

The Special Safeguard Mechanism: Some Issues for Consideration by Developing Countries

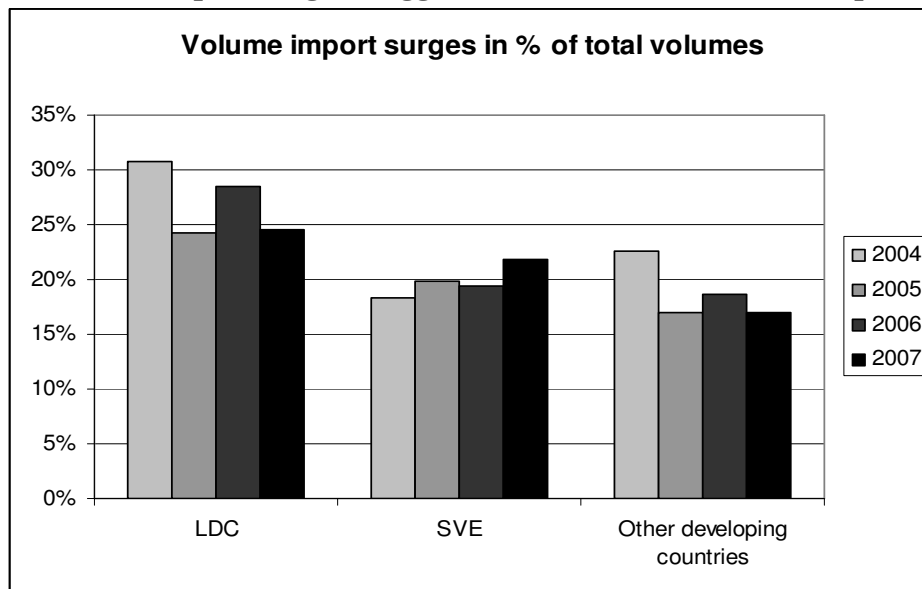
I. The Extent of Import Surges in G33 Countries (Are Import Surges a Problem?)

Import surges are a problem for developing countries, particularly if countries are attempting to increase their own food production. Many low-income developing countries, at the time of high food prices in 2008 resolved to invest more in agriculture to increase their own food production.

Trade liberalization, often in the course of structural adjustment has led to a heightened level of import surges. Of course, import surges also take place due to other reasons, such as food shortages, and governments do deliberately import more food to make up for the shortfalls.

What is the frequency of import surges taking place? If we define import surges as imports over an import volume of 110% compared to the three preceding-year average, between 2004 – 2007, G33 countries have imported approximately 19 per cent of their agricultural products (in volume terms) under an import surge. LDCs from the G33 countries imported 27 per cent of their agricultural volumes under an import surge.

Graph 1 – Volume import surges (trigger level 110%) as % of total imports



Source: South Centre Import Surge Database, 2009

For LDCs, whilst their trade import quantities are much smaller than the bigger developing countries, in relation to their on-going import levels, their import surges are larger.

II. Conditionalities Imposed on the SSM in the December 2008 Chair’s Texts (TN/AG/W/4/Rev.4 and TN/AG/W/7)

There are a large number of conditionalities. The list includes the following. Square brackets used below reflect the square brackets in the Chair’s texts.

Volume Based SSM

1. The **remedies** applied are limited (in keeping with the import surge volume). What is new (i.e. not in the SSG) is that the final duty is also capped.

Summary table: remedies and remedy cap (para 133; 143; 144; 145. Rev.4)

Import surge as % of base imports	Remedy added to applied tariffs (Rev.4)	Final duty cap
110% - 115%	25% of pre-Doha bound rate or 25 percentage points (pp), whichever higher	LDC: 40% of pre-Doha bound rate or 40pp, whichever higher
115-135%	40% of pre-Doha bound rate or 40pp, whichever higher	[SVE: 20% of pre-Doha bound rate or 20pp, whichever higher Max 10-15% of tariff lines]* (i.e. approx 76 – 114 lines)
> 135%	50% of pre-Doha bound rate or 50pp, whichever higher	Other developing country: 15% of pre-Doha bound rate or 15pp, whichever higher Max 2-6 tariff lines on HS6 level (i.e. max. 48 lines)

(para 3. W/7 text)

Import surge as % of base imports	Remedy caps (W/7)	Limit on tariff lines in 12 month period
120% - 140%	1/3 of pre-Doha bound rate or 8pp, whichever higher	Max 2.5% of tariff lines (i.e. 18-19 tariff lines)
>140%	½ of pre-Doha bound rate or 12pp, whichever higher	

2. Imports that are ‘**manifestly negligible**’ should not face SSM duties. (para 133(d) Rev.4)

3. **Period of Application.** Volume based SSM can be in place for 12 months. For seasonal products, this will only be for 6 months. (para 140. Rev.4)

4. **On/Off conditionality:** The volume-based SSM can only be used for 2 consecutive periods. When this has been used, there should then be an off period for a further two consecutive periods. (para 140. Rev 4).

Price Based SSM

3. **Trigger.** The c.i.f. import price falls below a trigger price equal to 85% of the average monthly MFN-sourced price for the most recent 3-year period for which data is available. (para 135. Rev 4)

4. **Remedy.** The additional duty can only cover 85 percent of the difference between the import price and the trigger price. (para 136. Rev.4)

5. **Cross check.** If the volume of imports are declining, the price based SSM ‘shall not normally’ be used. (para 137. Rev.4)

Both Price and Volume SSM

6. The application shall be for **MFN trade** only. (para 138. Rev.4)

7. **En route shipments** should not be subject to the SSM (price or volume based). (para 139. Rev.4)

Additional Conditionalities in the W/7 Text (above the bound rate):

8. **Cross-check.** The volume based SSM ‘shall not normally be applicable’ unless the domestic price is also declining. (para 3. W/7)

9. **Period of application.** The maximum period of application for above the bound rate volume SSM is [4/8] months. There is also an on/off conditionality. It cannot thereafter be applied for the same amount of time. There can be a spillover into the next 12 month period, but this is only limited for no more than [2/4] months. (para 3. W/7)

10. **Maximum no. of tariff lines** in any 12 month period that can avail of the SSM is 2.5%.

11. **Seasonal products.** If there is application of the SSM of 12 months over 2 years, it may not be applied for the next 12 months. [A review to take place after 2 years of operation of SSM to ascertain impact on developing country members’ exports]. (para 4. W/7)

12. [Should the **SSM be applied for 3 consecutive periods**, a standing group of experts will evaluate whether or not the measure is functioning to deal with import surges of an inherently temporary nature that is not disrupting normal trade, or whether it is a response to an underlying more structural problem. Their views and options are non-binding].

III. The Conditionality: Some Issues to Consider

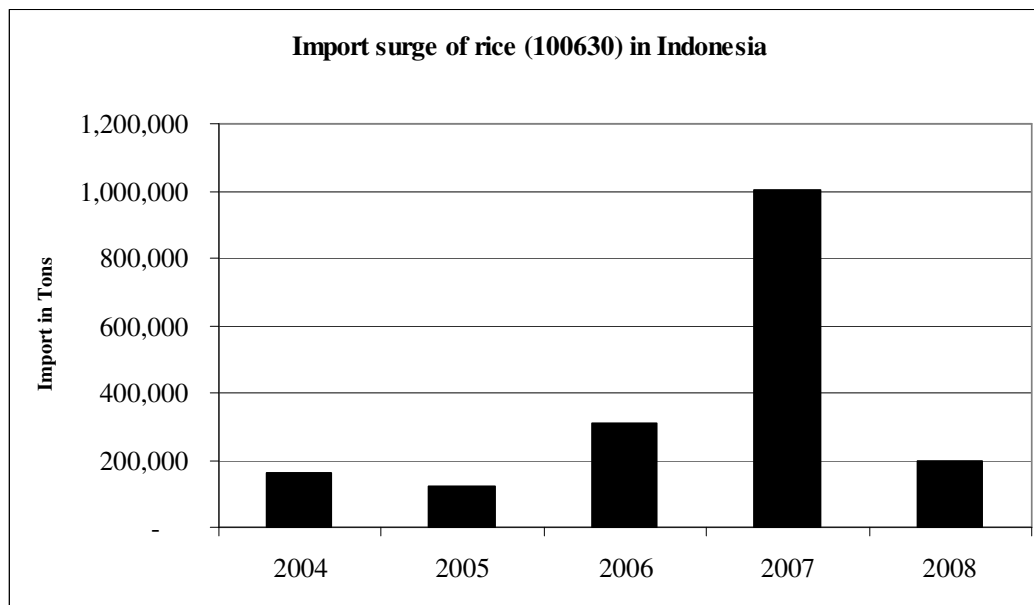
1. Volume based trigger of 110% or 120% is too high

The trigger levels for the volume-based SSM are set too high. According to the 4th revision of the Chair's text, an import surge occurs when the level of imports is above 110% of the 3-year rolling average. To make matters worse, in the W/7 document, the Chair has noted that for final applied duties that go above the Uruguay Round, the volume surge must be at least 120%.

This level of 110% or 120% must already have been attained in the first few months of the 12 month period before the SSM can be triggered. This means that the actual volume surge for the current 12 month period is considerably more than 110% or 120% within a 12 month period.

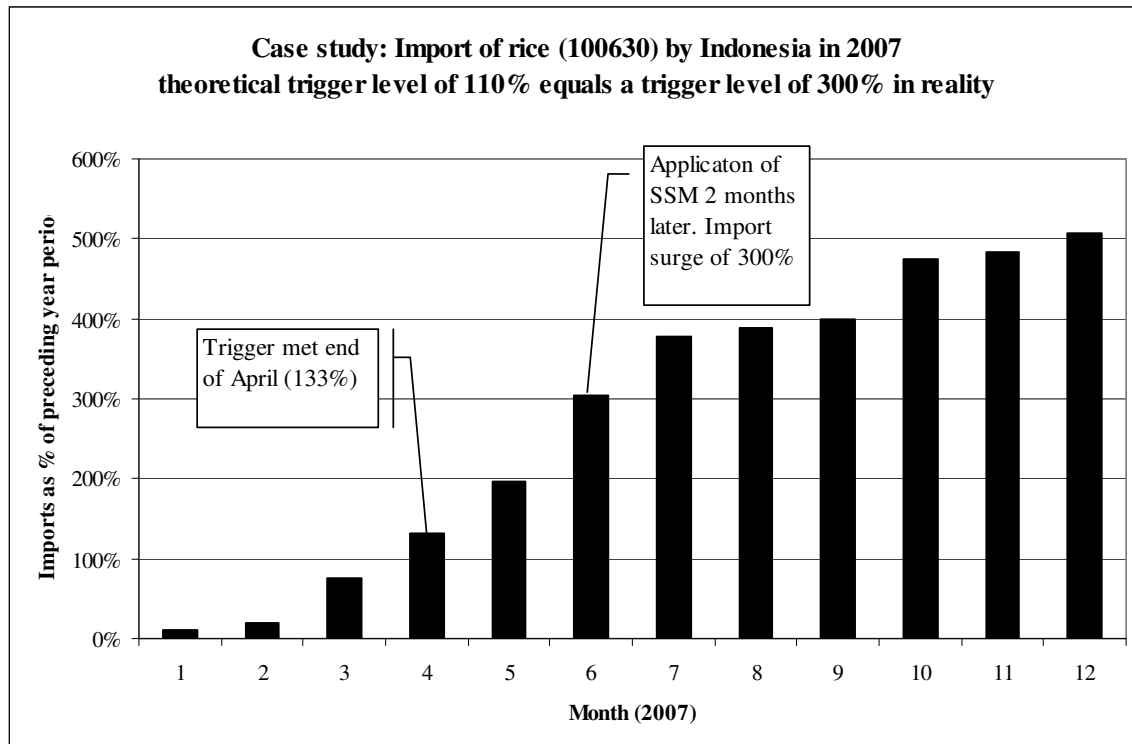
In addition, there is a time lag between the import surge and the application of the remedy that should be considered. This time lag is due to 1) availability of trade statistics and 2) bureaucratic processes needed to implement the remedies after an import surge has been identified. This time lag can often mean that by the time the remedy is implemented, the import surge could already be much larger than the 110% or 120%.

The example of Indonesia in 2007 is a case in point. The country experienced a major rice import surge in 2007 as illustrated in the figure below.



Source: South Centre Import Surge Database 2009

The increase in imports through the 12 months of that year is illustrated below.



Source: South Centre Import Surge Database

If we use a trigger of 110%, that level of import surge would have been reached in April 2007. Realistically, even in the best of scenarios, an SSM if it could have been implemented then, would only be able to be applied 2 months later. By then, the import surge had already reached over 300% of the preceding 3-year average.

RECOMMENDATION: A smaller trigger such as 105% would therefore allow for an early warning signal. By the time the SSM is in place, it is likely that the import surge would already be higher.

2. Limits on the Number of Tariff Lines that Can Avail of the SSM in 12 months is Too Constraining

The Chair's texts suggests that there should be limits on the number of tariff lines that can avail of the SSM that goes beyond the Uruguay Round bound rate within a 12 month period.

The numbers vary between the two Chair's texts. For SVEs, Rev.4 notes a maximum of 10-15% of tariff lines. This is approx 76 – 114 lines. For developing countries, Rev. 4 suggests 2 – 6 products (or a maximum of about 48 tariff lines on an HS 6 basis).

W/7 is even more constraining, suggesting 2.5% of tariff lines in any 12 month period. This is approximately 18- 19 tariff lines (of course the exact number will depend on developing countries' total tariff lines).

Data for 3 different scenarios (volume triggers of 105%, 110% and 200%) were taken to examine how many tariff lines would be required. The results show that for SVEs, this figure is bordering on the minimal figure countries might need. For certain SVEs, it is not even sufficient. For example, El Salvador has an average of 109 lines per year (between 2004 – 2008) that could avail of the 110% volume SSM. In some years, such as 2007, the figure was even 125 tariff lines. In a more liberalized environment post-Doha, it is likely that the number of import surges will increase yet further.

For the larger developing countries, it is clear that these limits can be very constraining. At a 110% trigger level, China has an average per year of 214 tariff lines that could have availed of the SSM were it in place; Philippines 150 tariff lines; Indonesia 174 lines and India 132 lines.

The tariff lines that yearly experience import surges are also not necessarily always the same lines. The last column of the boxes below, 'unique tariff lines' shows the total number of lines wherein these surges have taken place between 2004 - 2008.

Table: Potential number of applications of volume-based SSM (no. of tariff lines)

Potential SSM application with import surge trigger of 105%

Country	2004	2005	2006	2007	2008	Average no. of surges a year	Unique tariff lines ('04-'08)
China	245	211	227	224	229	227	416
Philippines	161	152	168	155	172	162	324
Turkey	171	178	174	177	158	172	311
Indonesia	191	176	180	201	178	185	351
India	132	136	150	133	151	140	254
Kenya	49	66	83	99	89	77	161
Guatemala	120	131	102	132	125	122	242
Zambia	29	43	54	39	51	43	101
Mozambique	41	44	56	56	49	49	105
Uganda	44	55	45	54	56	51	101
Senegal	70	79	60	76	68	71	136
Madagascar	35	29	31	35	41	34	79
El Salvador	129	119	97	132	104	116	218
Guyana	23	26	29	36	41	31	73
Jamaica	71	77	74	64	62	70	147
Mauritius	69	52	50	69	18	52	126
Barbados	49	64	50	45	43	50	109

Countries with no data for 2008

Country	2004	2005	2006	2007	2008	Average no. of surges a year	Unique tariff lines ('04-'07)
Honduras	105	118	127	135		121	211
Rep. Korea	213	197	203	221		209	359
Venezuela	71	128	128	171		125	246
Tanzania	49	57	53	57		54	112
Sri Lanka	76	59	75	80		73	153
Botswana	62	80	69	89		75	162
Cuba	79	67	61	73		70	146
Peru	77	95	92	111		94	169
Benin	34	33	42	56		41	90
Nicaragua	64	62	69	92		72	126
Trinidad and Tobago	73	91	80	78		81	150
Haiti	32	41	43	39		39	77
Bolivia	43	43	56	73		70	146
Suriname	34	41	38	44		39	71
St. Lucia	27	37	29	12		26	62
Grenada	9	9	7	14		10	27
St. Kitts and Nevis	8	9	13	16		12	28
St. Vincent and the Grenadines	13	10	17	16		14	37
Belize	27	18	11	27		21	43
Dominica	12	13	7	11		11	23

Source: South Centre Import Surge Database, 2009

Based on Rev4 text: potential SSM application when import surge trigger is 110%

Country	2004	2005	2006	2007	2008	Average no. of import surges	Unique tariff lines ('04-'08)
China	235	203	212	209	211	214	409
Philippines	149	143	161	141	158	150	323
Turkey	169	168	163	165	147	162	311
Indonesia	181	166	170	187	165	174	346
India	126	124	145	122	143	132	252
Kenya	49	63	80	94	86	74	160
Guatemala	111	124	93	128	115	114	240
Zambia	28	42	52	35	50	41	100
Mozambique	41	42	54	56	49	48	105
Uganda	44	53	45	53	55	50	101
Senegal	69	71	56	72	60	66	134
Madagascar	31	25	26	33	39	31	78
El Salvador	125	112	89	125	96	109	215
Guyana	21	25	28	34	37	29	73
Jamaica	62	66	68	56	51	61	142
Mauritius	59	43	40	65	17	45	114
Barbados	45	61	44	39	35	45	105

Countries with no data for 2008

Country	2004	2005	2006	2007	2008	Average no. of surges a year	Unique tariff lines ('04-'07)
Honduras	105	114	121	128		117	209
Rep. Korea	195	176	180	196		187	337
Venezuela	68	125	124	165		121	243
Tanzania	48	55	51	54		52	112
Sri Lanka	73	54	69	71		67	148
Botswana	58	75	65	83		70	160
Cuba	72	63	56	66		64	142
Peru	70	87	81	106		86	165
Benin	32	29	40	55		39	88
Nicaragua	58	57	64	84		66	125
Trinidad and Tobago	65	84	70	70		72	143
Haiti	29	37	42	38		37	75
Bolivia	40	38	51	68		49	98
Suriname	32	37	37	38		36	98
St. Lucia	23	37	26	11		24	58
Grenada	9	9	6	13		9	25
St. Kitts and Nevis	6	7	13	12		10	25
St. Vincent and the Grenadines	10	10	11	16		12	32
Belize	25	13	10	24		18	42
Dominica	11	11	7	9		10	20

Source: South Centre Import Surge Database, 2009

Potential SSM application with import surge trigger of 200%

Country	2004	2005	2006	2007	2008	Average no. of surges a year	Unique tariff lines ('04-'08)
China	97	71	74	63	70	75	232
Philippines	41	44	52	48	61	49	171
Turkey	62	67	62	59	59	62	180
Indonesia	68	49	46	63	57	57	195
India	66	64	50	40	53	55	166
Kenya	28	36	43	55	39	40	131
Guatemala	33	38	34	39	28	34	128
Zambia	9	18	33	13	27	20	74
Mozambique	31	28	40	38	26	33	95
Uganda	24	25	25	30	23	25	79
Senegal	21	25	15	20	21	20	67
Madagascar	17	13	13	15	21	16	58
El Salvador	43	31	20	29	18	28	91
Guyana	9	13	10	19	17	14	49
Jamaica	15	23	20	16	15	18	65
Mauritius	4	7	6	10	5	6	25
Barbados	5	9	12	7	2	7	24

Countries with no data for 2008

Country	2004	2005	2006	2007	2008	Average no. of surges a year	Unique tariff lines ('04-'07)
Honduras	40	49	51	48		47	130
Rep. Korea	56	49	42	42		47	118
Venezuela	25	37	28	97		47	148
Tanzania	25	33	27	29		29	82
Sri Lanka	19	15	41	38		28	88
Botswana	32	31	17	29		27	81
Cuba	28	20	18	33		25	80
Peru	24	24	17	28		23	71
Benin	11	11	31	34		22	63
Nicaragua	14	14	23	27		20	58
Trinidad and Tobago	14	26	20	18		20	62
Haiti	12	16	14	12		14	41
Bolivia	11	12	14	12		12	35
Suriname	9	8	10	9		9	30
St. Lucia	7	13	5	4		7	23
Grenada	5	3	0	8		4	13
St. Kitts and Nevis	4	4	5	2		4	12
St. Vincent and the Grenadines	2	1	0	12		4	15
Belize	0	2	5	4		3	10
Dominica	3	2	0	1		2	6

Source: South Centre Import Surge Database, 2009

It should also be noted that this limitation is very much more constraining than the treatment provided to some developed countries under the SSG.

Table: Developed Countries' Treatment under the SSG

Country / Current total agriculture tariff lines	No. of tariff lines under the UR allowed to use SSG	% of agricultural tariff lines covered by SSG
EC-12 EC -27 : 2,205 tariff lines	539	31
US : 1,777 tariff lines	189	9
Japan: 1,344 tariff lines	121	12
Switzerland: 2,179 tariff lines	961	59
Norway: 1060 tariff lines	581	49

Source: Information in columns 2 and 3 are from the WTO Secretariat paper TN/AG/S/12, 2004. Countries' tariff lines in column 1 are taken from more recent WTO data.

RECOMMENDATION: On average, the developed countries that have access to the SSG can use it for 229 tariff lines each. For some developed countries, this figure is much higher eg. the EU or Norway. The percentage is also high - the EU has enjoyed 31% of its tariff lines covered under the SSG. Norway has recourse for 49% of tariff lines and Switzerland 59%. Developing countries should have Special and Differential Treatment and there should be no limits for them, or if there are limits, these should be higher than the percentage of lines covered by the SSG for developed countries.

3. Importance of Going Beyond the Uruguay Round Bound Rate

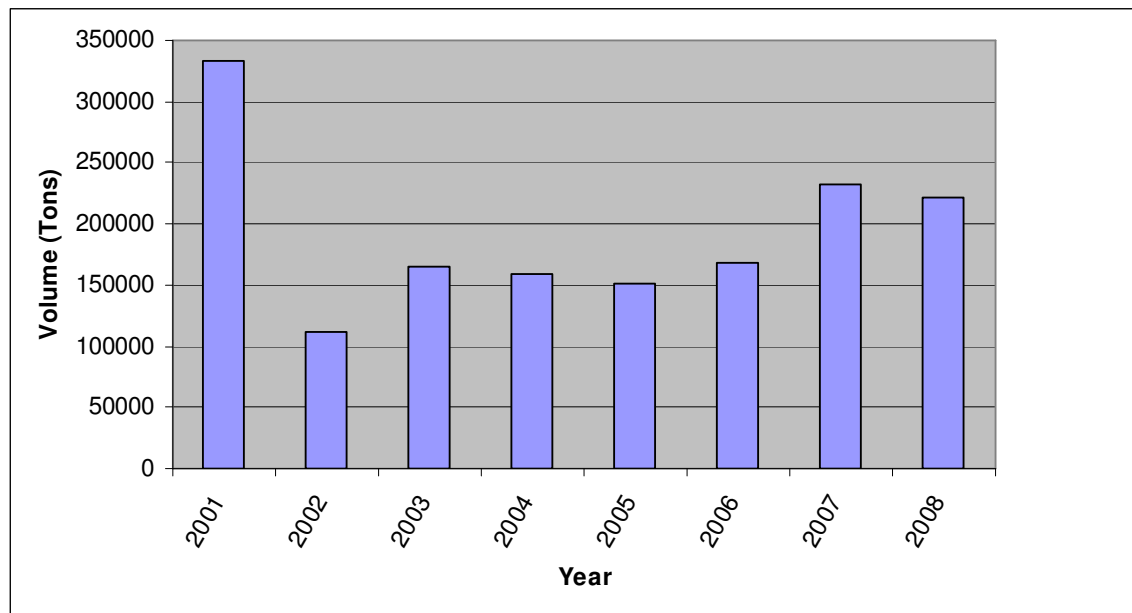
Restricting countries from taking SSM measures that go beyond the Uruguay Round bound rate, and restricting the extent to which they can go beyond the Uruguay Round bound rate may render the SSM ineffective.

This is particularly true for countries with low-bound tariffs. However, even countries with high bound Uruguay Round bound rates may find that a safeguard of only up to their Uruguay Round rate is insufficient to stem an import surge.

Kenya – Sugar

The example of sugar in Kenya is instructive. As a result of import surges in sugar, between 1995 and 2004, direct employment levels in the sugar sector shrank by 79%. Over 32,000 people lost their jobs through lay offs, retrenchments and factory closures. Whilst imported sugar enjoyed 31% of the domestic market in 1998, by 2004, imported sugar accounted for 41% of the domestic market.

Kenya Sugar Imports by Volume, 2001 - 2008



The applied tariff was 25 percent at the time of the 2000 – 2001 import surges. The government, using a COMESA safeguard brought applied tariffs to their maximum WTO bound level. Whilst initially, this had the effect of lowering the sugar import surges, it is clear that sugar imports have since risen steadily. An above the bound safeguard is therefore critical if the import surges are to be stemmed.

Cote d'Ivoire – Poultry

Poultry imports rose from 1 815 tonnes to 17 226 tonnes in Cote d'Ivoire between 1997 and 2003. Between 2001 and 2003, imports increased more than 650 per cent. During this time, FAO reported that over 1,500 poultry producers ceased production.¹

The country's total ad valorem bound tariff is around 83%.² In 2005, the country raised its duty from 300 CFA per kg to 1000 CFA.³ This translates into a total ad valorem duty of about 134%.⁴

This is over 50 percentage points above their Uruguay Round bound rate and is beyond the caps for SVEs that are contained in the Rev.4 or W/7.

¹ FAO 2007 'FAO Briefs on Import Surges. Countries no. 12. Insights on Rice, Poultry and Sugar Imports into Cote d'Ivoire'.

² Cote d'Ivoire's current bound for poultry (0207) is 4% plus 600 CFA / kg. 600 francs equals 0.9 euro, which is 900 euro per Ton. With a price of 1,134 euro per Ton (2005 average unit value), this amounts to duty per Ton of $4\% \times 1,134 + 900 = 945$. In other words a bound AV duty of around 83% ($945/1,134$).

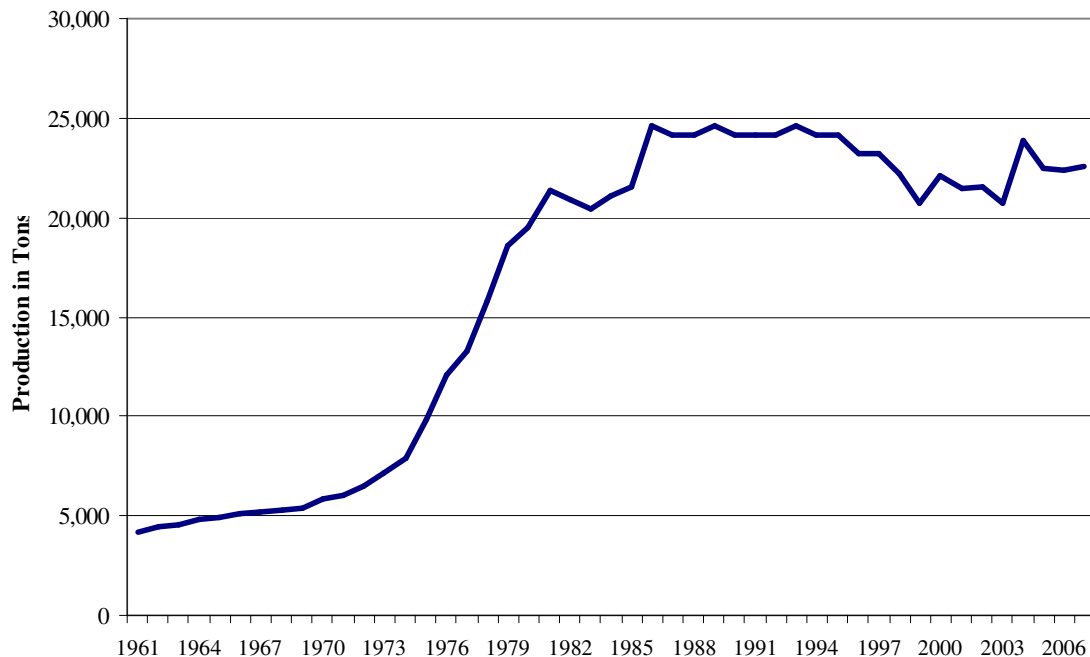
³ International Egg and Poultry Review, Cote d'Ivoire Increases Poultry Import Tariff, 17 May 2005, <http://www.thepoultrysite.com/poultrynews/7807/international-egg-and-poultry-review>

⁴ 100 CFA francs = 0.152449 Euros. 1000 CFA duty is equivalent to a duty of €1,524.49 per kg. The average unit value in 2005 of was €1,134 (ITC Trade Map).

The poultry sector in Cote d'Ivoire illustrates the effect of liberalization on production in the context of structural adjustment. Cote d'Ivoire poultry production between independence and 2000 is clearly associated with its trade policies. These policy periods can be described as follows: initiation and deepening of protection (1960-1984), liberalization (1984-1988), reversal to protection (1988-1990), return to liberalization (1990-1993), consolidation of liberalization (1994) to the present.⁵

While the first liberalization period was associated with an increase in the production of poultry meat – incidentally, the world just came out of a global recession – no increase in poultry production has been recorded since 1988. The present level is still below the 1988 level.⁶

Poultry Meat production Côte d'Ivoire



Source: FAOStat

RECOMMENDATION: If countries are being supported to increase their food production, putting caps on the final SSM duty is likely to render the instrument ineffective in some cases. If a cap must be included, more research needs to be done regarding an appropriate level. This may not be easy to ascertain (hence the problem with having a cap) as it is difficult to know, until after the fact, exactly the level of additional duty that is needed for an effective safeguard. Different countries have in the past added on a second round of additional duties, or have under political constraints in their

⁵ <http://www.fao.org/docrep/005/y4632e/y4632e0b.htm#bm11.4>

⁶ The dip during 2000-2004 can be explained by civil strife and the concurrent import surges of poultry meat from the European Union. It is evident that production and import surges are linked. Liberalization in the 1990s is the prime driver of production stagnation (and consequently, import surges).

countries, taken on quantitative restrictions as the additional tariffs were insufficient. Eg. Cameroon in the case of poultry.

The FAO documents that Cameroon experienced prolonged and persistent import surges in poultry between 1999 – 2004. During this time, import tariffs were generally below 25 percent. In 2004, tariffs were raised to 42 percent. (Their WTO bound rate is 80 percent). In 2005, the Ministry of Livestock issued a ministerial order to restrict poultry imports to 5,000 tons. The quantitative restriction led to higher domestic poultry prices.

4. The Cross-Check (prices should decline before a volume SSM can be used) Will Prevent Some Countries from Using the SSM

The situation of Cameroon is once again instructive. During the import surges between 1999 and 2004, the price of local poultry did not decline but in fact even increased slightly. This is in part because the country needed imports to make up the shortfall in demand (although not to the extent that was imported), and in part because of rising input costs (corn and fuel). Even though prices may not be falling during an import surge, the surge may nevertheless be dampening domestic prices and making it unprofitable for domestic farmers to produce.

RECOMMENDATION: The cross check clause should be deleted as it could prevent countries from using the SSM even in emergency situations, such as in the case of Cameroon.

5. On/Off Periods

Both texts Rev.4 and W/7 suggest a number of on/off periods for the implementation of the SSM. Again, this will constrain countries' ability to provide a conducive environment for their domestic producers.

In the case of Kenya – sugar, the COMESA safeguard was invoked for 4 years, renewed for another 4 years and is currently being implemented for a further 2 years (10 years). Even with this, it is clear from the table above on Kenya's sugar imports that in spite of Kenya using its maximum duties allowed under the WTO, sugar imports are raising steadily. Expiration of the safeguard next year could be problematic.

RECOMMENDATION: Eliminate the on/off clauses.

6. MFN Trade Only, Preferential Trade Excluded

In the light of an increasing number of bilateral and regional free trade agreements being signed, limiting the SSM instrument to only preferential trade is likely to render the instrument ineffective in times when it might be most needed. There are some countries that have supported this clause on the basis that they do not want it to be applied to their regional neighbours. Yet, other countries, such as the ACP countries that are currently

negotiating or have signed EPA agreements with the EU will be losers if they are explicitly prohibited from using the SSM in their EPAs.

It should be noted that the SSG was silent on this issue, hence making it possible for the SSG to be also applied to preferential trade.

RECOMMENDATION: In an earlier draft of the Chair's text, preferential trade was included for SSM treatment (see TN/AG/W/4/Rev.1 para 134, 8 Feb 2008). The language in that text should be used instead:

'Where preferential trade is included in the calculation of volume or price triggers, the additional SSM duties shall be applied also to preferential trade.'

A second best choice would be for the SSM to be silent on the issue of MFN or preferential trade so that countries can still apply it to preferential trade should they need to do so.