10 December 2004

G-33 STATEMENT
SPECIAL SAFEGUARD MECHANISM (SSM)

INTRODUCTION

1. Paragraph 42 of Agriculture Framework[1] states:

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

2. According to the General Council's Decision, the SSM is an integral part of the Special and Differential Treatment (SDT) provisions under the market access pillar. As such, the SSM constitutes a fundamental element for addressing the existing imbalances in the agreement. In this context, the SSM should provide developing countries and Least Developed Countries (LDCs) with an effective and flexible instrument to address their distinct susceptibilities to import surge disturbances and the ruinous effects of down swings in prices.

3. The Agriculture framework does not provide specific guidelines with respect to the possible architecture of the SSM but such negotiations do not take place in a vacuum. Currently, there exist provisions on safeguards under Article XIX of the GATT and the Agreement on Safeguards as well as provisions on Special Safeguards (SSG) under Article 5 of the Agreement on Agriculture.

4. For several reasons these provisions have been insufficient and/or inadequate to address the concerns of developing country Members related to stabilising domestic markets and avoiding sudden increases of imports that threat to disrupt domestic production and employment.

5. In that context a review of the experience of developing countries in the use of the existing safeguard provisions could contribute to identify basic parameters for the negotiations on SSM modalities.

6. That is, negotiations on modalities on the SSM shall be guided by the purpose of devising a safeguard mechanism that as an SDT provision effectively responds to the needs and particular circumstances of developing country Members. **As such it must represent an improvement from the existing safeguard instruments.**

[1] Annex A of the General Council Decision on the Doha Work Programme -WT/L/59.

THE EXPERIENCE OF DEVELOPING COUNTRIES IN THE USE OF SAFEGUARD MEASURES

7. The general safeguard provisions under Article XIX of GATT and the Agreement on Safeguards are available to all WTO Members and for all type of products.

8. Therefore, Members including developing countries can adopt special import measures under the Safeguard Agreement for agricultural products. Moreover, the safeguard agreement does not establish restrictions with respect to the scope of products to be protected by the measure, thus **all** agricultural products can have access to the special import measures under the Safeguard Agreement.

9. However, the GATT's general safeguard provisions require Members invoking the measures to prove injury or threat thereof to the domestic industry and establish through an investigation based on objective evidence that there is a causal link between increase in imports and the injury or threat thereof to the domestic industry.

10. In consequence, theoretically all developing countries have access to these provisions. In practice however, many lack the institutional capacity to implement in a rigorous manner the detailed procedural requirements necessary to apply the safeguard measures in accordance with the Safeguards Agreement.[2] Furthermore, the nature of agriculture in many developing countries characterised by large number of subsistence and small farmers makes it difficult to meet the conditions established in the Safeguard Agreement to prove the causal link between increased imports and injury, necessary for invoking the measure.

11. An additional feature of the special import measures under the safeguard agreement is that it can be implemented only when a product is being imported in such increased quantities and under such conditions as to threaten injury to the domestic industry. Therefore, the measure would provide relief from import surge situations but does not address situations of price volatility per se.

12. The Agreement on Agriculture on the other hand, incorporated provisions on special import measures that waived the basic constraint of the safeguard agreement of proving injury or threat thereof to the domestic industry. The measure is thus automatic in the sense that the safeguard can be activated once the triggers are hit without the requirement to undertake an investigation process.

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[2] FAO (2002), *Some trade policy issues relating to trends in agricultural imports in the context of food security*, Committee on Commodity Problems, CCP 03/10, p. 5.

13. Besides, this instrument provided for special measures to be taken in response to both import surges (i.e. increased in the volume of imports) **and** downward swings in prices.

14. Indeed, agricultural markets are by their nature cyclical and subject to turbulence. On the other hand, poor farmers' livelihoods are often extremely vulnerable, meaning that temporary shocks can have significant and long lasting effects on the poor. Given that developing countries lack safety net mechanism to protect farmers' income and employment, downward pressures on prices can have deleterious effects on rural development and agricultural production.

15. Thus the provisions on special import measures under the Agreement on Agriculture would seem more at reach of developing countries' institutional capabilities and special circumstances: there is no need to prove injury to the domestic industry for invoking the special import measure; and the safeguard instrument can be triggered both in response to import surges and down swings in prices (i.e. volume and price triggers).

16. However, not all WTO members have had access to this mechanism - something that the new SSM will address; nor has this instrument been available for all agricultural products. Furthermore, the specified technical conditions for making use of this instrument seem to act as constraining factors for their use by many developing countries.

17. An important deficiency is related to the fixed reference price built into the price-triggered safeguard. For developing countries having been exposed to inflationary pressures and instances of currency devaluation the fixed reference price in-built in this instrument has no relationship with current trends in prices hampering the possibility of the measure being invoked by the affected countries. As indicated by FAO: "To apply the safeguard, the current nominal price of imports in domestic currency should be lower than the corresponding average price effective during the 1986-1988 period, which was a period of very depressed international prices and strong overvaluation of many developing countries' currencies. This implies that the trigger price for these countries turns out to be very low in comparison with any current prices."[3]

18. Additional elements in the architecture of this safeguard instrument act as deterrents in their use by developing countries.

19. For instance, only additional duties are contemplated in this instrument as relief measures while the general safeguard provisions under GATT allows for the use of additional duties **and** quantitative restrictions.

[3] FAO (2003) *WTO Agreement on Agriculture. The Implementation experience*, FAO, Rome, p. 18.

20. Furthermore, important constraints are in-built in this safeguard instrument with respect to the potential relief that the special import measure can provide by limiting the level of the additional duty to be imposed in respond to import surges. Such constraints as they currently stand, combined with the particular tariff profile of developing countries may not provide for adequate relief.

21. Moreover, the trigger levels are less sensitive to low levels of imports with the implication that when the national food supply is based largely on domestic production, imports have to increase by more than 25 per cent in one year for invoking the measure. Yet, from a food security perspective in developing countries these are often the most sensitive situations and such a large threshold for triggering the measure severely restricts its responsiveness to the particular circumstances of developing countries.

22. In addition to the above, the current agriculture safeguard instrument requires certain level of sophistication in terms of administrative capabilities as well as customs' facilities and infrastructure. This sophistication is currently out of reach of many developing countries and thus a simpler mechanism may be necessary in the context of designing a SDT safeguard provision for developing countries.

23. All these factors inhibit the use of the safeguard instruments under the GATT and the Safeguard Agreement, as well as the Agreement on Agriculture by developing countries and leave them exposed to the vagaries of international prices and sudden increase in imports with detrimental effects on farmers' livelihoods, rural development and food security.

PARAMETERS FOR THE NEGOTIATION OF THE SSM MODALITIES

24. As the above brief review of the experience of developing countries in the use of existing safeguard provisions indicate, there are specific aspects to each of these instruments that constraint their use by developing country Members.

25. As an SDT measure the SSM must represent an improvement on the existing safeguard provisions in terms of establishing a mechanism that is responsive to the needs of the developing country Members and LDCs and the particular circumstances of their agricultural sectors. Building on the flexibilities embedded in the existing safeguard provisions rather than extracting from them would be the adequate approach to follow in devising the modalities for the new special safeguard mechanism.

26. In view of the above, the following general parameters should guide the negotiation of modalities on SSM[4]:

    i) The safeguard measure shall be automatically triggered;
    ii) The safeguard measure shall be available to all agricultural products;
    iii) The safeguard measures should be available to address situations of import surges and swings in international prices. Therefore, price and volume-triggered safeguards shall be contemplated.
    iv) Both additional duties and quantitative restrictions shall be envisaged as measures to provide relief from import surges and decline in prices;
    v) The mechanism shall respond to the institutional capabilities and resources of developing countries; hence it should be simple, effective and easy to implement.

[4] The table in the Annex provides a summary of the basic parameters of the existing safeguard provisions. The shaded cells purpose to highlight the more constraining approach towards any specific parameter reflected in the existing safeguard instruments. The new SSM should not necessarily be framed by the existing safeguard provisions but it should certainly avoid imposing conditions on the SSM that would tantamount to the same constraints that rendered the existing instruments inadequate for developing countries.

Annex

Item/parameter	Article XIX GATT 1994 and Safeguards Agreement	Special Safeguards Article 5 Agreement on Agriculture
• Basis to justify action	Import surges	- Import surges <u>and</u> drop in prices
• Conditions for the application of safeguard measures	- Prove through an investigation based on objective evidence, injury or threat thereof to domestic industry caused by increased imports	- No need to prove injury or threat thereof to local production. - Automatically triggered
• Type of relief/remedy measures	- Additional duties **<u>and</u>** quantitative restrictions.	Additional duties for both, volume and price-triggered safeguard.
• Restrictions as to the level of compensation admissible	- No specific restrictions as to the level of the additional duties to be imposed. - If quantitative restrictions were imposed, such a measure shall not reduce the quantity of imports below the level of a recent period	*<u>Volume trigger</u>*: the additional duty shall not exceed aprox. 30 per cent of the applied rate in effect the year the measure is triggered. *<u>Price trigger</u>*. The additional duty can only compensate for a fraction of the difference between the nominal price of the shipment concerned in domestic currency and the reference price fixed at the average value of the product over the period 1986-1988.