Special safeguard for agricultural products: concerns and options for developing countries

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Abstract

Safeguard measures under the GATT framework provide the means to temporarily raise import barriers. This paper reviews existing trade defense mechanisms under the GATT, with special reference to developing countries. These include the general safeguard mechanism, the special agricultural safeguard, subsidies and countervailing duties, safeguard actions for economic development purposes, Anti-dumping, Balance of Payments Measures and, less obvious, the option to renegotiate concessions. The paper also discusses recent proposals in the ongoing WTO Doha development round for a developing country safeguard mechanism.

1. Introduction

The GATT has produced an impressive legal framework aimed at the liberalization of international trade through the binding and reduction of protectionist measures. But the GATT also provides instruments to raise protection against imports. Numerous proposals for agricultural safeguard mechanisms as part of special and differential treatment for developing countries have been made in the ongoing the Doha round.

The argument that developing countries should have access to a special safeguard arrangement is based both on two main considerations. First, the *vulnerability* of producers, and especially low-income and resource-poor producers, to a sharp drop in market prices caused either by unexpectedly low world market prices or a surge in imports. Second the *absence of alternative risk management and safety net instruments*. Furthermore the desire for a developing country safeguard is supported by a perception that there is an imbalance in the current Agreement in Agriculture (AoA) because the use of the Special Safeguard (Article 5) is mainly confined to developed countries since it was limited to countries which chose the tariffication option in making their tariff commitments. Many developing countries opted for ceiling bindings instead of bound rates, and consequently did not have access to the Special Safeguard.

The opening of markets to international competition will first of all have some impact on those sectors that are currently not competitive and are shielded from international competition through trade- and domestic policies. In many developing countries the rural population who derive most of their income from agriculture is very vulnerable to a downward fluctuation in market prices. There is a lack of public institutions and lack of market-based or public risk management to provide income support. Few developing countries have the ability to respond to a deteriorating income position of their farmers in the way the United States did with its series of emergency aid packages at the end of the 1990s. (Matthews, 2003)

Safeguards are an alternative to requesting high bound tariffs for stabilization purposes. To the extent that countries will be able to negotiate higher bound tariffs on some agricultural products, the case for a safeguard mechanism in addition is diminished. This is particularly the case where the applied tariffs are lower than their bound rates.

2. Existing trade defense mechanisms

The WTO framework provides some safeguard and trade defense mechanisms that allow members to protect domestic markets from short-term difficulties arising from exposure to world markets or to protect them against unfair trade practices that could cause injury to domestic industries. All the mechanisms attempt to address problems that might arise through increases in imports. Table 1 below summarizes the key features.

Agreement on Safeguards (Article XIX of GATT and Agreement on Safeguards)

The Agreement on Safeguards allows importing countries to temporarily restrict imports after it is established that increased imports cause serious injury to a domestic industry. The investigations have to be carried out by a competent authority. The trade defense measures available are increased tariffs (over bound rates) or quantitative restrictions. Such trade measures must be applied on a non-discriminatory basis, i.e. they must apply to imports from all sources. Compensation must be offered to those countries whose trade interest would be adversely affected by the measures. An affected country may take retaliatory action if no agreement on adequate compensation can be reached. This Article allows countries to quickly impose trade restrictions and afterwards negotiate compensation with its trading partners. It therefore opens the door to backsliding of liberalization efforts.

Since the Safeguard Agreement is meant to temporarily provide protection to industries to allow them to adjust to a liberalized situation, the Agreement allows for safeguard measures to be applied only for a limited period for any given product: eight years in the case of developed countries and ten years for developing countries.

The Agreement specifies procedural requirements for conducting investigations, including the criteria that the investigating authorities must use to establish whether increased imports cause serious injury.

Several constraints have prevented developing countries form using this general safeguard mechanism. First of all, it requires considerable (institutional) resources to establish a case of serious injury. Second, the potential cost of compensation to avoid retaliation by affected parties may be prohibitive. Finally, the use of general safeguards requires that they are implemented in the national legislation, and this is not the case in many developing countries.

Special Safeguard Mechanism of the Agreement on Agriculture (Article 5 of the AoA)

Under the Special Safeguard Provision (SSG) of the Agreement on Agriculture, additional duties can be imposed in response to import surges. Only the 39 countries that agreed to bind *and* reduce their tariffs in the Uruguay Round have access to the SSG. The 21 developing countries that did bind and reduce their tariffs have not made use of the existing SSG.

The SSG was created to address concerns that the replacement of NTBs by bound tariffs might result in import surges or depress domestic prices. The general safeguard measure was viewed as inadequate to facilitate the transition to a tariff-only regime. Few developing countries have access to the SSG, since most decided to offer ceiling bindings.

Under the SSG there are two situations when a safeguard action may be invoked: a surge in volume of imports or a sharp drop in import prices. The quantity and price triggers are well defined in the AoA. If these triggers are met, additional duties, beyond bound rates may be put in place.

The *volume-based trigger* is derived from:

- actual imports over the past 3 years
- share of imports in domestic consumption in the same period
- absolute change in domestic consumption over the most recent year

If the volume of imports exceeds the trigger level, an additional duty up to 30% may be imposed. The trigger level of imports (M^*) is defined as follows:

Let:

M^* = the trigger level of imports

M_{av} = the average quantity of imports during the three preceding years for which data are available

X = the base trigger level

c = volume change in domestic consumption in the most recent year for which data are available compared to the preceding year

$$M^* = M_{av} \cdot X + c$$

The value of X is calculated on the basis of the share of imports in domestic consumption (S) during the three preceding years as follows. If: $S \leq 10\%$, then X = 125%; $10\% < S \leq 30\%$, then X = 110%; S>30%, then X = 105%

The trigger level varies positively with the past level of imports and it varies negatively with the share of imports in domestic consumption and/or the growth rate of domestic consumption. The additional duty cannot be levied beyond the end of the year in which the safeguard is invoked, and it cannot exceed 30% of the ordinary level of duty that was in effect in the year in which the SSG is invoked. The SSG cannot be applied to imports under a tariff-rate quota (TRQ).

The *price-based trigger* is defined as the average c.i.f. price (excluding the tariff, see EC-poultry panel) during 1986-88, expressed in domestic currencies. These trigger prices have been notified to the WTO by countries using the SSG. The additional duty depends on the gap between the current import price and the trigger price, and it therefore acts like a variable levy. However, the additional duty does not fully close the gap.

The price-based trigger works on a shipment-by-shipment basis as follows:

Let:

P_m = the c.i.f. import price of the shipment expressed in domestic currency

P_t = the trigger price (the average 1986-88 reference price)

D = $(P_t - P_m) / P_t$). i.e. the percentage fall in the import price below the trigger price

t = additional duty imposed above bound tariff rate

If: $D \leq 10\%$ then $t = 0$

$10\% < D \leq 40\%$ then $t = 0.27\ (P_t / P_m) - 0.3$

$40\% < D \leq 60\%$ then $t = 0.39\ (P_t / P_m) - 0.5$

$60\% < D \leq 75\%$ then $t = 0.47\ (P_t / P_m) - 0.7$

$D > 75\%$ then $t = 0.52\ (P_t / P_m) - 0.9$

During 1995 – 1999 over twice as many price-based safeguard have been invoked as volume-based safeguards (WTO, 2002a). Although the SSG is designed as a temporary measure, the EC has maintained price-based SSGs on sugar products for every year since 1995.

Between 1995-2001, only seven developing countries initiated or implemented emergency safeguards for a total of 16 agricultural products (Sharma, 2002). This small number might be explained by the availability of other measures (particularly the ability to raise applied tariffs within the bound ceiling), because the import surges did not lead to negative effects (which is one of the conditions to trigger the safeguard), or, most likely, because the complexity of the emergency safeguard process made it too difficult for countries to use.

Safeguard Actions for Economic Development Purposes (Article XVIII of GATT)

Strict rules are laid down for developing countries to temporarily restrict imports in order to promote development. The application of these measures requires the approval of WTO member, and typically hinges upon the argument that the higher level of protection will indeed help the industry to become internationally competitive within a reasonable amount of time.

Agreement on Subsidies and Countervailing Measures (Article XVI of GATT)

The agreement on subsidies and countervailing measures (SCM) provides instruments to counteract adverse trade effects of subsidies. It applies only to industrial products, and the AoA clarifies the permissible use of agricultural subsidies. Under the Peace Clause of the AoA (expired 31 December 2003) permissible Green Box subsidies could not be subject to countervailing duties during the implementation period, while other domestic subsidies and export subsidies can only be counter-acted if injury is established.

Under the SCM, investigations must prove a causal link between subsidized imports and material injury to the industry concerned. Once injury is established, a country may levy countervailing duties to offset the subsidy. The countervailing duty may be maintained until the subsidy is eliminated, or other measures are taken concerning its effects.

Anti- dumping (Article VI of GATT)

Anti-dumping measures have become a very popular trade defense instrument after the Uruguay Round. Finger et al. (2001) show that antidumping is by far the most prevalent instrument applied by countries to impose new import restrictions. In the 1980s antidumping was used mainly by industrial countries. More recently developing countries have used it increasingly often. Between 1995 and 2000, developing countries have initiated 559 antidumping cases, developed countries 463.

Under WTO rules, dumping is defined as pricing of exports below what is charged on domestic markets and causing injury to the importer’s domestic industry. The following three conditions have to be met to apply an anti-dumping duty:

- Determination that dumping has occurred.
- Proof that domestic industry suffering from material injury.
- Proof that dumping is the cause of the injury.

Tariff measures can be taken as anti-dumping remedy. The anti-dumping duty must not exceed the margin of dumping, and must be imposed on a non-discriminatory basis on imports from all sources. The duty should remain in force only as long as and to the extent necessary to counteract dumping which is causing injury. Few developing countries possess resources and institutional capacity to determine and prove serious injury.

Renegotiation (Article XXVIII)

Perhaps less obvious as a trade defense mechanism, the option for renegotiation as a means for adjustment deserves some attention. Finger et al. (2001) argue that renegotiation was the most prominent provision to re-impose trade restrictions during the early years of the GATT.

The 1947 agreement gave each country an automatic right to renegotiate any of its reductions after three years (Article XXVIII). Under Article XIX (safeguards, see above), a country could, and still can, introduce a new restriction then afterwards negotiate a compensating agreement with its trading partners. Typically, compensation will be negotiated on another product that suppliers consider equally valuable.

In the 1950s the GATT was amended to add more elaborate renegotiation provisions. According to Finger et al. (2001) the renegotiation process still applies today and is outlined as follows[1]:

1. A country for which import of some product had become particularly troublesome would advise the GATT and the principal exporters of that product that it wanted to renegotiate its previous tariff reduction.
2. If, after a certain number of days, negotiation had not reached agreement, the country could go ahead and increase the tariff. After the Uruguay Round it is also possible to impose a TRQ.
3. If the initiating country did so, and at the same time did not provide compensation that exporters considered satisfactory, then the principal exporters were free to retaliate.
4. All of these actions were subject to the most favored nations principle; the tariff reductions or increases had to apply to imports from all countries.

[1] The Uruguay Round agreement clarified some issues relating to the definition of principal exporters' interest in: Understanding on the Interpretation of Article XXVIII of the General Agreement on Tariffs and Trade 1994.

Table 1: Summary of trade defense mechanisms under the WTO

Name of instrument	**Trigger/ conditions when measure can be invoked**	**Measures that can be taken**	**Time limit**	**Constraints on use by developing countries**
Agreement on Safeguards Article XIX of GATT and Agreement on Safeguards	Following investigation, proof that increased quantity of imports is causing or threatening to cause serious injury to domestic industry that produces like or directly competitive products.	Tariff measures or quantitative restrictions. Applied on a non-discriminatory basis.	Maximum of eight years (or ten years for developing countries).	1 - Compensation must be provided to countries whose trade interests are adversely affected by trade restrictions. 2 – Few developing countries possess the resources and institutional capacity to determine and prove serious injury. 3 - Safeguards must be instituted through national legislation. Many have not made necessary legislative changes.
Special Safeguard Mechanism of the Agreement on Agriculture Article 5 of the AoA	Surge in volume of imports or sharp fall in import prices	*Tariff measure*s. 1 - *Quantity-based SS*G: a maximum of 30% of ordinary duty for the product 2 - *Price- based SSG:* depends on the degree to which the import price falls below the trigger level.	1 - *Quantity-based trigge*r: Limited to the end of the year in which the safeguard is invoked. 2 - *Price-based trigge*r: Must be levied on a shipment-by- shipment basis.	Only 39 WTO members (21 developing countries) have recourse to the SSG. 1995-1999 only 10 countries used the SSG. Implementing the SSG requires reliable and timely trade statistics on the volume of imports and reliable price data.
Safeguard Actions for Economic Development Purposes Article XVIII of GATT	Used to promote development of new or infant industries. Requires WTO approval.	Tariff measures or quantitative restrictions.	Not specified in WTO rules, but must be temporary and reviewed annually.	

Agreement on Subsidies and Countervailing Duties Article XVI of GATT	Where it is deemed that subsidies granted cause adverse affects to the trade interests of other countries. Investigations must prove a causal link between subsidized imports and material injury to the industry concerned	Countervailing duties to offset the subsidy.	May be maintained until subsidy is eliminated, or other measures are taken concerning its effects	Applies only to industrial products. Agricultural products exempted under the Peace Clause of the AoA. (until 31 December 2003)
Anti- dumping Article VI of GATT	3 conditions: 1 - Determination that dumping has occurred. 2 - Proof that domestic industry suffering from material injury. 3 – Proof that dumping is the cause of the injury.	Tariff measures. A duty that must not exceed the margin of dumping imposed on a non-discriminatory basis on imports from all sources found to be dumped and causing injury.	Duty should remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.	High resource cost and institutional capacity to determine and prove serious injury.
Modification of Schedules (renegotiation) Article XXVIII of GATT	No proof required	Withdrawal of tariff concession on a particular product. Possibly replace by TRQ Compensation for suppliers with ‘substantial interest’	n.a.	High resource cost involved in renegotiation
Balance of Payments Measures Article XII of GATT	When such measures are deemed necessary to safeguard a country’s external financial position.	Tariff measures or quantitative restrictions.	Restrictions must be eliminated then conditions no longer justify the presence of the measures taken.	

Source: Ruffer and Vergano (2002); WTO legal texts: GATT 1947, GATT 1994

3. Safeguards and WTO accession: product specific safeguards

In the process of WTO accession, some countries have agreed on product-specific bilaterally negotiated special safeguards. These safeguards, once agreed bilaterally can become a two-edged sword, because after accession all existing members can use them against the newly acceding country. China is a case in point. China's WTO accession protocol includes stringent antidumping and safeguard provisions that its trading partners may use against its exports. Specifically the accession protocol contains product specific safeguards on textiles that were negotiated with, amongst others, the USA.

On 12 October 2004, US textile groups announced that they were filing safeguard claims under China's WTO accession agreement based upon the threat that Chinese textile and apparel imports will surge after the remaining quotas are removed at the end of 2004 as part of the Agreement on Textiles and Clothing. Under the terms of China's accession to the WTO, Members may impose a safeguard that would limit imports to 7.5 percent above the import level in the first 12 months of the most recent 14 months in response to market disruption. However, the safeguards proposed are particularly controversial because hey seek to limit Chinese imports into the US based solely upon the *threat* of market disruption. The Chinese have suggested that safeguards can only be imposed after *actual* market disruption has occurred, and have threatened to bring any safeguards imposed under the threat of market disruption to the WTO Dispute Settlement Body.

For a further discussion of the Chinese case, see Messerlin (2004). He explores how China could minimize its exposure to foreign antidumping cases.

4. Safeguard proposals under the Doha round

Developing countries have argued that previous trade negotiations as well as structural adjustment programs have required them to reduce tariffs, leaving them few policy alternatives to protect their farmers from the downward fluctuations on the international market place. In the Doha round developing countries have made numerous proposals to address their concerns, including proposals for special safeguards and Special Product designation. Such proposals have been labeled 'development box', 'food security box' or simply S&D. The WTO (2002b) summarized the issues under discussion:

- Participants have to decide whether the special safeguard provisions of Article 5 of the Agreement on Agriculture should be eliminated and, if so, (i) whether with immediate effect upon entry into force of the further market access commitments or by some future date, and (ii) whether for all countries or only for developed countries.
- In case Article 5 is to be maintained beyond the date of the entry into force of the further market access commitments, whether the existing product coverage should be maintained or modified and, if modified, for all countries or only for developing countries?
- Whether, in the framework of special and differential treatment, a new safeguard mechanism and/or countervailing measure for developing countries should be established and, if so, for all agricultural products or for a limited number of products such as strategic/food security/livelihood products? Detailed possible modalities for such provisions have been submitted.
- Whether a proposed Food Security Mechanism should be established?
- Whether a new safeguard mechanism for seasonal and perishable products should be established, as proposed by some participants?

At this point of the negotiations there is no firm progress on these issues. Although the July 2004 Agreement (WTO, 2004) contains ample language on S&D, it lacks concrete and negotiable propositions. In the July 2004 Agreement the council of ministers instructs the Committee on Trade and Development in Special Session to complete the review of all the outstanding issues by July 2005. Regarding a special agricultural safeguard, it is simply mentioned that this remains under negotiation.

There seems to be a consensus that some form of special safeguards for developing countries, and especially least developed countries (LDCs), is warranted as part of Special and Differential treatment. Such a targeted safeguard will have to be both simplified relative to the current mechanisms, and be based on clear an objective criteria. Including economic and statistical criteria to decide which countries have access to such a facility.

For example, Ruffer and Vergano (2002) argue for simplification of rules to apply a special safeguard for developing countries. Simplification and transparency would reduce implementation costs and make access to safeguards easier for developing countries. A similar argument is put forward by Matthews (2003).

Two major proposals that appear most likely to be taken further concern a Special and Differential Countervailing Measures (SCDM) and a Simplified Special Safeguard (SSSG). Both aim to make existing trade defense mechanisms more useful for developing countries. The SCDM would allow developing countries to apply countervailing duties on imports from countries that provide trade distorting domestic support to their farmers without having to prove injury or existence of a causal link between subsidized imports and alleged injury (WTO, 2002b). The SSSG for developing countries would have triggers on both price and volume and would not require proof of injury. The IPC, an international agricultural lobby group, favours the SSSG (IPC, 2004). They argue that an SSSG should be made available in exchange for commitments by developing countries to reduce bound tariffs and increase market access.

Amongst all the proposal that have been submitted, only those that focus the policy instruments on the market of the products concerned are likely to be discussed further. Alternative proposals that link S&D trade measures to the mode of production, e.g. products produced by ‘resource poor farmers’, are not likely to survive, as this would introduce unwarranted degrees impreciseness and flexibility in interpretation into the discussion.

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