangements to be further defined. Special Products and the Special Safeguard Mechanism shall be an integral part of the modalities and the outcome of negotiations in agriculture."

At the time when the last modalities text in December 2008 was released, the SSM negotiations had made some progress but negotiations were far from complete. Negotiations had taken place on the volume-based SSM, however, the price-based SSM had hardly been discussed. Due to deep opposition from agricultural exporters, the result was that the Rev.4 text is highly problematic if viewed from the point of view of an effective and operational SSM.

In fact, South Centre analysis (SC/TDP/AN/AG/11, November 2009) comparing the SSG which developed countries enjoy and the SSM (Rev.4 text) found that in most areas, the SSG had better terms – there are fewer conditionalities in the SSG.

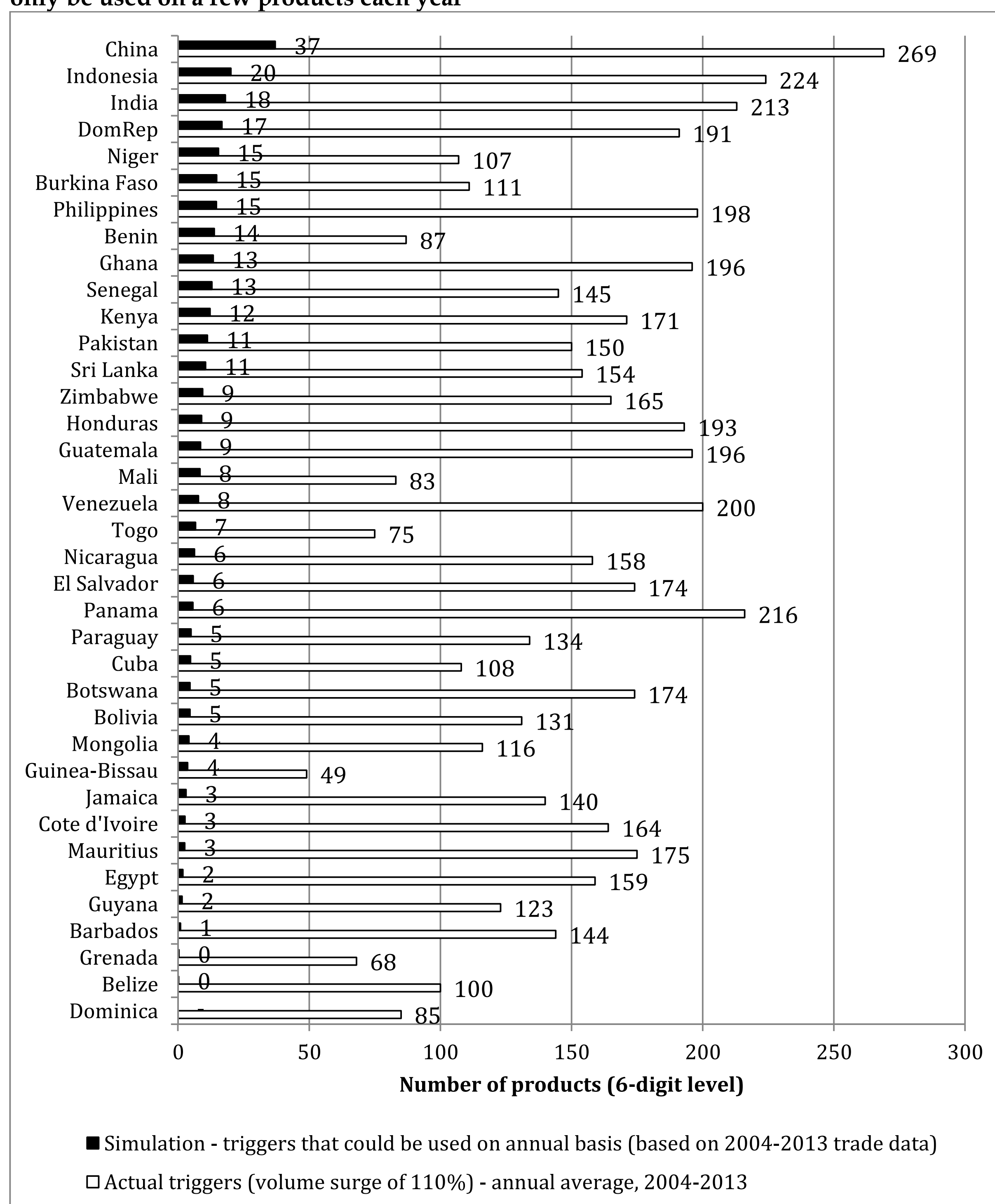
Concerned about the many problematic issues in the Rev.4, the G-33 made the following submissions in 2010:

- TN/AG/GEN/30 of 28 January 2010 (Refocusing Discussions on the SSM: Outstanding Issues and Concerns on its Design and Structure);
- JOB/AG/3 of 5 February 2010 (G-33 Submission on the SSM: Price and Volume Cross-Check Conditionalities);
- JOB/AG/4 of 5 February 2010 (G-33 Submission on the SSM: Seasonality);
- JOB/AG/5/Rev.1 of 4 March 2010 (Issues and Concerns on the Price-Based SSM: Some Analysis and Technical Contributions for the Design and Structure);
- JOB/AG/6 of 4 March 2010 (G-33 Submission on the SSM: Flexibilities for SVEs); and TN/AG/GEN/29 of 10 February 2010 (G-33 Proposal on the Treatment of SSM Provided to the SVEs); and
- JOB/AG/7 of 5 March 2010 (G-33 Submission on the SSM: Pro-Rating).

Difficulties in operationalizing the SSM (according to Rev.4)

In contrast with the 50-270 agricultural import surges experienced by developing countries yearly, the South Centre took only three conditionalities of Rev.4 (price cross-check, the fact that SSM is not applied immediately due to timelags in receiving trade data and acting upon that trade data and the 'manifestly negligibility requirement) and ran simulations. The results show that the actual possible usage of the Rev.4 SSM declines significantly. In a large sample, the annual average number of import surges in the period 2004-2013 was 150 but these 3 conditionalities brought down possible SSM application to only 9 times. (These products are not necessarily the same each year). See graph on next page.

Graph – Simulating three conditionalities in Rev.4: the volume-based SSM in Rev.4 can only be used on a few products each year



Source: South Centre simulations based on trade data over 2004-2003 (queried from ITC TradeMap)

Pre-MC10

On 17 July 2014, the G33 submitted their revised proposal (JOB/AG/29) using the Rev.4 text as the basis and improving the Rev.4 text so that some of the conditionalities making the SSM inoperable would not apply.

This was followed in October 2015 by a draft Ministerial Decision on the SSM (WTO document WT/MIN(15)/W/19 or JOB/AG/49, 17 October 2015). This Decision would insert a new Article 5bis titled 'Special Safeguard Mechanism for Developing Country Members'. It would enter into force in accordance with Article X:3 of the WTO Agreement. Pending entry into force, developing country Members can use the SSM and Members shall not challenge through the WTO Dispute Settlement Mechanism the compliance of a developing country Member with its obligations under Articles 4 and 5 of the Agreement on Agriculture with respect to any use by that Member of the SSM

This G-33 proposal is based on Rev.4 but in some areas, reduces significantly the level of ambition compared with Rev.4:

- **Reduced availability**. The principle that the SSM can be invoked for all tariff lines (Rev.4) has been relinquished. Instead developing countries are to indicate in their Schedule of commitments the products for which they would like to apply the SSM in the future.

- **Volume crosscheck on price-based SSM** – developing countries may not take recourse to the price-based SSM where the volume of imports of the products concerned in the current year is manifestly declining, or is at a manifestly negligible level incapable of undermining the domestic price level. In Rev.4 this obligation was 'shall not normally' instead of 'may not'.

The proposal also had an interesting feature:

- **Exemption of SSM to imports from certain Members**, in particular LDCs, SVEs and other Members listed in an Annex.

The G-33 proposal also aims to fix some problems of Rev.4:

- As compared to Rev.4, it gives the **possibility to use the SSM on non-MFN/preferential trade**, depending on what the RTA stipulates about possible application of SSM.

- As compared to Rev.4, the G33 proposal **allows the price-based SSM to be applied to en-route shipments.** The Rev.4 text prohibits the use of SSM when shipments have been contracted for and are 'en route' (on the way to the importing country wishing to apply SSM) after completion of custom clearance procedures in the exporting country. If this is applied, Members would not be able to operationalize Rev.4's price-based SSM at all. The G33 proposal makes this correction.

Even though the G33 had revised and lowered the ambition on their 17 July 2014 proposal, yet some agricultural exporting Members were still unwilling to engage constructively. As such, on 9 December 2015, the G33 made a subsequent submission (WT/MIN(15)/W/34; JOB/AG/65) asking for an alternative – not the SSM but a simple addition of some Special and Differential Treatment (S&D) paragraphs to the existing SSG (Article 5). The main

change from the SSG (Article 5) is that the reference price used for the price-based SSG would be the most recent 3-year period (hence updating the SSG). Without this update, the price-based SSG, linked to 1986-88 reference prices would, in most circumstances, not be operable.

Why the Agricultural Safeguard Will Only be Used Very Selectively, if at All

Agricultural Exporting Members in the WTO are concerned that the SSM (or perhaps now, the SSG for developing countries), if agreed to, would be used very frequently and impact their exports.

This is unlikely to be the case for many reasons:

i) Many agricultural lines which experience import surges or price declines are not sensitive lines. Countries will not impose the safeguard if they do not produce these products, or do not produce enough of these products, or simply require these products in very large quantities. Further, some agricultural imports are inputs for industrial products - cotton for the textile industry; ethyl alcohol for the chemical industry etc.

ii) A large number of developing countries are net food importers (NFIDCs). Even those that are not NFIDCs have a heavy reliance on the world market for their food. Furthermore, population growth is increasing quickly in many developing countries. Hence food imports will only continue to grow. The safeguard will therefore only be used very selectively, if at all, as most developing countries will remain heavily reliant on imports, and will want these food imports to be brought in as cheaply as possible.

iii) Countries will also use alternative policy instruments – for example, some countries may choose to increase their tariffs within the bound rates, instead of invoking the safeguard.

iv) Many countries will not use the safeguard because of the design of the instrument. Even with the SSG, there is only a limited window of opportunity timewise to invoke it E.g. the volume-based safeguard requires very close monitoring of imports and action to be taken very quickly by a Member so that the safeguard is implemented within the same year that the import surge had taken place. Otherwise, the window of opportunity to implement the safeguard closes. Such conditions are not easy for most developing countries to fulfill.

v) There are developing countries today that do not currently have domestic safeguard legislation, or if they do, may simply not have the institutional capacity to implement it. Whatever safeguard measures provided by the WTO cannot be operationalized until domestic legislation and the necessary institutional capacity is in place.

The experience of developing countries that have access to the SSG has shown that most developing countries have not used the SSG or if they have, have done so only on the rare occasion.

Importance of the Agricultural Safeguard in Context of Failure to Discipline Developed Members' Domestic Supports

The agricultural safeguard is also important for developing countries as developed Members providing large amounts of domestic supports have still not been forthcoming in delivering on the Doha promise of 'substantial reductions in trade-distorting domestic supports'. These domestic supports have actually subsidised OECD countries' exports – leading to very deep and far-reaching consequences on the small farmers in many developing countries who have been squeezed out of their domestic markets (see earlier section).

This is why the safeguard cannot only be linked to progress in the market access pillar in the Doha agriculture negotiations but is an important instrument for developing countries in the overall context of imbalanced agricultural trade rules.