

Chair's Reference Paper¹

SPECIAL SAFEGUARD MECHANISM

Background

Paragraph 7 of the Hong Kong Ministerial Declaration states, *inter alia*, that:

".... We also note that there have been some recent movements on [...] elements of the Special Safeguard Mechanism. [...] 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."

Paragraph 42 of the Agreed Framework (Annex A of WT/L/579) states that:

"A Special Safeguard Mechanism (SSM) will be established for use by developing country Members."

¹ The headings used in this reference paper are indicative only.

Structure for discussion

Introduction

1. The Agreed Framework states that a Special Safeguard Mechanism (SSM) will be introduced for developing countries. The Hong Kong Ministerial Declaration makes it clear that this SSM will be activated if either the price or quantity trigger is passed.
2. The SSM has been the subject of intensive discussion in various formats. The G-33 has made a number of proposals, the most recent (JOB(06)/64) is attached, which have used Article 5 as the basis for a suggested text. In practice, this approach has been used by many delegations in consultations although it could be noted that alternative approaches might be considered. For the time being, I consider it is useful to keep working off this format without prejudice to how we end up in formal terms.
3. If Article 5 is taken as the basis on which to structure discussion and the G-33 proposal is taken as a starting point the following points could be considered.

SSM as exception to general rules

4. Any special safeguard instrument will have to operate as an exception to the general rules of the GATT 1994 and the Agreement on Agriculture. The G-33 proposed that the list of rules notwithstanding which the SSM would operate should be paragraph 1(b) of Article II and Article XI of GATT or Article 4 of the Agreement on Agriculture. It is clear that Article II of GATT and Article 4 of the Agreement on Agriculture need to be on list – indeed Article 4.2 itself includes a reference to the current Article 5 of the Agreement on Agriculture. However, it is not so clear if the reference should be to Article 4 in its entirety or to Article 4.2 alone, like the current exemption in Article 4.2 for Article 5.
5. The case is perhaps less clear for Article XI of GATT. No current proposal refers to quantitative restrictions and earlier discussions suggested this reference was a carry over from an earlier stage of the negotiations.

Coverage

6. The basic issue concerning coverage is, whether it should be constrained *a priori* in any way, or whether it is purely and simply a question of satisfying the conditions laid down in the instrument for any particular product when and where the circumstances specified for application exist. It is clear that a number of Members do not favour any *a priori* constraint. A number of other Members do want some such restraint. Clearly, unless we resolve this issue one way or another, we will not get to closure on this particular item.
7. I do not want in any way to foreclose this discussion as there are strongly held views on both sides of the debate. What I would suggest, however, is that we come back to this issue *after* we have tried to specify the more substantive and operational aspects. The proponents of open-ended coverage are seeking to cover situations that are generalised and potentially likely to apply across the board. They are not seeking particular product-specific situations. That suggests that there is a certain logic to dealing with this directly as a matter of priority. In principle it should be perfectly feasible to determine what the objective need for a safeguard mechanism of this type would be without prejudice to how widely it should be applicable ultimately. Indeed, it might even help in resolving the latter point: once we see what the creature looks like, we may find it easier to decide whether or how far we would be happy to let it roam, as it were.

8. We also need to have some kind of general orientation of what the basic nature of this mechanism is. I have had the sense that delegations share the view that this is to be interpreted in the literal sense of "special" i.e. a mechanism that is not the "normal" way in which imports would be treated. I don't think we can, or should, attempt to define this in precise numerical terms. But it is central to bear this perspective in mind. If this is, indeed, something that is "special" rather than "usual", the instrument's detailed operational functioning should be likely to function in the real world in that sort of way. In other words, it should be able to genuinely deal with a special situation. But, viewed from the other end of the telescope, neither would it be an instrument that was of such a nature that it would be likely to be routinely triggered and applied. As I say, I have not to this point detected any other view, but if there is, indeed, such a divergence we would need to deal with this up front, otherwise purely technical elaboration would get us bogged down to no good purpose.

Triggers

9. For the purposes of discussion it might be useful to separate analytically the issues of trigger and remedy while noting that:

- The current quantity-based SSG has a fixed remedy ("one third of the level of the ordinary customs duty in effect in the year in which the action is taken") and a variable trigger;
- The current price-based SSG has a fixed trigger and a remedy that varies depending on the difference between import price and price trigger; and
- The new quantity- and price-based SSMs could, as proposed by G-33, have variable remedies and fixed triggers (or, to be more correct, the reference period for the trigger is fixed relative to the year in which the SSM might be applied).

Quantity-based trigger

10. It would seem quite clear that the quantity-based trigger would have to be based on total import volumes during some reference period. Although the current SSG requires an estimate of domestic consumption for both its x and y elements this notion has not figured significantly in negotiations for the SSM and most recent positions have used import quantities as the basis for the trigger. If the trigger for the quantity-based SSM is to be import volume two questions that come to mind are:

- What is the reference period – should it be a straightforward base period of the average for years A to B – but if A and B are fixed does this allow for normal growth of trade? Or should it be a rolling average of the C most recent years – but does this take account of what should be considered to be "normal" import fluctuations arising in the normal course of commercial trade. Could it be a combination of the two – such as the higher level of average for fixed years A to B or most recent C years; and
- What imports should be included in calculating imports – should it be m.f.n. only trade or some other way of excluding certain imports – for example, imports under tariff quotas, free trade agreements or other kinds of concessional arrangements?

Price-based trigger

11. It would appear that the central issue for the price-based trigger is: below what level of price movement is it appropriate that the SSM should be able to be triggered? Although it seems to be accepted that the c.i.f. price of the shipment should be the basis the "import price" there is no convergence on other aspects of the trigger. The G-33 suggest that it should be the average monthly price for the most recent three-year period.

12. Others have pointed out that there can be significant fluctuations in monthly prices and import levels vary as a result. A simple average of monthly prices would mean weighting in favour of high price periods. This would imply it might be more representative to use trade-weighted or longer time-period averages and suggestions have been made for a three-year average or for annual averages.

13. As would be the case for the quantity trigger, an additional consideration is the type of imports to be included in calculating the historic average – should it be m.f.n. only trade or some other way of excluding certain imports – for example, imports under tariff quotas, free trade agreements or other kinds of concessional arrangements?

Remedies

14. There are two general issues to resolve for the remedies that could be applied once the trigger is breached – what is the remedy and for how long it can be applied. Some have added a third – to whom it should be applied. That is it should apply, subject to different triggering mechanism, to those that subsidise agriculture production. However, this could be taken as a change in the character of the SSM from safeguard to countervailing duty and goes beyond the narrow objective of protecting against import quantity and price fluctuations per se.

Quantity-based remedy

15. Several ideas have been put forward of what should be the remedy under the quantity-based SSM. As proposed by G-33 it is the higher of (i) a percentage of the current bound tariff or (ii) so many percentage points. The additional duty would vary from 0% for the first 5% of imports over the trigger and increase to 100% of the bound rate or 60 percentage points, whichever is the higher, when imports are 130% above the trigger volume.

16. Other ideas are to limit the additional duty to a proportion of the applied tariff or to put a cap on the total duty (such as the UR bound level).

17. Two general options have been suggested for the duration of the quantity-based SSM – the G-33 suggest it should be applied for 12 months year after the trigger is breached and others that it should be applied for the rest of the calendar or marketing year.

Price-based remedy

18. The result of the remedy proposed by the G-33 is to apply an additional duty to the c.i.f. import price which could make up for all of the difference between the import price and the trigger price.

19. One specific alternative proposal suggests that the price-based remedy should be linked to the tariff cut by saying that it should not be more than half the difference between the Uruguay Round bound rate and the new bound rate. In consultations, other delegations have suggested caps on the remedy e.g. to prevent total duty rising above UR bound rates. We will indeed need to deal with the more general question of whether this instrument is applicable for all products (i.e. including products for which no tariff reduction commitments in this round are made – including Special Products) or only for those where tariff reduction commitments in this Round are made. I would propose that, as a matter of working in the period ahead, this is an issue we return to once we have developed the shape of the measure as it is without prejudice to that position. Suffice it to say at this point that, that said, it seems to me already clear at the very least we would need to deal with the situation of least-developed countries – when it is specifically provided that no tariff cuts are envisaged by them. They would surely be entitled also to access to the special safeguard mechanism should they choose to do so, in line with paragraph 45 of the Agreed Framework.

Additional conditions

20. It would seem to be generally accepted that products en route after the quantity-based SSM has been triggered would be exempt from additional duties. The quantity in the shipment and its price would be used, however, for estimating triggers.

21. For perishable and seasonal products, the current provisions of Article 5.6 have been adapted to match their proposal by the G-33. However, no other detailed suggestions have been made.

Concurrent use of safeguard actions under the WTO

22. Most participants seem to support the view that this mechanism should not be employed concurrently with certain other WTO measures, at least with respect to the provisions of paragraphs 1(a) and 3 of Article XIX of GATT 1994 or paragraph 2 of Article 8 of the Agreement on Safeguards. However, the list of WTO-consistent measures which should not apply concurrently varies.

Exchange rate fluctuations

23. This aspect has only been taken up by the G-33 in their proposal. There has been no reaction so far.

Transparency provisions

24. There seems to be no dissent from the view that operation of the SSM should be carried out in a transparent manner and appropriate provisions should be developed to that effect.

JOB(06)/64

23 March 2006

Committee on Agriculture
Special Session

Without prejudice

G-33 PROPOSAL ON

ARTICLE 5 [...]

SPECIAL SAFEGUARD PROVISIONS MECHANISM FOR DEVELOPING COUNTRIES

1. Notwithstanding the provisions of paragraph 1(b) of Article II and of Article XI of GATT 1994 or of Article 4 of this Agreement, any developing country Member may take recourse to the imposition of an additional duty in accordance with the provisions of paragraphs 4 and 5 below in connection with the importation of ~~an~~ any agricultural product listed in Annex 1 to this Agreement, ~~in~~ respect of which measures referred to in paragraph 2 of Article 4 of this Agreement have been converted into an ordinary customs duty and which is designated in its Schedule with the symbol "SSG" as being the subject of a concession in respect of which the provisions of this Article may be invoked, if:

- (a) the volume of imports of that product entering the customs territory of ~~the~~ that developing country Member ~~granting the concession~~ during any year² exceeds a trigger level equal to the average annual volume of imports for the most recent three-year period preceding the year of importation for which data are available (hereinafter referred to as the "average import volume") ~~which relates to the existing market access opportunity~~ as set out in paragraph 4; or, but not concurrently:
- (b) the c.i.f. import price, expressed in terms of the developing country Member's domestic currency, -at which a shipment³ of imports of that product ~~may enter~~ enters the customs territory of ~~the~~ that developing country Member during any year ~~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 (hereinafter referred to as the "import price"), falls below a trigger price equal to the average ~~1986 to 1988~~ monthly reference price⁴ for the that product concerned for the most recent three-year period preceding the year of importation for which data are available (hereinafter referred to as the "average monthly price"),

provided that, where the developing country Member's domestic currency has at the time of importation depreciated by at least 10 per cent over the preceding 12 months against the international currency or currencies against which it is normally valued the import price shall be computed using the average exchange rate of the domestic

² For the purposes of this Article, "year" refers to the calendar, financial or marketing year specified in the *Schedule* relating to that developing country Member.

³ A shipment shall not be considered for purposes of this subparagraph or paragraph 5 unless the volume of the product included in that shipment is within the range of normal commercial shipments of that product entering into the customs territory of that developing country Member.

⁴ The reference trigger price used to invoke the provisions of this subparagraph shall, in general, be based on the average monthly c.i.f. unit value of the product concerned, or otherwise shall be based on a an appropriate price that appropriately reflects, in terms of the quality of the product and its stage of processing. ~~It~~ The trigger price shall, following its initial use, be publicly ~~specified~~ disclosed and available to the extent necessary to allow other Members to assess the additional duty that may be levied.

currency against such international currency or currencies for the three-year period referred to above.

2. Imports under any tariff rate quota current and minimum access commitments established as part of a concession referred to in paragraph 1 above shall be counted for the purpose of determining the volume of imports required for invoking the provisions of subparagraph 1(a) and paragraph 4, but imports within such ~~commitments~~ tariff rate quota shall not be affected by any additional duty imposed under either subparagraph 1(a) and paragraph 4 or subparagraph 1(b) and paragraph 5 below.

3. Any ~~supplies~~ shipments of the product in question which have been contracted and were en route after completion of custom clearance procedures in the exporting country before the additional duty is imposed either under subparagraph 1(a) and paragraph 4 or under subparagraph 1(b) and paragraph 5 shall be exempted from any such additional duty, provided that:

(a) ~~they~~ the volume of such shipments may be counted in the volume of imports of the product in question during the following year for the purposes of triggering the provisions of subparagraph 1(a) in that year; ~~or:~~

(b) the price of any such shipment may be used during the following year in determining the average monthly trigger price for the purposes of triggering the provisions of subparagraphs 1(b) in that year.

4. (a) Any additional duty imposed under subparagraph 1(a) shall only be maintained for no more than 12 months after it has been imposed.

(b) An additional duty imposed under subparagraph 1(a) until the end of the year in which it has been imposed, and may only be levied at a level levels which that shall do not exceed one third of the level of the ordinary customs duty in effect in the year in which the action is taken. The trigger level shall be set according to those specified in the following schedule based on market access opportunities defined as imports as a percentage of the corresponding domestic consumption⁵ during the three preceding years for which data are available:

(ai) where such market access opportunities for a product are less than or equal to 10 per cent, the base trigger level shall equal 125 per cent level of imports during a year does not exceed 105 per cent of the average import volume, no additional duty may be imposed;

(bi) 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 level of imports during a year exceeds 105 per cent but does not exceed 110 per cent of the average import volume, the maximum additional duty that may be imposed shall not exceed 50 per cent of the bound tariff or 40 percentage points, whichever is higher;

(eiii) where such market access opportunities for a product are greater than 30 per cent, the base trigger level shall equal 105 level of imports during a year exceeds 110 per cent but does not exceed 130 per cent of the average import volume, the maximum additional duty that may be imposed shall not exceed 75 per cent of the bound tariffs or 50 percentage points, whichever is higher;

(iv) where the level of imports during a year exceeds 130 per cent of the average import volume, the maximum additional duty that may be imposed shall not

⁵Where domestic consumption is not taken into account, the base trigger level under subparagraph 4(a) shall apply.

exceed 100 per cent of the bound tariff or 60 percentage points, whichever is higher.

~~— In all cases 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 Member granting the concession exceeds the sum of (x) the base trigger level set out above 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) above.~~

5. ~~(a) The~~ Any additional duty imposed under subparagraph 1(b) shall be set according to the following schedule: ~~may be assessed either on a shipment-by-shipment basis or on an~~ ad valorem basis for a duration of no more than 12 months as defined in subparagraph 5(b) below.

~~(a)~~ (b) In the event that the additional duty is assessed on that product:

~~(i)~~ (i) on a shipment-by-shipment basis, the additional duty shall not exceed ~~if the~~ difference between the e.i.f. import price of ~~the each~~ shipment expressed in terms of the domestic currency (hereinafter referred to as the "import price") and the trigger price as defined under that subparagraph is less than or equal to 10 per cent of the trigger price, no additional duty shall be imposed;

~~(b)(ii)~~ (ii) if on an ad valorem basis, the additional duty shall not exceed the difference between the import price of the shipment and the trigger price referred to in subparagraph 1(b) above, expressed as a percentage of ~~and that trigger~~ import price;

~~— provided that if at least two subsequent shipments are at import prices that are 5 per cent or more lower than the trigger price referred to in subparagraph 1(b), the developing country Member may shift to the imposition of additional duty on a shipment-by-shipment basis as set out in subparagraph 5(b)(i) above. (hereinafter referred to as the "difference") is greater than 10 per cent but less than 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;~~

~~(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 than 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);~~

~~(e) — if the difference is greater than 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).~~

6. For perishable and seasonal products, the conditions set out above shall be applied in such a manner as to take account of the specific characteristics of such products. In particular, shorter time periods under subparagraph 1(a) and paragraph 4 may be used in reference to the corresponding periods ~~period~~ in the base three-year period referred to in subparagraph 1(a) and different reference ~~reference~~ trigger prices for different periods may be used under subparagraph 1(b).

7. The operation of the special safeguard shall be carried out in a transparent manner. Any developing country Member taking action under subparagraph 1(a) above shall give notice in writing, indicating the tariff lines affected by the measure and including relevant data to the extent available, to the Committee on Agriculture as far in advance as may be practicable and in any event within ~~10~~ 30 days of the implementation of such action. ~~In cases where changes in consumption volumes must be allocated to individual tariff lines subject to action under paragraph 4, relevant data shall include the information and methods used to allocate these changes.~~ A developing country Member taking action under paragraph 4 shall afford any interested Members the opportunity to consult with it in respect of the conditions of application of such action. Any developing country Member taking action under subparagraph 1(b) above shall give notice in writing, indicating the tariff lines affected by the measure and including relevant data to the extent available, to the Committee on Agriculture within ~~10-30~~ days of the implementation of the first such action or, for perishable and seasonal products, the first action in any period. Developing country Members undertake, as far as practicable, not to take recourse to the provisions of subparagraph 1(b) where the volume of imports of the products concerned are declining. In either case a developing country Member taking such action shall afford any interested Members the opportunity to consult with it in respect of the conditions of application of such action.

8. Where measures are taken in conformity with paragraphs 1 through 7 above, Members undertake not to have recourse, in respect of such measures, to the provisions of paragraphs 1(a) and 3 of Article XIX of GATT 1994 or paragraph 2 of Article 8 of the Agreement on Safeguards.

9. ~~The provisions of this Article shall remain in force for the duration of the reform process as determined under Article 20.~~ No developing country Member shall take recourse to measures under Article 5 in respect of any product on which it has imposed additional duties pursuant to the provisions of this Article.