

G-33 Proposal on

Article [...]

Special Safeguard 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 any agricultural product listed in Annex 1 to this Agreement, if:

- (a) the volume of imports of that product entering the customs territory of that developing country Member 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”) 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 enters the customs territory of that developing country Member during any year (hereinafter referred to as the “import price”), falls below a trigger price equal to the average monthly price⁴ for that product 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 *[m]* per cent over the preceding *[n]* 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 currency against such international currency or currencies for the three-year period referred to above.

2. Imports under any tariff rate quota 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 under such 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.

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 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 price that appropriately reflects the quality of the product and its stage of processing. The trigger price shall, following its initial use, be publicly disclosed and available to the extent necessary to allow other Members to assess the additional duty that may be levied.

3. Any shipments of the product in question which were *en route* on the basis of a contract settled 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) 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 be maintained for no more than 12 months after it has been imposed.
 - (b) An additional duty imposed under subparagraph 1(a) may only be levied at levels that do not exceed those specified in the following schedule:
 - (i) where the level of imports during a year does not exceed $[x]$ per cent of the average import volume, no additional duty may be imposed;
 - (ii) where the level of imports during a year exceeds $[x]$ per cent but does not exceed $[x1]$ per cent of the average import volume, the maximum additional duty that may be imposed shall not exceed $[y]$ per cent of the bound tariff or $[z]$ percentage points, whichever is higher;
 - (iii) where the level of imports during a year exceeds $[x1]$ per cent but does not exceed $[x2]$ per cent of the average import volume, the maximum additional duty that may be imposed shall not exceed $[y1]$ per cent of the bound tariffs or $[z1]$ percentage points, whichever is higher;
 - (iv) where the level of imports during a year exceeds $[x2]$ per cent of the average import volume, the maximum additional duty that may be imposed shall not exceed $[y2]$ per cent of the bound tariff or $[z2]$ percentage points, whichever is higher.
5.
 - (a) Any additional duty imposed under subparagraph 1(b) 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.
 - (b) In the event that the additional duty is assessed on that product:
 - (i) on a shipment-by-shipment basis, the additional duty shall not exceed the difference between the import price of each shipment and the trigger price;

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

provided that if at least two subsequent shipments are at import prices that are [*b*] 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.

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 period in the three-year period referred to in subparagraph 1(a) and different 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 30 days of the implementation of such action. 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 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. 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.