

ICTSD Project on Special Products and a Special Safeguard Mechanisms



# Simulations On The Special Safeguard Mechanism

## A Look At The December 2008 Draft Agriculture Modalities

By Raul Montemayor, Federation of Free Farmers Cooperatives, Inc. (FFFCI)



International Centre for Trade and Sustainable Development

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International Centre for Trade and Sustainable Development (ICTSD)  
International Environment House 2  
7 Chemin de Balexert, 1219 Geneva, Switzerland  
Tel: +41 22 917 8492 Fax: +41 22 917 8093  
E-mail: [ictsd@ictsd.org](mailto:ictsd@ictsd.org) Internet: [www.ictsd.org](http://www.ictsd.org)

Chief Executive: Ricardo Meléndez-Ortiz  
Programmes Director: Christophe Bellman  
Programme Team: Jonathan Hepburn, Marie Chamay and Ammad Bahalim

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## LIST OF ABBREVIATIONS AND ACRONYMS

CIF	Cost, insurance and freight
COA	Committee on Agriculture
G-33	Group of 33
GATT	General Agreement on Tariffs and Trade
ICTSD	International Centre for Trade and Sustainable Development
LDC	Least Developed Country
MFN	Most Favored Nation
NAMA	Non-Agricultural Market Access
RAM	Recently Acceded Member
SP	Special Product
SSG	Special Safeguard
SSM	Special Safeguard Mechanism
SVE	Small and Vulnerable Economy
TRQ	Tariff Rate Quota
WTO	World Trade Organization
YTD	Year-to-date

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## FOREWORD

The world is producing more food than ever before. Yet, after decades of declining under-nourishment rates, the number of hungry people is on the increase again in several countries. Environmental degradation associated with intensive agricultural production - such as soil erosion, water pollution and biodiversity loss - remains at an unacceptable level. The major challenge today is, therefore, not so much to increase food production, but rather to ensure that agricultural production generates sufficient income for the poor, promotes equity and contributes to the sustainable use of natural resources.

The reform of the global agriculture trading system currently being negotiated in the context of the Doha Round - with the objective of establishing a "fair and market-oriented trading system" - will play a major role in this process. Over the last fifteen years, world agriculture trade has grown almost twice as fast as production. However, highly subsidised agricultural production and exports from member countries of the Organization of Economic Co-operation and Development (OECD) as well as the anti-competitive behaviour of trading firms are depressing world prices, thereby affecting development prospects in the South. Tariff peaks, tariff escalation and technical barriers to trade (such as sanitary and phyto-sanitary requirements) also limit market access and, thus, the potential gains from trade which developing countries are expecting.

While it is widely recognised that developing countries as a whole will benefit from freer agricultural trade, some fear that most of the new trading opportunities the Doha Round is set to bring would be captured by a few middle-income countries and large food exporters. Lower income countries would gain only little and might even lose from further liberalisation. Many still have large rural populations composed of small and resource-poor farmers with limited access to infrastructure and few employment alternatives. Thus, these countries are concerned that domestic rural populations employed in import-competing sectors might be negatively affected by further trade liberalisation, becoming increasingly vulnerable to market instability and import surges as tariff barriers are removed.

A large number of countries still depend on the export of a few commodities, the prices of which show high volatility and long-term decline. Commodity dependence, the expected erosion of preferences that some countries depend on for their export earnings, as well as increased food import prices due to the elimination of export subsidies, will make it difficult for these countries to guarantee their growing populations the food they need. In this context, safeguarding domestic food production capacity has become an essential component of food security strategies in an increasing number of countries.

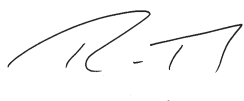
These concerns were first raised at the World Trade Organization (WTO) in the context of the "Development Box" debate, in which developing countries tabled a set of proposals aiming at providing flexibility for countries to enhance domestic food production and adopt measures to protect the livelihoods of resource-poor farmers. These proposals included concrete measures to address dumping and import surges. Some were eventually reflected in the so-called 2004 July package. The provisions for special and differential treatment under Paragraphs 41 and 42 of the Framework Agreement are probably the most innovative from a sustainable development perspective. They specify that "developing country Members will have the flexibility to designate an appropriate number of products as Special Products, based on criteria of food security, livelihood security and rural development needs. These products will be eligible for more flexible treatment." The Framework Agreement further states that a "Special Safeguard Mechanism (SSM) will be established for use by developing country Members."

However, key aspects of these instruments - such as the selection and treatment of Special Products (SPs), or specific modalities for a new SSM, including product coverage, possible trigger mechanisms and remedies - were left for future negotiations. As a contribution to this highly controversial debate, the International Centre for Trade and Sustainable Development (ICTSD) Project on Special Products

and a Special Safeguard Mechanism aims to generate knowledge and options to better articulate and advance the concepts of SP and SSM from a sustainable development perspective.

Negotiations on the SSM reached a critical point in July 2008, when they appeared to be at least the proximate cause for the collapse of ministerial level talks in Geneva. Subsequent negotiations, from September to December of that year, focused primarily on the possible modalities for imposing safeguard duties that would exceed pre-Doha bound tariffs. The then chair of the agriculture negotiations, Ambassador Crawford Falconer (New Zealand), issued a revised modalities draft (TN/AG/W/4/Rev.4) in December 2008, along with an accompanying document (TN/AG/W/7) that set out his thoughts on the more recent evolution of negotiations on the SSM.

This paper aims to provide policy-makers, negotiators and other stakeholders with a clear technical assessment of how the December 2008 draft modalities (TN/AG/W/4/Rev.4) and the accompanying working document (TN/AG/W/7) could affect the functioning of the proposed special safeguard mechanism, and, in particular, accessibility of the mechanism and its effectiveness.



Ricardo Meléndez-Ortiz  
Chief Executive, ICTSD

## EXECUTIVE SUMMARY

Negotiations on new agricultural trade rules remain deadlocked more than nine years since the launch of the Doha Development Round in 2001. Among the contentious areas of debate is the proposal for a Special Safeguard Mechanism (SSM) which would allow developing countries to impose additional safeguard duties in the event of an abnormal surge in imports or the entry of unusually cheap imports. In particular, there continue to be disagreements as to whether developing countries will be allowed to exceed or breach their bound tariffs - duty rates to which they are currently committed in the WTO - when they impose additional safeguard duties, and if so, under what conditions and up to what extent.

Some negotiating parties have insisted that WTO member countries should not be permitted to backtrack on their commitments to keep their tariffs within bound levels. They have also claimed that SSM could be repeatedly and excessively invoked, distorting the normal flow of trade in the process. In turn, the G-33 negotiating bloc of developing countries, which has been the major proponent of the SSM, has argued that breaches of bound tariffs should not be ruled out if the SSM is to be an effective remedy. They have added that the SSM should be simple and operational so that developing countries can promptly address market emergencies even as they pursue their food security, poverty development and other developmental objectives.

In December 2008, the chairman at the time of the WTO Committee of Agriculture Special Session, Ambassador Crawford Falconer, issued a revised draft negotiating text for agriculture following a series of consultations after the collapse of the negotiations in July 2008. This text, labeled as TN/AG/W/4/Rev.4 (hereafter referred to as Rev 4), contained a segment on SSM which continued to be unresolved. In an attempt to straighten out the differences, Ambassador Falconer issued a separate document labeled TN/AG/W/7, (hereafter referred to as W7), which proposed alternative text to cover cases in which developing countries would be allowed to breach their bound rates when applying SSM duties.

A newly released ICTSD study reports on the results of simulations conducted when applying variations of Rev 4 and W7 rules and modalities on the SSM. These simulations first measured the accessibility of the SSM, that is, the frequency with which the SSM could be invoked to address import surges and price depressions. A second set of tests determined the effectiveness of the SSM, or how often the remedy was able to bring prices of imports to within an acceptable range of domestic prices. Monthly data on imports of twenty seven products in six countries (China, Ecuador, Fiji, Indonesia, Philippines and Senegal) were used as proxies for individual shipments in the simulations.

To recall, the volume SSM allows a graduated scale of safeguard duties in the form of additional percentage points or percentages of bound tariffs if the cumulative volume of imports in a given year exceeds the volume trigger by certain percentages. This trigger, in turn, is the average annual volume of imports in the preceding three years. On the other hand, the price SSM can be imposed when import prices dip below an established price trigger. This trigger is determined using the average monthly price of imports during the preceding three-year period.

The simulations showed that the volume SSM could be invoked thirty three percent of the time if the provisions of Rev 4, except caps and other restrictions, were applied. About half of the months (or shipments) were deemed “problematic”, meaning that the import prices plus bound tariffs fell below domestic prices by more than ten percent. The SSM was found to be effective in about one-fourth of these “problematic” months by raising import prices to at least 90 percent of domestic prices.

If countries were not allowed to breach Doha starting tariffs as stipulated in Rev 4, the effectiveness of the volume SSM dropped to two percent or less for all countries except Senegal (which was accorded

special privileges because it was a least developed country or LDC). In turn, the overall effectiveness rate increased to ten percent if countries were allowed to exceed their bound rates based on W7 rules. In this scenario, remedies were capped at eight percentage points or one-third of the bound tariff, whichever was higher, if the import surge was between 120 and 140 percent of the trigger. No breach was allowed if the surge was less than 120 percent. Above 140 percent, the cap was set to twelve percentage points or fifty percent of the bound tariff, whichever was higher.

Access to the volume SSM did not appear to be unduly affected by the so-called pro-rating modality. Under this mechanism, monthly import volumes during the preceding three years were analyzed and the average import volume during months when SSM was not imposed was used as a substitute for the import values during months when SSM was used. The volume trigger was then computed using the adjusted (non-SSM) annual import totals for the three years. This procedure has been proposed by some export-oriented countries in an attempt to preserve “normal trade” - the natural growth of imports that occurs over time - despite the imposition of the SSM.

Access rates dropped to almost a third of baseline results if a “cross-check” was applied, meaning that the volume SSM could not be imposed if domestic or import prices were not declining at the same time as an import volume surge.

The simulations also showed that the accessibility of the SSM was directly proportional to the length of time that the remedial duty could be imposed. For example, a four-month imposition period yielded an access rate of sixteen percent while a twelve-month modality yielded a twenty percent result. Access rates went down by between one-fourth and one-third of baseline results if the SSM could not be re-imposed during a so-called holiday period equivalent to the length of the first period of imposition. In turn, the availability of the SSM tended to be the same, irrespective of the length of the imposition period, if the remedy was allowed to “spill over” only up to the first two months of the succeeding year.

The effectiveness of the volume SSM peaked when caps were set at around twenty percentage points if the surge was between 120 and 140 percent of the trigger, and thirty points if the surge was more than 140 percent. On the other hand, the cap had to reach 250 percent of bound tariffs to approximate the same result.

The study also noted that the price SSM had not been tackled as intensively as its volume counterpart in the negotiations. This is despite its potential value in effectively and fairly addressing price depressions. The simulations showed however that the remedy was less accessible and effective than the volume SSM under baseline settings. Access rates averaged only eighteen percent and effectiveness rates settled at six percent of “problematic” months. Prohibiting the breach of Doha starting tariffs rendered the price SSM almost inconsequential, with effectiveness rates declining to between zero or one percent for most countries.

Rev 4 defined the price trigger as 85 percent of the average monthly price of imports, converted to local currency, in the preceding three years (thirty six months). If subsequent import prices fell below this trigger, a price SSM remedy could be imposed equivalent to 85 percent of the difference between the import price and the price trigger. The simulations showed that the availability of the remedy increased by more than fifty percent if the trigger was set instead to 100 percent of the thirty six-month price average. At the same time, the effectiveness rate advanced by forty percent even if the remedy was limited to 85 percent of the price difference.

Imposing a parallel cross-check on the price SSM by disallowing its use if import volumes were not increasing in tandem with a price depression resulted in a significant decline in access rates to between

eight and twelve percent. Effectiveness rates similarly reached their peak when remedies caps were set to between twenty and thirty percentage points or 250 percent of bound tariff levels.

On the basis of these results, the study recommended that the pro-rating method for computing volume triggers could be adopted in order to address the concerns of exporting countries that normal trade and trade growth would be unduly compromised by the imposition of SSM. The study also noted that even under the most flexible conditions, the overall effectiveness of the SSM did not exceed twenty three percent, indicating that imports would continue to enter despite the imposition of SSM duties in eight out of every ten “problematic” months.

In turn, developing countries could be accorded easier access to the remedy once imports exceed trigger levels by a certain threshold. Cross-checks or additional restrictions, for example, may not be necessary unless the volume SSM is to be re-imposed. Shorter imposition periods can be allowed, provided the volume SSM can be re-imposed if the surge aggravates. Remedy caps could be adjusted upwards to ensure that the measure is able to effectively address import surges or price depressions. Additional rules can be adopted so that the resultant remedies do not amount to excessively high breaches over bound tariff rates. The study also suggested removing the W7 remedy cap provisions altogether and simply adjusting the level of remedies mentioned in Rev 4 in order to simplify the application of the SSM.

The study recommended that en route shipments be assessed price SSM duties based on the preceding year trigger or the new trigger that is notified after the shipment has already left port, whichever is lower. Alternatively, the existing price trigger at the time that the shipment departed the exporting country could be used. Difficulties in establishing universal rules to cover so-called “seasonal” products were noted. The proposal also pointed out that limiting the application of the SSM to imports coming from outside preferential trading agreements could backfire against exporting countries when they try to access markets outside their preferential trade areas.

## 1. BACKGROUND

In July 2008, the Chairman of the World Trade Organization (WTO) Committee on Agriculture (COA) Special Session, Ambassador Crawford Falconer, issued a draft agriculture text labeled as TN/AG/W/4/Rev.3 (hereafter referred to as Rev 3), which sought to capture the emerging consensus, and also underline the remaining areas of disagreement in the ongoing negotiations on agricultural trade rules under the Doha Development Round. Unfortunately, the negotiations collapsed, although attempts were subsequently made to revive the talks. In December 2008, Ambassador Falconer issued TN/AG/W/4/Rev.4 (Rev 4) as a revised text for consideration during the negotiations in late 2008<sup>1</sup>, following a series of formal and informal consultations.

Among the most contentious issues in the negotiations was the Special Safeguard Mechanism (SSM) proposal which was incorporated in the market access provisions of the draft text. SSM is a trade remedy intended to help developing countries address surges in import volumes or declines in import prices by allowing them to temporarily impose additional safeguard duties on imports. It is worth noting that SSM provisions in Rev 4 were simply copied in full from the Rev 3 version, indicating no progress or movement since the collapse of the negotiations in July 2008, particularly on bracketed provisions (on which no agreement has been reached). A critical area of disagreement centered on the issue of whether developing countries would be allowed to exceed their pre-Doha Round bound tariffs - duty rates to which they are currently committed in the WTO - if they applied SSM duties on top of their post-Doha bound tariffs. Perhaps realizing that no consensus would be reached on the Rev 4 provisions pertaining to this issue in time for the December 2008 negotiations, Ambassador Falconer issued a separate document labeled TN/AG/W/7 (W7) which suggested a compromise modality for these so-called "*above the bound rate*" SSM applications.<sup>2</sup>

However, no definitive breakthrough emerged from the December 2008 discussions. To a large extent, this was purportedly due to

continued wrangling over the SSM. Negotiations are still ongoing, although prospects for a final consensus on the SSM issue in particular, and all other areas of the negotiations in general, remain unclear.

Despite the current impasse on the SSM issue, assessing the effect of emerging proposals on the utility and effectiveness of the remedy and its potential impact on trade continues to be useful and relevant. Since negotiations are still ongoing and will presumably generate a final agreed text at some point, analytical work can help negotiators work out a mutually acceptable compromise on SSM, thus speeding up this process.

To recap, Paragraphs 132 to 146 of Rev 4 currently stand as the official negotiating text in relation to SSM. Among other things, these paragraphs stipulate how either the volume or price SSM will be triggered, what level of remedies can be applied, and how long and repeatedly such remedies can be imposed on imports. Interestingly, there were no bracketed provisions in this SSM section up to and including Paragraph 143, implying, perhaps from Ambassador Falconer's perspective, but certainly not from the point of view of some major negotiating blocs, that there was a general consensus up to that point.

Paragraph 142 of Rev 4 prescribed an all-encompassing rule that developing countries would not be allowed to exceed their pre-Doha bound tariffs when applying volume or price SSM duties on top of their applied tariffs.<sup>3</sup> This proposed rule was vigorously supported by several negotiating blocs, including those with mainly export interests, on the grounds that any breach of tariff bindings would constitute "backsliding" on trade reform commitments. In turn, the G-33, which had been the main proponent of the SSM, argued that such a cap on remedies would effectively render the SSM unable to address import surges and price depressions. In an attempt to resolve this standoff, Paragraphs 144 to 145 were appended so as to allow developing countries

to exceed their pre-Doha starting tariffs, but only to a certain extent, subject to additional conditions, and with new limits on imposition periods. (Notably, these paragraphs referred only to the volume SSM and were silent on whether price SSM duties could similarly breach pre-Doha tariff levels.)<sup>4</sup>

However, agreement on the compromise text remained elusive in the lead up to the December 2008 negotiations, which explains why they continued to be bracketed in Rev 4. Meanwhile, discussions and consultations on new modalities were pursued and led Ambassador Falconer to issue W7, in which he proposed new language to cover, among

other things, instances when the volume SSM could be triggered "*above the bound rate*". In particular, paragraph 3 of W7 specifies the conditions by which developing countries could exceed their current bound tariffs, the caps on remedies that can then be applied, and the period during which "*above the bound rate*" measures could be imposed. Although not an official negotiating text, Paragraph 3 of W7, if adopted, would presumably replace Paragraphs 144 and 145 of Rev 4.

Other portions of W7 sought to address the issue of "seasonal" products and other pending issues in the SSM discussion. Notably, W7 also did not refer at any instance to the price SSM.

## 2. OBJECTIVES OF THE STUDY

The basic objective of this study is to evaluate the effect of various provisions in Rev 4 and W7 and other relevant proposed modalities and rules on the SSM. In particular, the study seeks to determine how often the SSM can be used to address import volume surges and price depressions, and how effective it will be in resolving domestic market problems that may arise as a result of the entry of large volumes and/or cheaply priced imports to developing countries. The study also tracks

the behavior of the safeguard measure when applying modalities intended to prevent the excessive use of the remedy or its distortive effects on normal trade patterns.

The analysis is intended to help negotiators acquire a better and more factual understanding of the SSM and hopefully provide indicators of possible areas of compromise which could help lead to a consensus on the issue.

### 3. METHODOLOGY

As in previous versions<sup>5</sup> of this study, the analysis focuses on two critical features of the SSM, namely, the extent to which countries will be able to access it, and the extent to which it will be effective.

Accessibility is defined as the frequency with which the SSM can be invoked to address import surges and price depressions. For this purpose, monthly data on import volumes, prices, and foreign exchange rates were compiled by country and by product. Each set of monthly data was assumed to correspond to a single “shipment” or importation. A simulation model was then developed to analyze various options for the SSM as contained in Rev 4

and W7. Where relevant, data sets on annual consumption, bound tariffs, and tariff rate quotas (TRQs)<sup>6</sup> established during the Uruguay Round were taken into consideration, as were tariff reductions and new market access conditions set out in Rev 4.

The SSM was deemed “accessible” if a volume or price trigger was breached and other pertinent rules allowed for the imposition of remedial safeguard duties. The number of months during which such access was allowed was then compared to the total number of months in the relevant data series to come up with an access rate in terms of a percentage of total months.

**Figure 3.1: Methodology for Assessing How Often Import Volumes Trigger the SSM**

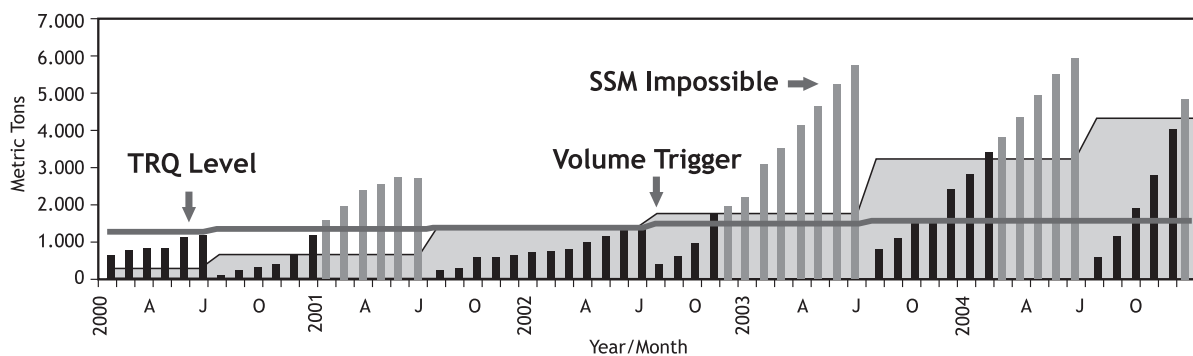


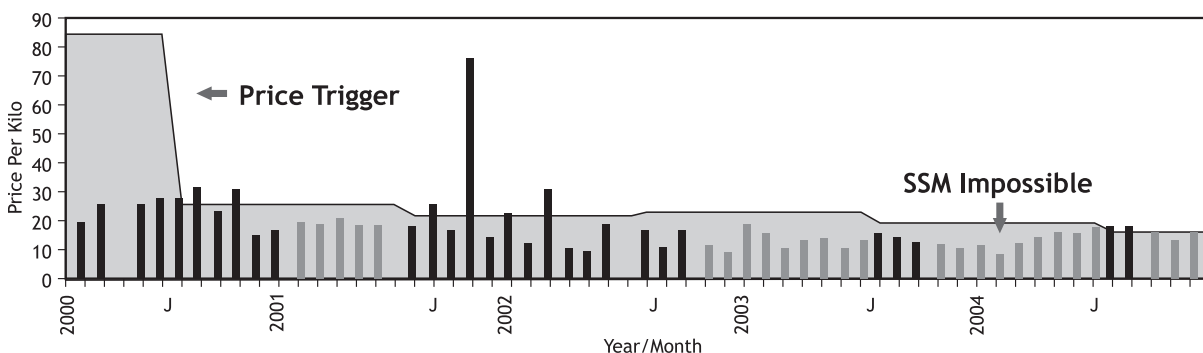
Figure 3.1 above illustrates the approach used to measure how often the safeguard would be triggered by import volume increases. The horizontal bars correspond to cumulative import volumes in a given implementation year (July to June in this case). The bars colored red indicate the months during which volume-based SSM duties could be imposed. In this example, safeguard duties can be imposed whenever import volumes exceed both the volume trigger (indicated by the blue line) and TRQ<sup>7</sup> commitment levels (indicated by the green line).

The access rate is the proportion of total months in which safeguard duties can be imposed (indicated by the red bars on the graph). For example, if additional safeguard duties could be imposed for a particular

commodity in twelve months out of a data series involving 60 months, the access rate is deemed to be twenty percent.

The access rate for the price-based SSM was calculated in a similar way. In Figure 3.2 below, the red horizontal bars indicate the “shipments” or months during which a price-based safeguard could be used. Normally, the price-based safeguard could be invoked once the import price falls below the price trigger (blue line) by a certain percentage or threshold. However, as mentioned earlier, safeguard duties cannot be applied if cumulative import volumes have not yet exceeded the TRQ commitment for the year. This explains why some of the horizontal bars remain black despite the fact that they fall significantly below the price trigger line.

**Figure 3.2: Methodology for Assessing How Often Price Depressions Trigger the SSM**



The effectiveness of the SSM, in turn, was measured through a three-step procedure. First, the study counted the number of months or “shipments” during which average import prices (converted to local currency), plus bound tariffs, fell below corresponding domestic wholesale prices by more than ten percent. These months were deemed “problematic” and considered as months during which additional safeguard duties were needed. Secondly, the study assessed whether additional safeguard

duties could in fact be invoked during these “problematic” months when various rules and restrictions were applied. Thirdly, if additional safeguard duties could be imposed during a “problematic” month, the study assessed whether the resulting price of imports, inclusive of bound tariffs plus SSM duties, would consequently rise to within ninety percent of domestic prices or higher and thereby remove the “problem”. In such instances, the SSM was deemed to be “effective”.

**Figure 3.3: Methodology for Assessing SSM Effectiveness**

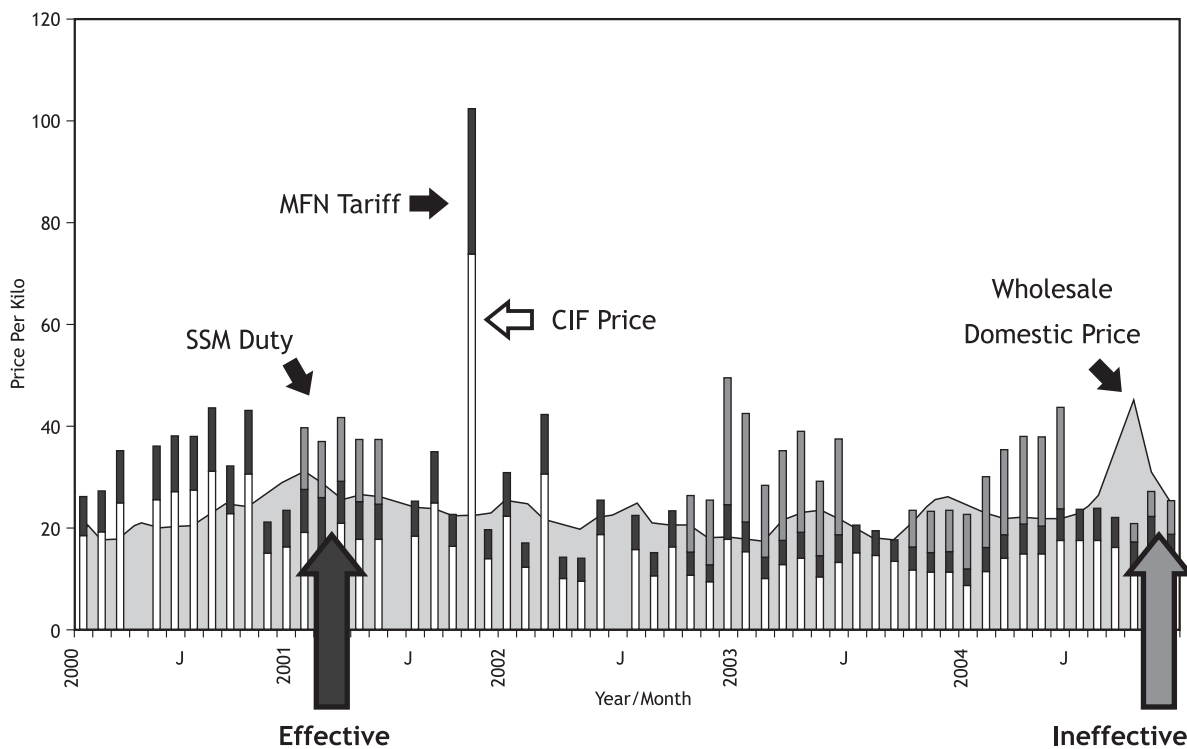


Figure 3.3 above gives an illustration of how the effectiveness of an SSM measure is determined. The horizontal bars correspond to average import prices in each month (shipment), while the grey bottom portion is equivalent to the import price converted to domestic currency and the green portion is the monetary equivalent of the applicable bound *ad valorem*<sup>8</sup> tariff. A month during which the import price plus tariff (the grey plus green portion) falls below the wholesale domestic price line (the blue line) by more than ten percent is deemed to be a “problematic” month. If additional safeguard duties can be invoked in these “problematic” months, a red bar equivalent to the monetary value of the additional safeguard duty is appended. The safeguard is deemed to be “effective” if this additional duty is able to bring total import prices (shown as the grey plus green plus red bars) to within at least ten percent of domestic prices.

Take an example in which forty out of 100 months were deemed “problematic”. If the SSM could be invoked in twenty out of the forty

problematic months but could address the price gaps effectively in only ten months, the remedy would have an effectiveness rate of twenty five percent (ten out of forty months).

In total, the simulations and analysis covered twenty seven agricultural products from six developing countries, namely the Philippines, Indonesia, China (a recently acceded member or RAM), Ecuador and Fiji (classified as small and vulnerable economies or SVEs) and Senegal (a least developed country or LDC). The model utilized data mostly from 2000 to 2005 (2002 to 2007 for the Philippines).

The simulations used in this study were based exclusively on available historical data. No attempt was made to forecast prices, demand, consumption and other variables, or to use these to project SSM behavior in future years. The model also did not consider how import volumes and prices would have reacted to the imposition of SSM duties. Accordingly, any findings should be treated with caution and should be considered as primarily indicative instead of conclusive.

## 4. THE VOLUME SSM

The first part of this analysis focuses on the volume-based SSM. The price-based SSM was temporarily deactivated<sup>9</sup> in the simulation model in order to isolate the behavior and impact of its volume counterpart.

For the simulation, the baseline was initially established using the following general settings:

- a) The calendar year (January to December) was used as the implementation year.<sup>10</sup>
- b) The volume trigger for each year was set to the average annual volume of imports in the preceding three years.
- c) The previous year's volume trigger was retained or carried over if computations showed that the current year's volume trigger was lower and SSM was applied during the preceding three-year period.
- d) Computation of volume SSM duty:
  - i. If cumulative imports were less than 110 percent of the volume trigger, the additional SSM duty was zero;
  - ii. If imports were between 110 percent and 115 percent of the trigger, the additional duty was twenty five percent of current bound tariffs or twenty five percentage points, whichever was higher;
  - iii. If imports were between 115 percent and 135 percent of trigger, the additional duty was forty percent of the current bound duty or forty percentage points, whichever was higher;
  - iv. If imports were more than 135 percent of the trigger, the additional duty was fifty percent of the current bound duty or fifty percentage points, whichever was higher.
- e) No cap was applied on the SSM duty that could be imposed.
- f) SSM duties could not be imposed on imports falling within TRQ commitments. It was assumed that TRQ commitments would first be satisfied before out-quota imports would be allowed.<sup>11</sup>
- g) All imports of products, including those with TRQ commitments, were, however assumed to be out-quota and subject to bound (not applied) tariffs. Countries were assumed to be able to freely raise applied rates to bound levels, if they were lower, before considering the imposition of additional SSM duties.<sup>12</sup>
- h) Volume SSM duties could be imposed for a maximum of twelve months, with no constraints on re-imposition.
- i) No cross-checks<sup>13</sup> were applied.
- j) No distinction was made between MFN and non-MFN imports.<sup>14</sup>
- k) Products were assumed to be classified as special products (SPs) with a tariff cut of eleven percent over the prescribed implementation period, except LDCs like Senegal which would have zero cuts.<sup>15</sup> (Paragraph 129 of Rev 4 prescribed this as the minimum average cut for SPs even as it allowed for zero cuts for a certain percentage of SP tariff lines.)

### 4.1 Effect of the Application of Remedy Caps under Rev 4 and W7

Using the Rev 4 baseline settings outlined above, Table 4.1 below shows that the volume SSM would be available (denoted as "Avail" in table) in about one-third of total months. The remedy in turn would be "needed" in about half of the total months during which import prices inclusive of bound tariffs were at least ten percent lower than domestic prices. The volume SSM would be available in about one-third and effective in one out of every four of these "problematic" (denoted as "Probl" in table) months.

**Table 4.1: Baseline Volume SSM Access Rates under Rev 4 and W7**

COUNTRY	Baseline Rev 4				Rev 4 Caps			W7 Caps		
	Access	Effectiveness Rate			Access	Effectiveness		Access	Effectiveness	
	Rate	Probl	Avail	Effect	Rate	Avail	Effect	Rate	Avail	Effect
China	15%	47%	22%	22%	10%	10%	0%	6%	11%	11%
Ecuador	37%	21%	33%	23%	37%	33%	2%	19%	19%	8%
Fiji	33%	68%	28%	21%	33%	28%	2%	16%	12%	3%
Indonesia	41%	41%	27%	27%	41%	27%	2%	10%	8%	7%
Philippines	37%	48%	43%	17%	37%	43%	1%	18%	24%	4%
Senegal	43%	64%	45%	42%	43%	45%	42%	24%	26%	24%
Total	33%	49%	34%	25%	32%	32%	10%	16%	17%	10%

The access rates under the baseline scenario were basically unchanged if pre-Doha starting tariffs could not be exceeded when imposing SSM duties as stipulated in Paragraph 142 of Rev 4.<sup>16</sup> However, the effectiveness rate dropped to two percent or less for all countries except Senegal. Senegal preserved most of its baseline rates by virtue of unbracketed provisions in Paragraph 143 of Rev 4 which allowed LDCs to breach pre-Doha bound tariffs by forty percent or forty percentage points, whichever was higher. In contrast, China's effectiveness rate dropped from twenty one percent to zero while that of the Philippines declined to one percent.

The significant drop in effectiveness rates arose from the fact that the Rev 4 caps effectively limited the allowable remedy to the difference between current bound rates<sup>17</sup> and pre-Doha starting tariffs. The resulting remedy was consistently too small to bridge most "problematic" gaps between domestic and import prices.

Let us take for example a product with a fifty percent pre-Doha starting tariff, which is subjected to an assumed eleven percent tariff cut for special products (SPs). If this cut is applied in eleven equal annual installments as provided in Paragraph 63 of Rev 4, the starting tariff will be cut by 0.5 percent at the start of implementation and by another 0.5 percent every year thereafter. If the remedy caps introduced by Paragraph 142 of Rev 4 were then to be applied, SSM duties will not be able to exceed 0.5, 5.5 and eleven

percent on the first, fifth and last year of implementation for this sample product. If a country selected the zero tariff cut option for an SP as provided in Paragraph 129 of Rev 4, it would not be able to apply any volume SSM remedy for the said product since there would be no difference between bound and pre-Doha starting tariffs in any year.

Given this outcome, one could conclude that any modality that allowed a breach of pre-Doha starting tariffs would almost always result in a more accessible and effective SSM, even if additional restrictions over the use of volume SSM remedies were imposed. The table above shows for example that although access rates declined significantly when the imposition period was reduced from twelve to four months as provided by W7, the overall effectiveness rate still improved considerably for most countries when remedies were allowed to exceed bound rates based on W7 rules. Only Senegal saw a drop in its effectiveness rate, but this was mainly due to the contraction of the imposition period to four months.

In the following simulations, the provisions of Rev 4 (except Paragraphs 144-145) and Paragraph 3 of W7 were assumed to operate simultaneously but separately. This means that Rev 4 rules, except the capping provisions, were applied and any resultant SSM remedies were subjected to the caps outlined in W7. The baseline setting was additionally reset with the following parameter changes and additions, consistent with W7:<sup>18</sup>

- a) The imposition period was reduced from twelve to four months.
- b) Notwithstanding the schedule of remedies allowed in Rev 4, volume SSM tariffs would be subject to the following caps:
- If cumulative imports did not exceed 120 percent of the trigger, the remedies could not exceed current bound rates (zero remedy);
  - If the magnitude of the import surge was between 120 and 140 percent of the trigger, remedial tariffs were limited to one-third of the current bound tariffs or eight percentage points, whichever was higher;
  - If cumulative imports exceeded 140 percent of the trigger, remedies could not exceed one-half of the bound tariff or twelve percentage points, whichever was higher.

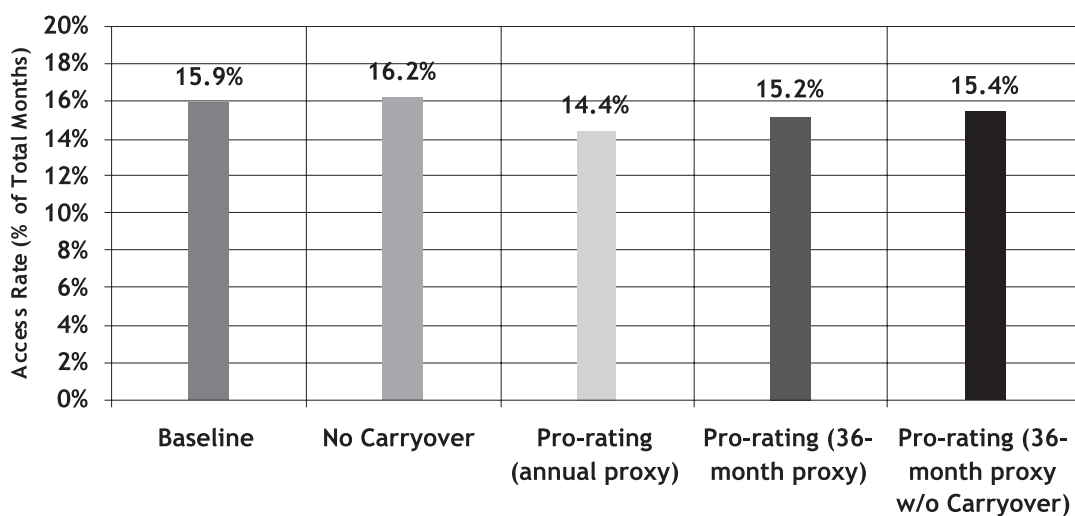
normal flow and growth of international trade. It has further been argued that import volumes will decline, if not totally stop, once a volume SSM duty is imposed. Not only will further imports during the current year be curtailed, but the trigger volume for the succeeding year will also go down since a lower annual volume of imports will be included in the subsequent three-year average. With a lower trigger, SSM could then be imposed more easily by the importing country in the following year. A continuous cycle of SSM imposition and lower triggers followed by more SSM impositions may ensue and eventually prevent any reasonable level of trade and trade growth to occur.

Rev 4 initially addressed this concern of exporting countries by stipulating in Paragraph 140 that the previous year's trigger will be carried over to the current year if a) SSM was invoked in the preceding three years and, b) the resulting new trigger was lower than the trigger in the preceding year. Figure 4.1 below shows that if this trigger carryover modality (which was incorporated in the baseline setting) was *not* applied, access to the remedy improved slightly from 15.9 to 16.2 percent of total months.

#### 4.2 Effects of Pro-Rating Modalities

One of the major criticisms of the SSM is that it will be excessively and abusively invoked, consequently distorting and restricting the

**Figure 4.1: Volume SSM Access Rates Under Various Trigger Modalities**



A so-called pro-rating procedure for computing triggers has also been proposed to further address concerns over the adverse effect of SSM imposition on future triggers and access to markets. This was incorporated in the second sub-paragraph of Paragraph 3 of W7.

In one interpretation of this pro-rating procedure, the average monthly volume of imports during non-SSM months in each year is used as a proxy, or substitute, for imports during months when SSM was imposed during the year.<sup>19</sup> However, if the actual volume of imports during a particular month was higher than the proxy, the actual volume was used. The adjusted import volumes per year were then computed, and the totals for the three years were averaged to come up with a new, pro-rated trigger. Figure 4.1 above shows that when this pro-rating modality using annual proxies was applied, the access rate declined to 14.4 percent.

The effect of pro-rating was less pronounced if a single proxy was used to substitute for imports during months when SSM was imposed over a thirty six month period.<sup>20</sup> Here, the overall access rate averaged 15.2 percent, still slightly lower than the baseline result of 15.9 percent, but almost a percentage point higher than when annual proxies were used. Of the countries covered by the study, only Fiji appeared to be particularly vulnerable to either pro-rating modality.

If the pro-rating modality using thirty six month proxies was applied while suspending the carryover rule, the overall access rate reached 15.4 percent. This was slightly lower than the result in the reverse (baseline) scenario where the carryover rule was applied without the pro-rating modality.

In general, the pro-rating modality tended to increase the volume trigger over baseline levels. Intuitively, this would make it harder to breach the trigger and make use of volume SSM remedies. In actuality however, the higher trigger merely delayed the onset of the breach in some instances, but once the trigger threshold was breached, access to the SSM was

retained for essentially the same number of months. This explains why overall access rates seem to have not been affected significantly by the pro-rating modality.

However, there were cases when a delayed access to an SSM remedy had a greater impact on access rates. If a product had a tariff rate quota (TRQ) commitment and the imposition of SSM spilled over to the next implementation year due to a delayed breach of a higher pro-rated trigger, SSM duties would have to be suspended at the start of the succeeding year until cumulative imports surpassed the TRQ commitment. By the time imports exceed the TRQ level in the succeeding year, a volume surge condition may not apply any more. This would preclude the re-application of SSM. In effect, the portion of the imposition period that spilled over to the succeeding year would have been lost.

A similar situation could arise if the spillover limit provisions (as discussed in Section 4.4) were applied.

Some critics of the pro-rating proposal have argued that irreparable damage may be done to domestic industries if countries are unable to promptly implement the SSM remedy in response to an import surge. This is particularly relevant for developing countries which have weak import data gathering capacities. Delays in validating the existence of import surges are inevitable and will only be exacerbated by higher triggers arising from the pro-rating modality. In this regard, it should be noted that the pro-rating modality will require a disaggregation of import volumes by month, whereas the carryover method involves a simple averaging of annual import volumes.

It could be further debated whether an annual or 36-month average for non-MFN months is a suitable and accurate proxy for imports during months when SSM was imposed. Imports may have seasonal trends which cannot be captured by simple averages.

In a recent submission<sup>21</sup>, the G-33 also maintained that pro-rating was unnecessary since

the original modality for computing triggers was already sufficient to sustain “normal trade”: this was based on three-year averages, and allowed the use of SSM remedies only if cumulative imports breached the triggers by a certain percentage. The G-33 pointed to data showing that the annual growth rate in imports of certain commodities did not exceed single digits, and concluded that exporting countries would have more than enough leeway to expand their markets even if the triggers were not pro-rated since imports would have to exceed 120 percent of the trigger before SSM duties could be applied. They added that while imports could possibly taper off once SSM duties were imposed, this would happen only after imports had already exceeded the three-year average import level by more than twenty percent. On this basis, they concluded that triggers in subsequent years would not decline dramatically, and normal trade and normal trade growth would generally be preserved, even in the event of an SSM imposition.

The G-33 further alluded to the experience with the existing Special Safeguards (SSG) during the Uruguay Round implementation period: during this time, developing countries made use of the measure sparingly. They pointed to instances when imports did not decline, and in some cases even increased, after the imposition of SSG duties. The negotiating bloc reasoned that developing countries would utilize the SSM in a similar manner due to difficulties in promptly collating trade data, domestic concerns about food sufficiency, and other intervening factors.

The G-33 reiterated that the SSM was supposed to address import surges and price depressions that adversely affected importing countries, and could not be expected to simultaneously compensate exporting countries for their actual or potential losses arising from an SSM imposition.

Obviously, the actual effect of a pro-rating modality would depend on the behavior of imports of each specific commodity. If imports for a certain product breach the volume trigger early in the year, the subsequent trigger will tend

to be relatively higher because the proxies will be used for a larger number of months. In turn, some exporting countries have argued that their access to markets with high import growth rates will be seriously curtailed if SSM is imposed, and that the pro-rating modality is necessary to ensure that such access is reinstated even when SSM is applied. Unfortunately, the study did not have sufficient data to make a comparative analysis of the impact of the proposed modality on products with varying import trends. As noted earlier therefore, any conclusions from the analysis should be considered as merely indicative and based exclusively on the historical data available for the study.

### 4.3 Effects of Cross-Checks

Another proposed modality which was purportedly intended to curb the unnecessary application of SSM remedies is the so-called cross-check mechanism.<sup>22</sup> Paragraph 3 of W7 provided in particular that the volume SSM would “*normally not be applicable unless the domestic price is actually declining*”. This rule, which was not present in Rev 4, arose from the argument that there would be no urgent need to apply remedial SSM duties if an import surge was not causing a decline in domestic prices.

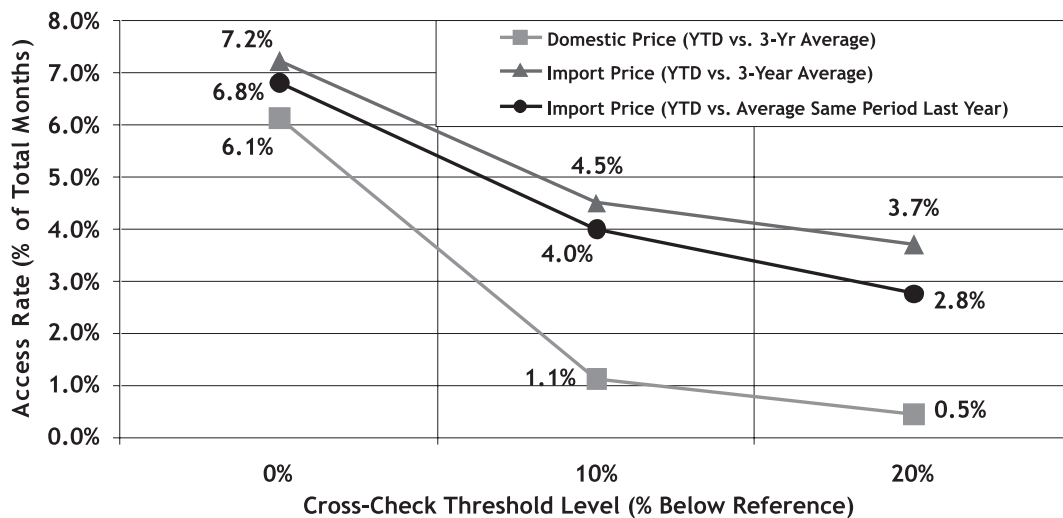
Different interpretations of the cross-check rule were used in determining the effect of the modality on the volume SSM. Figure 4.2 below shows that access to the remedy declined significantly from the baseline level of sixteen to only 6.1 percent if the SSM was allowed only when the average monthly domestic price of the product from the start of the year up to the current month (year-to-date or YTD) was lower than the average monthly domestic price of the product in the preceding three years. If YTD domestic prices had to be lower than the three-year average by at least ten percent, the access rate dipped further to 1.1 percent. A twenty percent threshold for the cross-check effectively rendered the volume SSM inaccessible.

Getting accurate and timely data on domestic prices of specific commodities would presumably be a major problem in most developing

countries. A possible alternative is to compare YTD monthly prices of imports to three-year monthly import price averages. Simulations show that this variation resulted in slightly less deleterious effects on access to the SSM. Still, the results fell significantly below baseline levels. Overall access rates declined to 7.2, 4.5 and 3.7 percent when using zero, ten, and twenty percent thresholds, respectively.

A third variation compared the YTD average import price to the average price of imports during the same period in the preceding year. Here, the access rate similarly declined to around seven percent. If the YTD price had to be at least ten percent lower than the reference price, the access rate went down to four percent, and then slid further to 2.8 percent when the threshold was raised to twenty percent.

**Figure 4.2: Volume SSM Access Rates Under Various Cross-Check Modalities**



These results indicate that access to the volume SSM remedy was particularly vulnerable to the application of any cross-check modality based on domestic or import prices. Operationally, it would also be difficult to secure import and domestic prices, and make the necessary price comparisons promptly. Further, the available price data may not be disaggregated so as to make a precise comparison of prices possible. In large countries like China, domestic prices may additionally vary significantly across different ports of entry and production or marketing zones.

Nominal domestic prices generally and normally rise due to inflation, and the chances of such prices declining over the years appear quite remote. Such a trend will almost always preclude the availability of the volume SSM if a cross-check is imposed. One option would be to deflate the nominal prices using consumer price indices. However, getting the necessary price data on time would continue to be a problem.

Delaying the response because prices have not yet reacted to an import surge could also arguably lead to irreversible damage to domestic markets. The effect of imports on domestic prices may not be immediate. By the time domestic prices start to decline and allow for SSM imposition, it may be too late to reverse the trend and mitigate its impact.

The G-33 has additionally argued in a recent submission<sup>23</sup> that requiring cross-checks will result in further and unnecessary delays since countries will have to gather additional data before they can apply the remedy. They also presented trade data to support their contention that there was no direct link between import/export volumes and trends in either domestic or import prices.

It is debatable whether import prices can be a suitable proxy for domestic prices in determining whether an import surge is harming local sectors and would therefore require a remedial response. Import prices

may be increasing relative to average prices in preceding periods, but they may still end up significantly cheaper than domestic prices. One alternative would be to compare import prices inclusive of bound tariffs against domestic prices. However, securing accurate data on import and especially domestic prices would again be a problem.

Critics of the cross-checking modality have argued that the volume and price SSMs were intended to be two distinct remedies that would not be contingent on each other. They have further reasoned that a price cross-check on the use of volume SSM comes close to requiring proof of injury, if not also causality. This would not make it very different from regular safeguards and would run against the objective of the SSM - to provide developing countries with a simple and effective tool to react quickly to market emergencies.

Finally, it could again be noted that the pro-rating modality discussed above already assures exporters of historical levels of access and a reasonable amount of trade growth. Importing countries which are affected by import surges beyond pro-rated trigger thresholds should arguably be given the prerogative to make use of remedies if they deem it necessary, whether or not domestic or import prices behave in a particular manner.

#### **4.4 Effects of Imposition, Holiday and Spill-Over Periods**

Paragraph 3 of W7 stipulated that the maximum period for imposing a volume SSM duty would be [4/8] months and that the remedy could

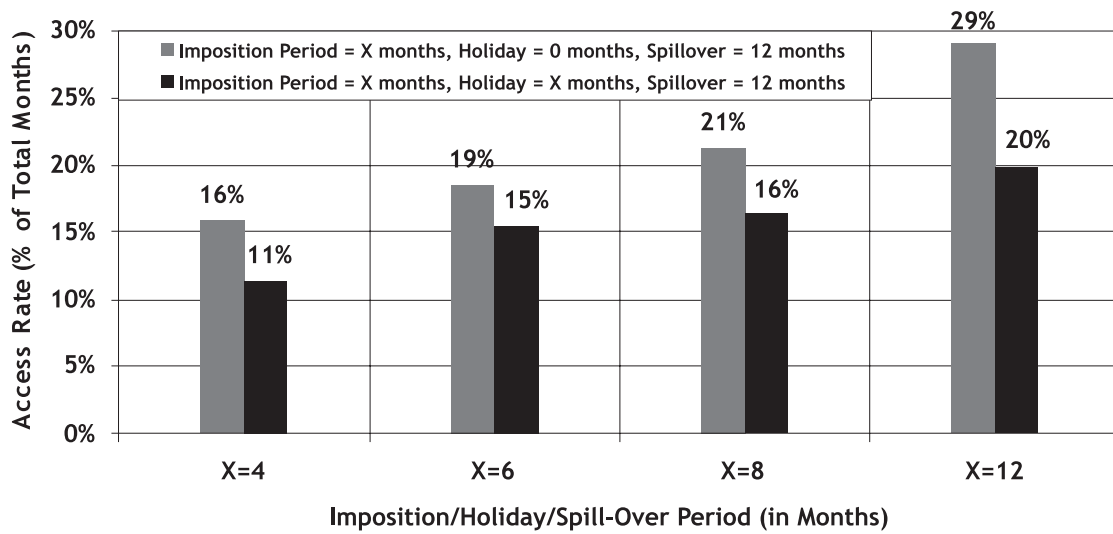
not be re-imposed until an equivalent number of months (or 'holiday' period) had elapsed. It further provided that if an SSM measure was triggered in the last [2/4] months of the implementation year, its application could spill over to the succeeding year only for a maximum period of [2/4] months.<sup>24</sup>

For purposes of the simulation, the baseline setting assumed a maximum imposition period of four months, with no restrictions on re-imposition and spillover.<sup>25</sup> As indicated earlier, the access rate for volume SSM under these parameter settings was sixteen percent.

If the volume SSM was allowed to be applied for a maximum of six months instead, the access rate improved to nineteen percent and further to twenty one percent if an eight-month period was allowed. Access rates reached their peak of twenty nine percent when the imposition period was set to twelve months, as originally provided in Rev 4. These results shown in Figure 4.3 below indicate that access rates were clearly sensitive to imposition periods.

Access rates declined significantly if volume SSM remedies could not be re-imposed during a holiday period equivalent to the imposition period. For example, a four-month imposition period followed by a four-month holiday reduced the access rate from sixteen to eleven percent. The decline was slightly less pronounced when six and eight-month imposition and holiday periods were applied. If SSM was allowed for twelve months but could not be re-imposed during the next twelve month period, the access rate dropped by about a third from twenty nine to twenty percent.

Figure 4.3: Volume SSM Access Rates Under Various Imposition and Holiday Periods



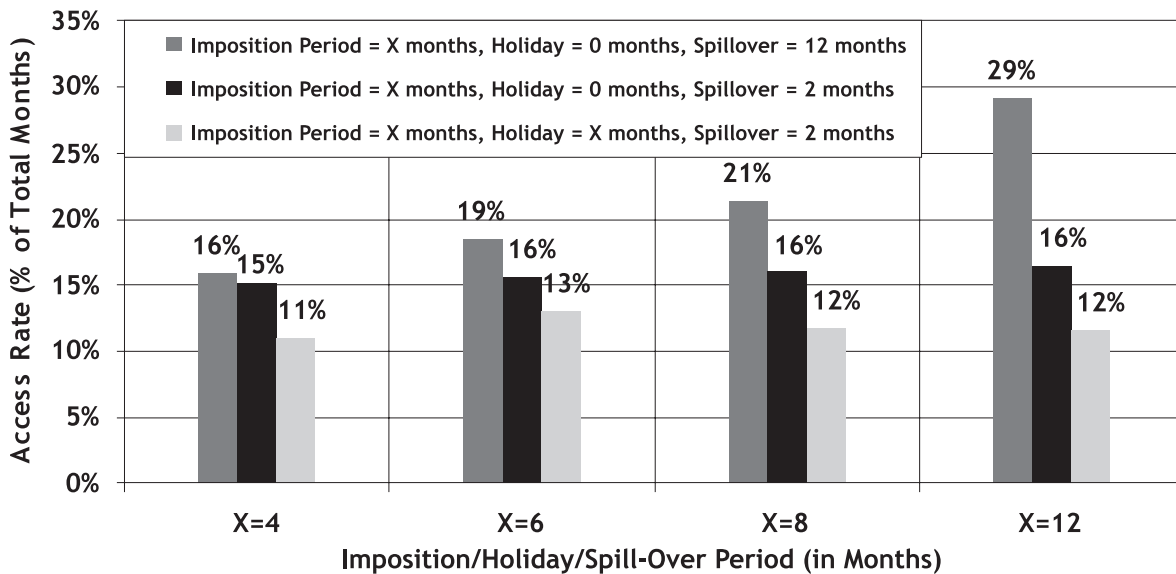
Another set of simulations tested the behavior of volume SSM when the remedy was not allowed to spill over to the following year beyond a certain number of months. Figure 4.4 below reveals that a maximum spillover period of two months effectively removed any positive impact of longer implementation periods. Access rates were limited to between fifteen and sixteen percent when imposition periods were set to four, six, eight or twelve months. In effect, the spillover cap stopped the application of the SSM beyond February of each year irrespective of the imposition period. The declines in access rates were therefore more pronounced as the imposition period grew longer since more months tended to be excluded from SSM coverage.

It should also be noted that products with TRQ commitments had built-in spillover constraints since SSM duty application would have to be suspended at the start of the succeeding

year until such time that cumulative imports exceeded TRQ levels.

The last set of simulations applied simultaneous limits on how long the volume SSM could initially be imposed, the length of the 'holiday' period during which it could not be immediately reimposed, and how many months the remedy could be allowed to spill over to the following year. If a four-month imposition and holiday period was applied together with a two-month spillover limit, the access rate declined from the baseline level of sixteen percent to a level of eleven percent. However, access rates did not vary much from this result when longer implementation and holiday periods were imposed. Again, this was because the two-month spillover cap limited the application of SSM duties up to February of the succeeding year, irrespective of the length of the imposition and holiday periods.

Figure 4.4: Volume SSM Access Rates Under Various Imposition, Holiday, and Spillover Periods



Critics could argue that a holiday period unfairly prevents a country from addressing a continuing import surge, especially if the initial imposition was not able to effectively stem the inflow of imports. It could further be noted that a historical level of imports plus an allowance for growth would have already entered domestic markets before SSM duties could be initially imposed. Hence, SSM re-imposition would not unduly compromise the interests of exporting countries. On the other hand, exporters could point to the possibility that the imposition of SSM duties could be unreasonably prolonged even if imports are no longer harming domestic markets. One possible compromise is to require a cross-check or validation measure before SSM can be re-imposed, but not at the time of initial imposition. For example, re-imposition could be allowed if imports continue to come in despite the imposition of SSM duties, or if the import surge aggravates to a higher threshold level. However, data availability problems could again be an issue in this regard.

The limitation on safeguard duties spilling over to the following year acts much like the end-of-year cap to SSG imposition which was enforced during the Uruguay Round implementation period. This may not have much effect on products which have TRQ commitments that

naturally interrupt the application of SSM duties at the start of each year and until such time that imports exceed TRQ levels. For other products however, access to the remedy may be more significantly curtailed, especially if their production and marketing cycles naturally spill over to the succeeding year. In such cases, choosing a different implementation year<sup>26</sup> may be a convenient way for importing countries to retain access to the SSM during critical periods.

It is possible that the SSM will be applied interminably if the imposition period is too long and holiday and spillover limits are not imposed. The application may spill over to the succeeding year long enough for imports to again accumulate over the trigger threshold. A surge condition will again prevail when the imposition period ends and the SSM can then be immediately re-imposed. To avoid such eventualities, shorter implementation periods in the range of four to six months may be adopted. Re-imposing the remedy could be permitted under certain conditions. If the application of an SSM duty has spilled over to the following year, a holiday period can be enforced after the imposition so as to allow exporters a breathing spell from SSM duties.

**4.5 Effects of Threshold<sup>27</sup> Levels**

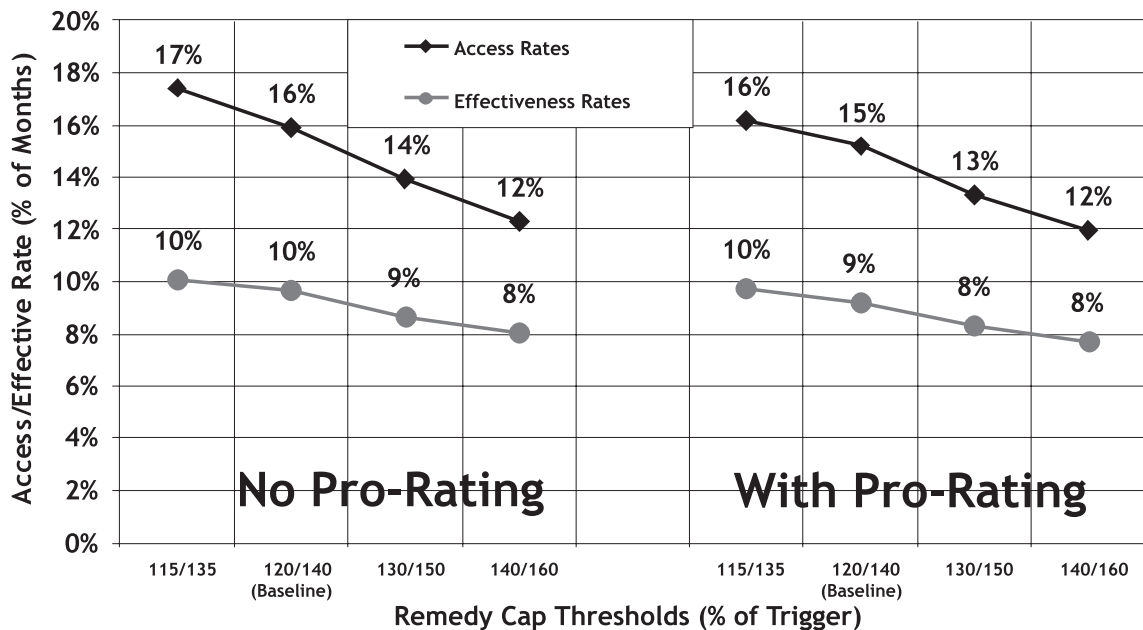
W7 stipulated that a first set of remedy caps (eight percentage points or one-third of current bound tariffs) would apply if cumulative imports fell between 120 and 140 percent of the volume trigger. Below the 120 percent threshold, remedies would not be allowed to breach bound tariffs. In excess of a 140 percent breach of the trigger, governments would be allowed to raise remedies to twelve percentage points or fifty percent of bound tariffs, whichever was higher.

Figure 4.5 below shows that if the thresholds were lowered to 115 and 135 percent to coincide with the thresholds for remedies under Paragraph 133 of Rev 4, access to the remedy improved slightly from sixteen to seventeen percent. More stringent thresholds had proportional effects on the SSM. For example, access rates went down to twelve percent when a 140 to 160 percent threshold combination was applied. Consistent with earlier findings, pro-rating the volume trigger using thirty six-month average import volumes as proxies did not materially change the results.

Adjusting the remedy cap thresholds affected effectiveness rates less significantly. The utility of the SSM went down from the baseline level of ten to eight percent when a 140 to 160 percent instead of a 120 to 140 percent threshold combination was applied. A similar result arose when the pro-rating modality was additionally imposed.

Some have argued that SSM tariffs should not be allowed to breach bound rates except in truly problematic instances, such as when import surges exceed 140 percent of the trigger. However, the impact of an import surge on domestic prices does not only depend on its magnitude, but also on the timing of the arrival and disposal of the imports in local markets, the price of the imports compared to local products, and other relevant factors. Hence, even a nominally small surge could severely disrupt domestic markets. Disallowing the use of the SSM until the surge reaches very high levels could have disastrous consequences. In turn, trigger modalities, particularly if pro-rating is applied, could ensure that exporters will preserve their historical access to markets even if SSM is applied at comparatively low surge levels.

**Figure 4.5: Volume SSM Access and Effectiveness Rates Under Various Remedy Cap Threshold Settings**



It may also be practical to harmonize Rev 4 and W7 thresholds to avoid confusion. To recall, Rev 4 set the thresholds for remedies at 110 percent, 115 percent and 135 percent of the volume trigger, with different levels of SSM duties allowed within each range. In turn, W7 imposed caps on remedies depending on whether the breaches were less than 120 percent, between 120 and 140 percent, and over 140 percent of the volume trigger. One way to harmonize the two texts is to apply the same thresholds. Rev 4 would then define the allowable remedies while W7 would set the corresponding caps for such remedies under each common range.

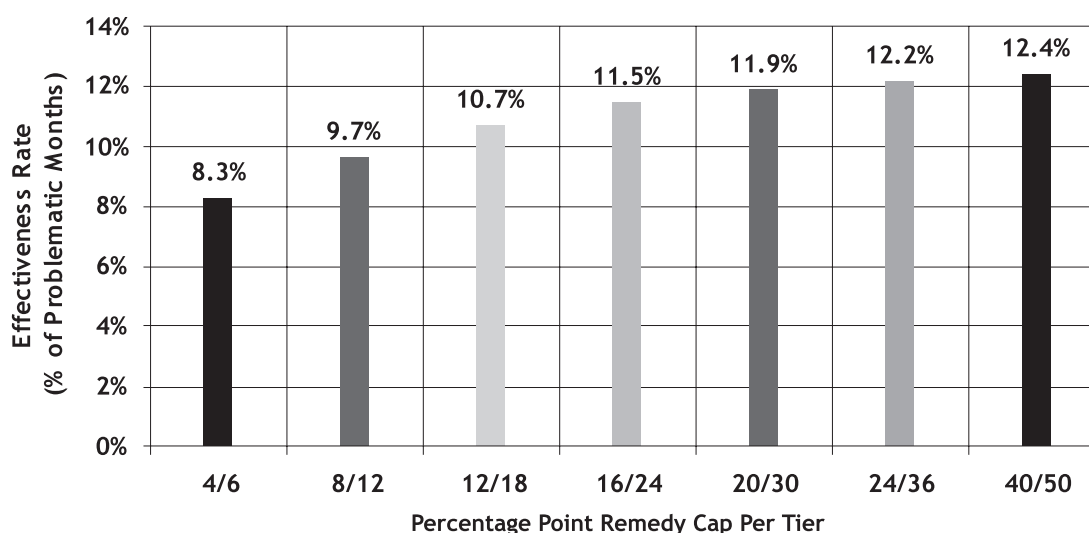
Going further however, a case could be made to integrate the two modalities altogether so as to simplify the SSM. The remedies stipulated in Rev 4 act like caps in themselves, since they limit the extent of the SSM duty that can be applied, albeit at levels higher than those allowed by W7. Accordingly, Rev 4 remedies could simply be adjusted without having to impose a second layer of remedy caps such as those in W7.

#### 4.6 Effects of Remedy Caps

As mentioned earlier, Paragraph 3 of W7 set limits on allowable SSM remedies in terms of percentage points or as a percentage of current bound tariffs.<sup>28</sup> A higher cap was applied if import volumes fell within the second (higher tier).

If we isolate the impact of percentage point remedy caps (by temporarily setting the caps expressed as percentages of bound tariffs to zero), we can see from Figure 4.6 below that a four percentage point remedy cap for the first tier and a six percentage point limit for the second tier made the SSM effective in only about 8.3 percent of “problematic” months. In comparison, the baseline effectiveness rate was around ten percent when using the eight-and-twelve percentage point combination. Effectiveness rates progressively improved as caps were increased in equal increments. If the caps were set to the maximum allowable remedy of fifty percentage points under Rev 4, the volume SSM registered an optimal effectiveness rate of 12.4 percent.

Figure 4.6: Volume SSM Effectiveness Rates Under Various Percentage Point Remedy Cap Settings



If the percentage point remedy cap was in turn deactivated, and only the caps in terms of percentages of bound tariffs were applied, Figure 4.7 below shows that the effectiveness rate would hit 6.5 percent under the baseline setting of one-third and one-half

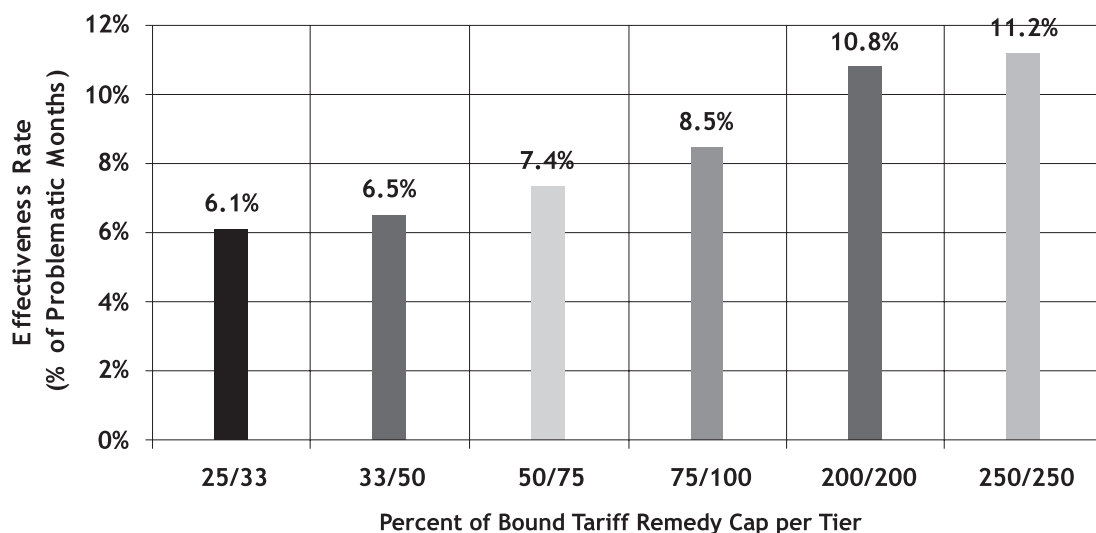
of bound tariffs in the first and second tiers, respectively. If the caps were set to three-fourths and 100 percent of bound tariffs, the volume SSM was able to successfully bridge price gaps in 8.5 percent of “problematic” months.

Even at extremely high levels such as 250 percent of bound tariffs, the effectiveness rate was not able to match the optimal level achieved when maximum percentage point remedy caps were applied. This can be traced to the fact that the bound tariffs of the products covered by the simulation were comparatively low, such that remedies in the form of percentage points tended to yield higher effectiveness rates than safeguard duties expressed as percentage of bound tariffs.<sup>29</sup>

As mentioned earlier, SSM has been criticized by some negotiating groups for opening the door for WTO member countries to effectively

renege on their tariff reduction commitments by allowing them to breach their bound rates. SSM advocates counter that the very purpose of safeguard duties, much like countervailing and anti-dumping measures, is to respond to market aberrations in an effective manner even if these may necessitate the temporary breaching of bound tariffs. They add that such caps were never applied to special safeguard (SSG) duties that were used by developed (and developing) countries during the Uruguay Round implementation period. Hence, there would be no reason to suddenly impose them on a measure that was purposely intended to help developing countries in the Doha Round.

**Figure 4.7: Volume SSM Effectiveness Rates Under Various Percent of Bound Tariff Remedy Cap Settings**



The case of China, which had to agree to relatively low tariff bindings for many of its products during its accession negotiations, has been cited by those who oppose large levels of remedies, particularly those in terms of percentage forms. If a particular remedy was capped at eight percentage points for example and added to a three percent bound rate, it would be tantamount to almost tripling the bound rate. On the other hand, some countries with higher bound rates have been demanding higher remedy caps based on percentage points in order to use meaningful remedies. If the same remedy of eight percentage points was appended to a forty percent bound tariff,

the increment would be equivalent to only twenty percent.

One could argue that it is the countries and products with low bound rates, which are more vulnerable to import surges and price depressions, which should be accorded better access to the SSM and higher levels of remedies. Allowing access to an effective safeguard remedy to address market emergencies would also give countries added confidence in pursuing tariff reform more aggressively. At the same time however, the worries of other countries that bound rates will be excessively breached by SSM remedies need to be considered. One

possible compromise would be to allow for a higher level of percentage point remedy caps but provide that any such remedy, when converted to *ad valorem* equivalents, should not exceed a certain percentage of bound tariffs.

Apart from the issue of what would be reasonable caps on SSM remedies, it should be noted from the simulations that the effectiveness of the volume SSM is innately limited. At most, it will be able to address problematic price gaps and arguably stop subsequent imports in only about one out of every ten instances. Even when Rev 4 provisions were applied without caps on remedies and additional rules under W7, the overall effectiveness rate reached only twenty five percent of “problematic” months. These results tend to validate the arguments of the G-33 that trade will not necessarily be paralyzed by the SSM. Additionally, the experience with

the SSG in the Uruguay Round indicates that developing countries typically underutilize the remedy, either because of difficulties in securing the necessary data on time, or due to internal pressures from importers or consumer advocates to defer the application of safeguard duties.

Finally, there does not seem to be any overriding reason for imposing additional caps on remedies considering that the Rev 4 schedule of remedies already constitutes limits on what countries can impose in terms of SSM remedies. As mentioned earlier, if the idea is to allow breaches of bound rates only in exceptional circumstances, the threshold and remedy settings under Rev 4 could just be adjusted accordingly without having to superimpose a second layer of remedy caps. This would greatly simplify the operationalization of the SSM.

## 5. THE PRICE SSM

Paragraph 135 of Rev 4 defined the price trigger as 85 percent of the average monthly price of imports during the preceding three-year period, converted to domestic currency. It included a proviso that if a country's domestic currency had depreciated by at least ten percent during the preceding twelve months, the average exchange rate during the preceding three-year period, instead of the current exchange rate, could be used in converting import prices to domestic equivalents. Paragraph 136 added that price-based SSM remedies should be applied on a shipment-by-shipment basis and that the remedial duty should not exceed 85 percent of the difference between the import price and the price trigger. Paragraph 142 then set overriding caps on SSM remedies by stating that the pre-Doha starting tariff cannot be exceeded when applying volume or price SSM tariffs on top of current bound tariffs.

Notably, most of the discussions and negotiations to date have focused on the volume SSM and have seemingly ignored or set aside issues relevant to the price SSM. For example, W7 was issued exclusively to try to bridge differences in opinion on the volume-based remedies and therefore did not make any reference to the price SSM.

There have been speculation that an effectively neutral price SSM that would be subject to absolute caps under Paragraph 142 of Rev 4 had been silently accepted by some negotiating parties as a *quid-pro-quo* for a more progressive volume SSM. It is also possible that the negotiators simply have had no time to deal with the price SSM given the wide divergence in negotiating positions on the volume SSM. Still, the price SSM remains a potentially more useful remedial measure for importing countries and, from the perspective of exporting countries, a fairer method for addressing market emergencies.

Import prices have a more direct impact on domestic markets in the importing country than the volume of imports. Imports may increase

due to local deficiencies or increased demand without necessarily having to be cheaper than domestic prices. On the other hand, even a relatively small volume of imports may have a dramatic effect on domestic prices if it is dumped at extremely low prices during critical periods of the year.

A remedy that is based on the difference between current and historical import prices is also more precise in terms of addressing the problem. In comparison, it is difficult if not impossible to determine the appropriate SSM tariff that will arrest an import surge.

The price SSM is arguably fairer since it will be imposed selectively on particular shipments which are priced below the trigger. Subsidized exports will have a greater tendency to fall into this category. The application of the price SSM will therefore help level the playing field in favor of countries who do not subsidize their exports. In comparison, the volume SSM will affect all countries whether or not they subsidize their exports, and whether or not they were responsible for the import surge. A country that starts to export late in the year, for example, may be hit immediately by SSM duties, while a competing exporting country that manages to bring in products before the volume trigger is breached will not be affected.

The effect of the price SSM will not be unnecessarily prolonged because remedies will be applied on a shipment-by-shipment basis, not for several months. If the prices of subsequent shipments do not fall below the trigger, the price SSM cannot be re-imposed. In the case of the volume SSM, remedial tariffs could theoretically be retained for the prescribed number of months even if the effect of the import surge has already abated.

Finally, the price SSM is specifically mentioned as an integral part of the SSM in the Doha Development Agenda and therefore rightfully deserves as much attention and examination as its volume counterpart.

### 5.1 Baseline Results

For the price SSM simulations, the baseline was initially established using the following general settings:

- a) The calendar year (January to December) was used as the implementation year.<sup>30</sup>
- b) If the local currency at the time of importation had depreciated by at least ten percent at any time during the last twelve months, the import price was computed using the average exchange rate during the three years preceding the year of importation.
- c) Import prices were valued in local currency using the applicable exchange rate.
- d) The price trigger for each year was set to 85 percent of the average monthly price of imports during the preceding three-year period.
- e) Computation of the price SSM duty: if the import price fell below the price trigger, the additional duty would be equivalent to 85 percent of the difference between the import price and the price trigger.
- f) No cap was applied on the SSM duty that could be imposed.
- g) SSM duties could not be imposed on imports falling within TRQ commitments, if any.<sup>31</sup>
- h) All imports of products, including those with TRQ commitments, were however, assumed to be out-quota and subject to MFN bound (not applied) tariffs.<sup>32</sup>
- i) Countries were assumed to be able to freely raise applied rates to bound levels,

if they were lower, before considering the imposition of additional SSM duties.<sup>33</sup>

- j) Price SSM duties would be imposed on a shipment-by-shipment basis.
- k) No cross-checks<sup>34</sup> were applied.
- l) No distinction was made between MFN and non-MFN imports.<sup>35</sup>
- m) Products were assumed to be classified as special products (SPs) with a tariff cut of eleven percent over the prescribed implementation period, except LDCs such as Senegal which would have zero cuts.<sup>36</sup> Paragraph 129 of Rev 4 prescribed this as the minimum average cut for SPs even as it allowed for zero cuts for a certain percentage of SP tariff lines.)

Simulations were undertaken to gauge the accessibility and effectiveness of the price SSM under various parameter and modality settings. The volume SSM was deactivated<sup>37</sup> in order to isolate the behavior of the price SSM.

Table 5.1 below shows that the price SSM was available in eighteen percent of all months if Rev 4 provisions were applied without any caps on remedies. The remedy was available in only about one-fourth of the months during which there were “problematic” price gaps, and was ultimately effective in addressing these gaps in only six percent of “problematic” months. In comparison, the volume SSM could have been applied in one-third of the total months and was effective in addressing price gaps in twenty five percent of “problematic” months in a scenario where caps on remedies were also not applied.

Table 5.1: Baseline Access and Effectiveness Rates for Price SSM

COUNTRY	Baseline Rev 4				Rev 4 Caps		
	Access	Effectiveness Rate			Access	Effectiveness	
	Rate	Probl	Avail	Effect	Rate	Avail	Effect
China	1%	47%	1%	0%	0%	0%	0%
Ecuador	24%	21%	47%	19%	20%	47%	1%
Fiji	41%	68%	35%	6%	24%	35%	1%
Indonesia	14%	41%	23%	11%	41%	23%	0%
Philippines	37%	48%	24%	4%	14%	24%	0%
Senegal	24%	64%	33%	6%	24%	33%	5%
Total	18%	49%	27%	6%	18%	27%	1%

The lower access rates could be traced to the shipment-by-shipment modality for applying price SSM remedies which precluded the use of the measure over extended periods. Access rates for the Philippines, and particularly China, were comparatively lower, mainly due to high TRQ commitments which significantly limited the opportunities to make use of the remedy. In general, lower access rates coincided with lower effectiveness rates.

If remedies were capped such that pre-Doha bound rates could not be exceeded when SSM duties were added to regular bound tariffs, the overall effectiveness rate dropped to one percent. Again, because it was allowed to exceed its pre-Doha bound tariffs by forty percent or forty percentage points by virtue of its being an LDC, Senegal was the only country that managed to benefit somewhat from the price SSM. Still, its effectiveness rate was only 5% of “problematic” months, indicating that the allowable remedies were largely insufficient to offset gaps between domestic and import prices.

Ecuador and Fiji ended up with one percent effectiveness rates while China, Indonesia

and the Philippines saw their rates plunging to zero.

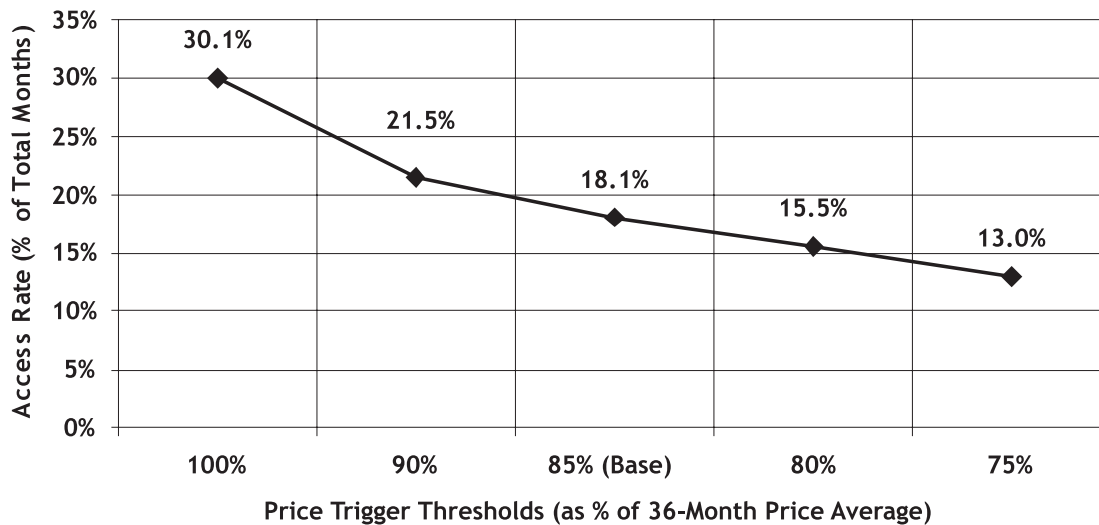
Inasmuch as the remedy caps render the price SSM effectively useless, the simulations below evaluate the measure without setting any caps on remedies, unless otherwise specified.

## 5.2 Effects of Trigger Thresholds

Paragraph 135 of Rev 4 defined the price trigger as 85 percent of the average monthly price of imports during the preceding three years. This was equivalent to saying that the price SSM could not be applied if the current CIF import price (adjusted in case of severe depreciation of the currency) was more than 85 percent of the three-year price average.

If SSM remedies were allowed once import prices fell below the three-year average price (equivalent to a 100 percent threshold), the access rate predictably rose from the baseline level of eighteen percent and reached thirty percent. In turn, access to the price remedy fell to thirteen percent if the trigger was set to 75 percent of the three-year price average, as shown in Figure 5.1 below.

Figure 5.1: Price SSM Access Rates under Various Trigger Threshold Settings



Clearly, access to the price SSM was closely related to how the price trigger was defined. As will be seen in subsequent discussion on remedies in Section 5.5, this definition also influenced the effectiveness of the measure in addressing “problematic” gaps between import and domestic prices.

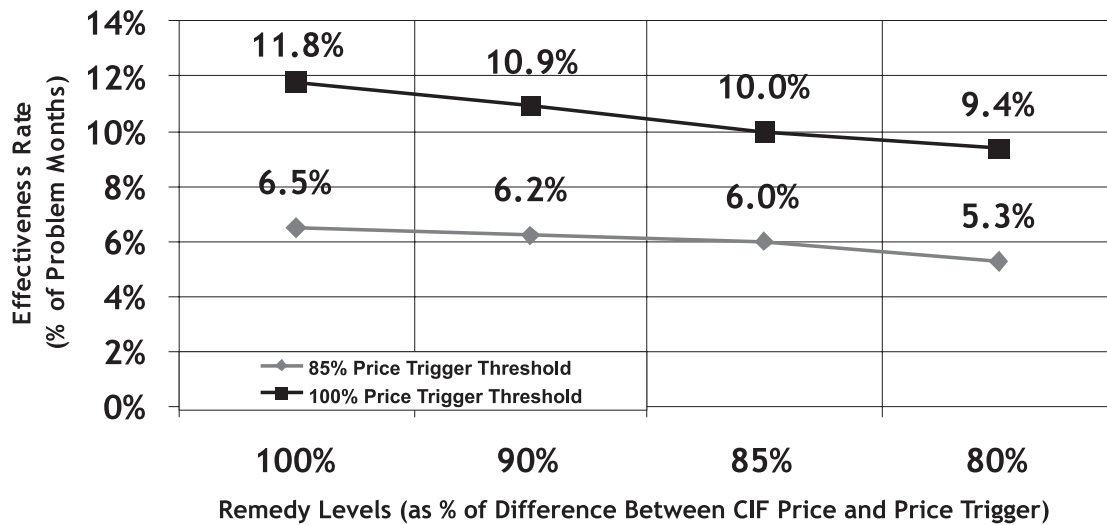
### 5.3 Effects of Allowable Remedy Levels

Paragraph 136 of Rev 4 stated that the price SSM remedy shall be 85 percent of the difference between the CIF import price (adjusted when necessary for depreciation) and the trigger price, which in turn was eighty five percent of the average monthly import price in the preceding three years. As mentioned earlier, this resulted in an overall effectiveness rate of about six percent of “problematic” months under baseline settings without caps on remedies.

Interestingly, the effectiveness rates did not change dramatically when the remedy levels were adjusted while the trigger was pegged to 85 percent of the three-year price average. Figure 5.2 below shows that if the remedy was limited to only 80 percent of the difference between import and trigger prices, the effectiveness rate dropped by only about one percentage point to 5.3 percent compared to when a 100 percent remedy was allowed.

If the trigger was set to 100 percent (instead of 85 percent) of the three-year price average, effectiveness rates conspicuously improved as a result of improved access to the remedy. Even if the remedy was limited to only 80 percent of the difference between import and trigger prices, the price SSM came out to be more effective (at 9.4 percent) than when the trigger was set to 85 percent of the price average and the remedial duty was set to 100 percent of the difference between import and trigger prices. In the latter case, the effectiveness rate was only 6.5 percent.

Figure 5.1: Price SSM Access Rates under Various Trigger Threshold Settings



These results indicate that threshold levels are more important than remedy levels in influencing the effectiveness of the price SSM. This was mainly because higher access to the remedy as a result of more favorable thresholds tended to increase the chances of the SSM being effective. In contrast, a high remedy level was useless if the SSM could not be accessed due to very restrictive thresholds. Notwithstanding this, it appears more logical to allow prices to move within tolerable levels and set the threshold to somewhere below 100 percent, and then provide for full remedies once prices fall beyond the threshold level.

It is worth noting that the trigger threshold of 85 percent set by Paragraph 135 of Rev 4, coupled with a maximum remedy of 85 percent of the price difference, effectively limited the allowable remedy to 72 percent of the absolute difference between the import price and the three-year price average.

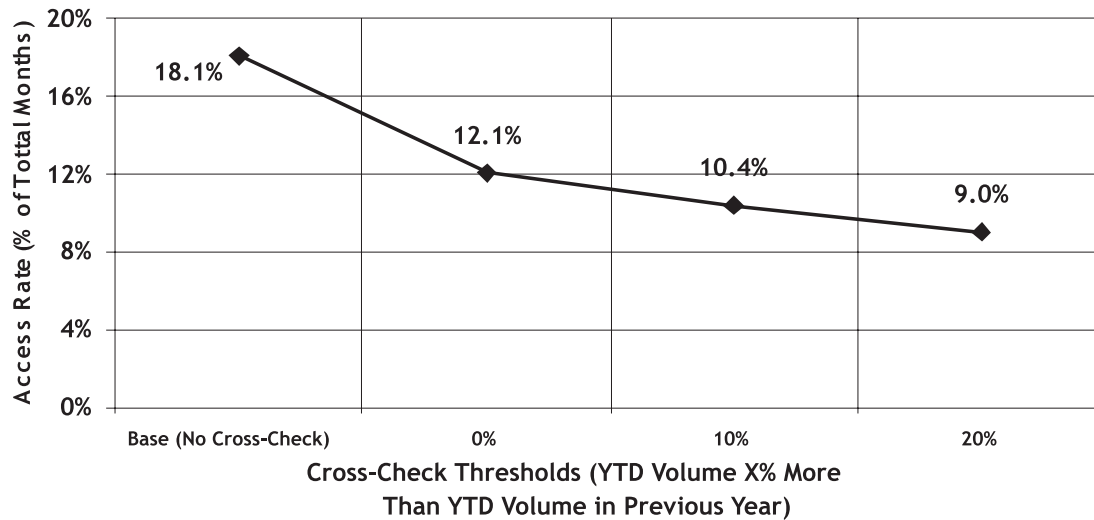
#### 5.4 Effects of Cross-Checks

Paragraph 137 of Rev 4 additionally stated that the price SSM cannot be imposed if

*“the volume of imports of the products concerned in the current year is manifestly declining, or is at a manifestly negligible level incapable of undermining the domestic price level”.* This parallel cross-check mechanism effectively linked the use of the price SSM to the trend in import volumes.

For purposes of the simulation, the phrase *“manifestly declining”* was interpreted to mean that the year-to-date (YTD) cumulative volume of imports was lower than the volume of imports during the same period in the preceding year by a certain percentage or threshold. If this threshold was set to zero percent, meaning that current import volumes simply had to exceed corresponding volumes in the previous year, Figure 5.3 below shows that the access rate would decline from the baseline level of eighteen percent (where no cross-checks were applied) to twelve percent. Further increases in thresholds had less dramatic effects. At the twenty percent threshold level, the residual access rate was nine percent.

Figure 5.3: Price SSM Access Rates Using Cross-Check Modalities



The second part of the condition in Paragraph 137 was not considered in the simulations in view of difficulties in determining what was “*manifestly negligible*”. Crafting a formula that would determine if a certain volume of imports would be “*incapable of undermining*” domestic prices was also problematic.

Intuitively, one could argue that cheap imports may not be a matter of major concern if imports were not only not rising but in fact were even declining. Local supplies may have stabilized following a period of shortages, thus making large imports unnecessary. While import prices may have come down relative to previous years’ levels, domestic prices may have also declined in tandem with the increase in supply. In such a situation, there may be no need to impose additional SSM duties. In comparison, very cheap imports that coincide with a surge in import volumes could exert a more direct and severe effect on domestic markets.

It may not however be appropriate to link a single shipment to the trend in import volumes over an extended period. Further, import volumes may not immediately or always move in an opposite direction to import prices. Cheap imports could still exert significant

impacts on domestic markets even if volumes are relatively small, particularly if they come in during critical months of the year. Postponing remedial action on such imports may result in irreversible damage in succeeding months.

### 5.5 Effects of Remedy Caps Expressed in Percentage Points

No formal discussions on “*above the Doha bound rate*” remedies for price SSM have been publicly initiated. However, as section 5.1 above shows, the remedy becomes almost unusable if paragraph 142 caps were applied in full to the price SSM. In such a scenario, effectiveness rates are close to zero for most countries.

For purposes of discussion, simulations for the price SSM were undertaken adopting the nomenclature of W7 for the volume SSM, such that price SSM duties would be allowed to breach Doha bound rates by a certain number of percentage points or by a certain percentage of bound tariffs if the CIF prices fell between seventy and eighty percent of the trigger price.<sup>38</sup> A higher remedy cap would be applied if the price depression was more than seventy percent of the price trigger. No breaching would be permitted if import prices were eighty percent of the trigger or higher.

Figure 5.4: Price SSM Effectiveness under Various Percentage Point Remedy Cap Settings

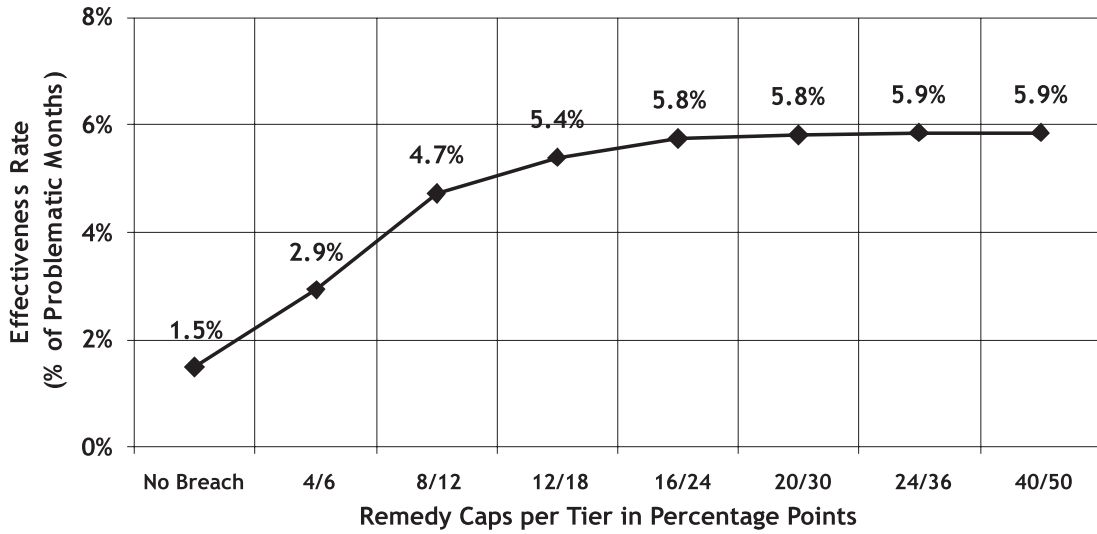
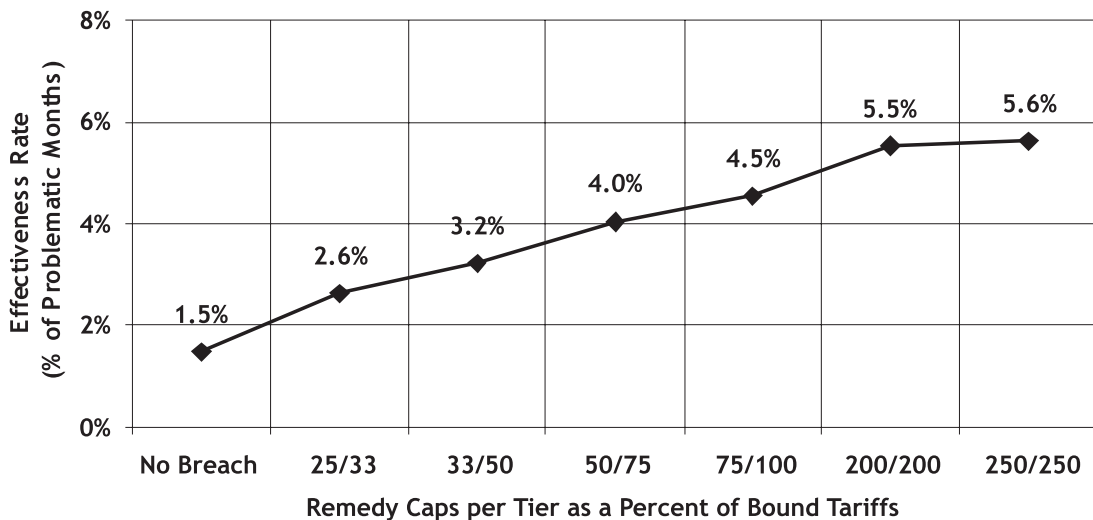


Figure 5.4 above shows the effectiveness of the price SSM when the remedy caps in terms of percentage points were adjusted while remedies in the form of percentages of bound tariffs were deactivated. If price SSM remedies were capped at eight percentage points in the first tier and twelve points in the second tier as with the volume SSM, the effectiveness of the remedy was 4.7 percent of “problematic” months. The effectiveness of the measure approached its peak of around six percent, when remedy caps were set to twenty and thirty percentage points for the first and second tier, respectively.

**5.6 Effects of Remedy Caps Expressed as Percentages of Bound Tariffs**

Effectiveness rates appeared to be more closely correlated to movements in remedy caps expressed as percentages of bound tariffs. The utility of the price SSM was 3.2 percent of “problematic” months in the W7 baseline scenario in which remedies were capped at one-third and one-half of bound tariffs for the first and second tier, respectively. The effectiveness rates consistently increased as remedy caps were loosened, and leveled off at around 5.5 percent when remedies were limited to a maximum of 200 percent of bound tariff levels.

Figure 5.5: Price SSM Effectiveness Rates Under Various Percent of Bound Rates Remedy Cap Settings



## 6. COMBINED VOLUME AND PRICE SSM

Although separate simulations on the volume and price SSM give good indicators of the behavior of each remedy, a better and more realistic gauge of the utility of the SSM can be generated by allowing both measures to operate simultaneously.<sup>39</sup> This is of course with the understanding that only one measure, whether a volume or a price SSM, can be applied at any one time. The overall result could intuitively be more than the sum of the

effects of the individual remedies since, for example, a volume SSM could be available when a price SSM is not, and vice-versa. Even if they coincide, one measure may allow for a higher remedy than the other.

For this purpose, simulations were made using a combination of modalities and parameter settings outlined in Table 6.1 below. Figure 6.1 below illustrates the results of the simulations.

**Table 6.1: Modality and Parameter Settings for Combined Volume and Price SSM Simulations**

	Baseline	Low	Medium	High
Volume SSM				
Pro-rating	No	Yes, 36-month proxy	Yes, 36-month proxy	Yes, 36-month proxy
Cross Check	No	Import Price	No	No
Imposition/Holiday/Spillover	6-0-12	4-4-2	6-0-2	6-0-2
Price SSM				
Trigger Threshold	100%	85%	100%	100%
Cross Check	No	Yes, 0%		
Threshold	No	No		
Remedy Level	85%	85%	85%	85%
Remedy Caps				
Percentage Points				
First Tier	none	8	20	50
Second	none	12	30	50
% of Bound Tariff				
First Tier	none	33%	33%	50%
Second Tier	none	50%	50%	50%

Under the baseline setting, the overall access rate was forty two percent of total months, while the SSM was effective in twenty-three percent of “problematic” months. In this scenario, no caps or additional restrictions were imposed on SSM application.

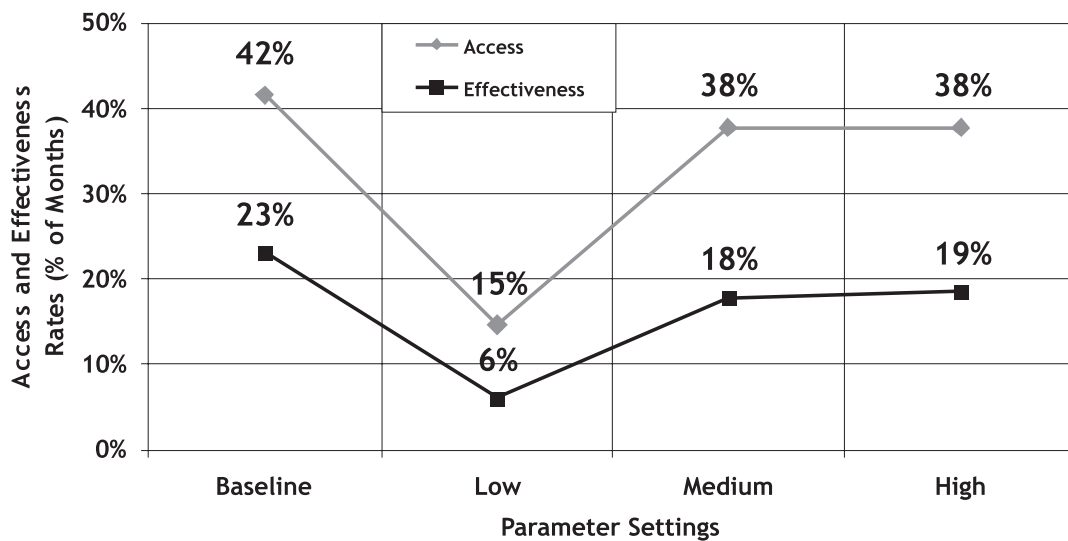
Figure 6.1 below shows that, in a “low” scenario where most of the additional restrictions and conditions included in W7 were applied, the combined access rate was cut to almost a third of the baseline result. The effectiveness rate, in turn, dropped from twenty three to six percent of “problematic” months.<sup>40</sup> In this

scenario, volume SSM remedies could not be applied if YTD import prices were higher than three-year averages, while countries would only be able to invoke the price SSM if YTD import volumes exceeded corresponding volumes in the same period in the preceding year. Additionally, remedies were capped at eight percentage points or one-third of bound tariffs in the first tier, and twelve percentage points and one-half of bound tariffs in the second tier, as stipulated in W7. The imposition period was further reset to four months, with a holiday period of four months and a spillover limit of two months.

A “medium” scenario retained the pro-rating modality but removed cross-check conditionalities on the use of either the volume or price SSM. The imposition, holiday, and spillover periods were reset to six, zero, and two months respectively. The trigger threshold was reinstated to 100 percent. Remedies were capped at a higher twenty and thirty

percentage points for the first and second tiers, respectively, while remedy cap levels in the form of percentages of bound tariffs were retained. Under these parameter settings, access to the SSM hovered near baseline levels at thirty eight percent of the total months, while the effectiveness rate reached eighteen percent of “problematic” months.

**Figure 6.1: Combined Volume and Price SSM Access and Effectiveness Rates under Various Parameter and Modality Settings**



Finally, a “high” scenario which retained “medium” settings but raised the remedy caps to fifty percentage points or fifty percent of bound tariffs for both tiers

yielded basically the same result, although effectiveness rates inched up a little bit further to nineteen percent of “problematic” months.

## 7. EN ROUTE SHIPMENTS

Paragraph 139 of Rev 4 stipulated that export shipments that were already *en route* to their destination after a volume or price SSM remedial duty was imposed by the importing country would be exempted from any additional SSM assessment.

In the case of the volume SSM, the application of this rule is quite clear because the existence of an import surge will be validated and the corresponding remedial duties, whether as percentages of bound tariffs or percentage terms, and applicable caps if any, will be publicly declared and notified to the WTO. Shipments which are *en route* prior to this notification should rightly be spared from the SSM duty since they could have been cancelled or diverted if the exporters knew about the additional assessment in advance. In turn, shipments made after the notification would be undertaken with full prior knowledge of how much additional duty would have to be paid.

In the case of the price SSM, the validation of a price depression will be undertaken only when the shipment arrives in the importing country, and the SSM remedial duty will be computed depending on the CIF price of each individual shipment compared to the price trigger. There can therefore be no advance notification of a price SSM imposition, nor can there be *en route* shipments in this sense.

It is the notification of the price trigger for the current year that is more relevant with respect to *en route* shipments. It will normally take some time to gather import price data before triggers for the new implementation year are activated. Shipments may already be *en route* when the new triggers are notified, and the exporters may end up having to pay more, or less, in price SSM duties depending on the new trigger level.

Instead of exempting *en route* shipments in such cases, the previous year's trigger may be carried over to the next year until such time that a new trigger is announced. Upon arrival, *en route* shipments could be assessed price SSM duties based on the old or new trigger, whichever yields the lower equivalent duty. Another option is to use whatever trigger was officially in effect at the time the shipment left the exporting country.

A similar situation could theoretically apply to volume SSM if an importing country decides to shift to a higher level of remedies as a result of a continuing surge of imports before it completes the imposition of an initial SSM duty for a prescribed number of months. Shipments that are *en route* before the higher safeguard remedy is notified could be assessed only the initial (lower) duty upon arrival.

## 8. SEASONAL PRODUCTS

Rev 4 initially referred to the seasonality issue by stating in Paragraph 140 that the maximum period for imposing volume SSM duties on a “*seasonal product*” would be six months, or the period of actual seasonality of the product, whichever is longer. Non-seasonal products, on the other hand, would be subject to a twelve-month maximum imposition period.

Paragraph 4 of W7, in turn, provided in bracketed text that if the volume SSM was applied for a total of twelve months during two consecutive twelve-month periods, it could not be re-imposed during the subsequent twelve-month period. The paragraph also contained proposals to undertake interim reviews on the operation and impact of the SSM with respect to seasonal and perishable products.

Unfortunately, the simulations could not carry out special studies on the effect of SSM on seasonal products due to the lack of a workable and universally acceptable definition of what is a “*seasonal*” product and its “*period of actual seasonality*”. From the point of view of exporters, the critical periods during which they would want to limit access to SSM and its re-imposition could coincide with the peak season for imports in the recipient countries. On the other hand, importing countries may want to control the entry of imports for the

duration of their harvest season or regular marketing cycles.

The G-33 has also pointed out in a recent submission<sup>41</sup> that “seasonality” is not a universal norm with respect to agriculture products and that seasonal patterns vary by country, by product and over time. On this basis, the G-33 concluded that it would be unrealistic to impose any general rule or modality for “seasonal” products.

For the importing countries, a convenient way to address the issue is to select an appropriate implementation year for each of their sensitive “*seasonal*” products. For example, if harvests of a certain product occur early in the year, a July-June implementation period may maximize the chances of invoking SSM during the first half of each year. Alternatively, countries could base their selection on the trend in imports of that product. Obviously, this does not address the interests of exporters. However, the rules give the importing countries the sole prerogative to define their implementation year.

Although specific simulations were not conducted for “seasonal” products, the discussions in Section 4.4 above indicated that the imposition of holiday periods and shorter imposition periods had significant effects on the accessibility of the volume SSM.

## 9. EXCLUSION OF NON-MFN TRADE IN SSM APPLICATION

Paragraph 138 of Rev 4 stipulated that the *“calculation of volume or price triggers, and the application of measures in accordance with the relevant provisions of this section, shall be on the basis of MFN trade only”*. This means that all trade within preferential trading agreements will operate outside the ambit of the SSM. The volume and price triggers will use data on imports only from outside, and remedies cannot be imposed on imports coming from within, the preferential trade areas.

There have been speculations that this provision was advocated by countries with export interests who wanted to preserve and enhance their preferential position under regional trade agreements vis-à-vis competing exporters from other countries. Paragraph 138 would shield them from any SSM duties, while their competitors from outside the trade area would run the risk of paying additional safeguard duties if a volume surge situation ensued.

In turn, countries with principally defensive interests who agreed to waive or minimize the usage of safeguard duties when joining the free trade agreements were reportedly banking on a progressive SSM modality in the Doha Round to regain access to the remedy.

Operationally, having to segregate imports by source and compute triggers based on a subset of imports may create more problems especially

for developing countries which have very weak import monitoring and data gathering systems. Tighter implementation of rules of origin to prevent the surreptitious trans-shipment of goods and avoidance of coverage may also lead to added burdens on exporters.

The advantage that exporters gain from Paragraph 138 when selling within the preferential trade area can also be easily reversed when they try to access outside markets. This time, they will be the ones to bear the brunt of the SSM, while some of their competitors who joined the importing country in their own trade agreements will escape from any safeguard duty imposition.

One could argue that the effects of import surges and price depressions do not depend on the source of the imports. Such market emergencies will exert the same effect on domestic markets whether imports are MFN or not. In turn, imports from within regional trade agreements may be more disruptive since they will be assessed lower preferential tariffs and would therefore tend to be cheaper and potentially in larger volumes.

Finally, discriminating against MFN imports in the application of the SSM may further distort international trade. Preferential trade agreements will diverge more conspicuously from multilateral trade pacts under the WTO, leading to further discrimination and confusion in the application of trade rules.

## 10. SVE CONCERNS

Annex I of Rev 4 defined a small, vulnerable economy or SVE “*as one whose average share for the period 1999-2004 (a) of world merchandise trade does not exceed 0.16 per cent and (b) of world NAMA trade does not exceed 0.10 per cent and (c) of world agricultural trade does not exceed 0.40 per cent*”. Rev 4 contained various references to SVEs, in most cases providing them with additional privileges and flexibilities in recognition of their size and susceptibility to market aberrations. Paragraph 111 for example required smaller reductions for in-quota tariffs of SVEs, while Paragraph 127 allowed them to retain a larger percentage of their existing SSG tariff lines. They additionally became eligible for lower tariff reductions (Paragraph 65) and more flexibilities in handling special products or SPs (Paragraph 130). A bracketed provision in Paragraph 144 of the SSM text would have accorded them extra leeway in breaching Doha starting and current bound tariffs.

In a 2009 position paper<sup>42</sup>, the G-33 endorsed proposals to lower the SSM remedy thresholds for SVEs, and to amend Paragraph 144 of Rev

4 so as to allow SVEs to breach their bound rates by seventy five percentage points or seventy five percent of their current tariffs when applying SSM. The group also proposed that SVEs be permitted to impose SSM on up to thirty percent of their tariff lines in any given period.

Unfortunately, only Ecuador and Fiji were the only SVEs that could be included in the simulations, and it would be inappropriate to make any definitive conclusion on the basis of such a limited set of data. With this caveat, it may be worth noting in any case that Fiji and Ecuador’s access to the volume SSM was close to the average for all countries covered in the study. However, Fiji in particular had a relatively high frequency of “problematic” months, indicating its susceptibility to cheap imports. Both countries had lower-than-average effectiveness rates. These results could help support demands for higher remedies and remedy caps for SVEs. For price SSM, the access rate of the two countries was better than average. Ecuador manifested relatively better effectiveness rates than Fiji.

## 11. CONCLUSIONS AND RECOMMENDATIONS

The baseline simulations described above indicate relatively high frequencies for accessing the SSM - thirty three percent for the volume SSM and eighteen percent for price SSM under the baseline scenarios in Sections 4 and 5. When both remedies were simultaneously put into operation while using baseline settings outlined in Table 6.1, the average access rate climbed to forty two percent.<sup>43</sup>

However, under the same settings, the SSM appeared to have limited effectiveness: twenty five percent for the volume SSM, only six percent for the price SSM, and twenty three percent when combined (under baseline settings in Table 6.1). This means that, at best, remedial SSM duties would be able to raise import prices to beyond ninety percent of corresponding domestic prices in only about two out of every ten months in which import prices, inclusive of bound tariffs, were cheaper by more than ten percent. (Since only half of the months exhibited “problematic” price gaps, this meant that the SSM would be useful and effective only once in every ten months.) Imports would presumably therefore continue to come in during the other eight “problematic” months even if the SSM was imposed, since they would continue to enjoy a price advantage of more than ten percent over domestic goods.

The results of the simulations on the pro-rating modality could help lead to a solution to the current impasse on the SSM.

Arguably, the simulations show that the pro-rating modality did not excessively affect access to the volume SSM or its effectiveness. In some cases, it did delay the implementation of the remedy and limited overall access to it, particularly if rules restricted the spillover of SSM remedies to the succeeding year. However, even when such instances were taken into account, the availability and utility of the SSM was essentially preserved.

The pro-rating method would nonetheless ensure that volume triggers will not be unduly depressed by SSM invocation and normal trade will not be excessively restricted in the process. Exporters would continue to enjoy historical levels of market access plus an allowance for trade growth equivalent to the initial threshold for invoking the volume SSM. Of course, there would be the possibility that trade will taper off, or even completely stop, once SSM duties were imposed. Still, the simulations show that even under “ideal” conditions, the effectiveness of the SSM in making imports comparatively more expensive than domestic products was quite limited. There therefore remains a distinct possibility that exports would continue to increase even in the face of SSM duties.

The pro-rating modality however applies only to the volume SSM. In the case of the price SSM, additional duties could be imposed even when imports have not reached a certain level, and would continue to be assessed as long as subsequent imports are priced below the price trigger. On the other hand, it could be argued that the price SSM is self-regulating in the sense that only “cheap” imports will be affected and remedies will only be applied to individual shipments. The simulations further show that the price SSM pales in comparison to the volume SSM both in terms of accessibility and effectiveness, and would therefore not impact trade flows to the same extent.

Based on the foregoing and the results of the simulation, the following proposals could be considered in crafting a final version of the SSM:

- a) A pro-rating method could be applied in computing annual triggers, with the average monthly volume of imports during non-SSM months during the preceding three years to be used as a proxy for imports during SSM months. However, the actual volume of imports could be retained if

- it is higher than the proxy during an SSM month. The SSM could be invoked only if cumulative imports during the year exceed the pro-rated trigger by a certain threshold percentage, and the framework for thresholds and remedies set out in Paragraph 133 of Rev 4 could be retained.
- b) Additional conditions could be imposed only if a volume SSM will be re-imposed, rather than at the time of initial imposition. Considering that comparisons between domestic and/or import prices will be problematic, an alternative would be to allow re-imposition if imports continue to come in during the initial period of applying SSM duties, or if the import surge goes over the threshold for the next tier of remedies.<sup>44</sup>
  - c) Imposition periods need not be unduly long. They can be set to six or four months, provided countries will be allowed to re-impose the remedy in accordance with additional rules and qualifications that may be agreed upon, such as in b) above. In order to not unduly prolong the use of the volume SSM, the application of remedies may be allowed to spill over to the succeeding year by a maximum of four months. In such cases, a holiday period for re-imposition could take effect after the spillover period.
  - d) If necessary, countries could additionally nominate their implementation year to suit the “*seasonality*” of specific products.
  - e) W7 caps need not be imposed; instead, the thresholds and remedies prescribed in Paragraph 133 of Rev 4 could just be adjusted so that they act as remedy prescriptions and caps at the same time. This would allow for a simpler understanding and application of the SSM.
  - f) The price SSM could be a separate but integral part of the SSM modality.
  - g) The price trigger could be set at 100 percent of the average of monthly import prices in the preceding three years. The price SSM could be imposed only if import prices fall below the trigger by a certain percentage threshold. The price SSM remedy would thus be equivalent to the full difference between the import price and the trigger.
  - h) A shipment that is *en route* could be assessed price SSM duties on the basis of the notified trigger prevailing at the time of departure from the exporting country. Alternatively, it could be subjected to an SSM duty based on the preceding year trigger or the new trigger that is notified after the shipment has already left port, whichever comes out to be lower.
  - i) All imports, whether MFN or not, would be considered when applying SSM rules.
  - j) No cross-checks would be applied on either the volume or price SSM.
  - k) In order to obviate the application of percentage point remedies that would result in very high *ad valorem* equivalents, it could be provided that remedies in a particular tier will be X percentage points, provided that this does not exceed more than Y percent of bound tariffs.<sup>45</sup>
  - l) Due consideration should also be accorded to the particular situation and vulnerabilities of SVEs, RAMs and LDCs when crafting SSM rules.

## ENDNOTES

- 1 WTO Committee on Agriculture Special Session, TN/AG/W/4/Rev.4, “Revised Draft Modalities for Agriculture”, 6 December 2008. Excerpts of Rev 4 pertaining to the SSM are shown in Annex A.
- 2 WTO Committee on Agriculture Special Session, TN/AG/W/7, “Revised Draft Modalities for Agriculture, Special Safeguard Mechanism”, 6 December 2008. A copy of TN/AG/W/7 is attached as Annex B.
- 3 Assuming a Doha Development Round agreement is reached, countries will start with their tariffs prevailing at the end of the Uruguay Round implementation period for each product tariff line. These are referred to as pre-Doha bound or starting tariffs. These initial tariffs will then be reduced based on modalities to be agreed upon and will result in a maximum or bound level of tariffs for each tariff line during each year of the Doha Round implementation period. Countries can set their actual tariffs at the bound levels or opt to impose lower, but not higher, applied rates. Notably, Paragraph 133 of Rev 4, which prescribed the SSM duties that could be imposed in the event of import surges or price depressions, stipulated that these additional duties will be added to applied, and not bound, rates.
- 4 The volume SSM is intended to protect against import surges. If the cumulative volume of imports in a given year exceeds the average annual volume of imports in the preceding three years, the SSM is triggered. On the other hand, the price SSM is designed to shield countries from drops in the price of imports, which compete with the domestic market. In this case, the SSM is triggered when the price of an import dips below the average monthly price of imports during the preceding three year period.
- 5 See “The Special Safeguard Mechanism: Findings From A Simulation Exercise”, by Raul Montemayor, ICTSD Information Note Series-Information Note 2, October 2007, <http://ictsd.org/i/publications/11208/>; “Implications of Proposed Modalities for the Special Safeguard Mechanism: A Simulation Exercise”, by Raul Montemayor, ICTSD Agricultural Trade and Sustainable Development Series-Issue Paper 10, November 2007, <http://ictsd.org/i/publications/11208/>; and “How Will The May 2008 ‘Modalities’ Text Affect Access To The Special Safeguard Mechanism, and the Effectiveness of Additional Safeguard Duties”, by Raul Montemayor, ICTSD Agricultural Trade and Sustainable Development Series-Issue Paper 15, June 2008, <http://ictsd.org/i/publications/12616/>.
- 6 In the Uruguay Round Agreement, countries were required to remove their quantitative and other non-tariff import restrictions and replace these with tariff equivalents through a process and formula called “tariffication”. Since the resultant tariffs were relatively high, these countries were required to allow a certain volume of imports of each “tariffied” product, called a tariff rate quota (TRQ), to enter the country at a preferentially low (TRQ or in-quota) tariff. Imports in excess of the TRQ would be assessed the regular or out-quota tariff.
- 7 Safeguard duties such as SSM cannot be imposed on TRQ imports. Only imports in excess of the TRQ can be subjected to SSM duties.
- 8 Most tariffs are “ad valorem” or based on the value (cost, insurance and freight or CIF) of an import. A ten percent ad valorem duty on an import costing \$500 would be \$50. Some countries however still use non-ad valorem duties such as specific duties; i.e., \$5 per ton irrespective of value, or variations thereof.
- 9 In the simulations, both volume and price SSM rules were assumed to apply and operate simultaneously, with the importing country using either a volume or price remedy, whichever was higher, in any given month. To isolate the behavior of the volume SSM, SSM price remedies were temporarily set to zero.
- 10 Countries are allowed to define their “implementation year” for each product; this may not be the same as the calendar year but must span twelve months.

- 11 See endnotes 5 and 6. In practice, TRQs could be imported at various times of the calendar year, depending on import prices, local demand, and other factors. Out-quota imports could occur even before TRQ imports are exhausted, such as when the local demand cannot be immediately satisfied by TRQ imports. However, it is impossible to determine when TRQ imports will actually take place; hence the simulation model assumes that all initial imports will be used to first fill up TRQ quotas before out-quota imports are undertaken.
- 12 As mentioned earlier, countries may voluntarily set their applied rates lower than their bound levels. In the simulations, it was assumed that such countries would be free to raise their “applied” rates to “bound” levels, if these were lower, before considering the use of SSM remedies. Notably, some countries have argued that any SSM remedy should be added to “applied” and not “bound” rates, as is currently provided in Paragraph 144 of Rev 4.
- 13 Refer to Section 4.3 for the discussion on cross-checks for volume SSM.
- 14 Bound tariffs that were committed by WTO member countries were to be applied to imports from all other WTO member countries, without discrimination, under the so-called “most favored nation” or MFN principle. However, many countries have also entered into regional and bilateral trade agreements wherein they agreed to impose lower-than-MFN tariffs on imports from their trading partners; such imports under special trade agreements are referred to in the study and in the negotiating text as non-MFN imports. Notably, Paragraph 138 of Rev 4 stipulated that only MFN trade will be considered in the application of the SSM. This implies that non-MFN imports will be excluded in the computation of triggers and in determining whether the triggers have been breached. SSM duties also cannot be imposed on non-MFN imports.
- 15 Under Paragraphs 129 to 131 of Rev 4, developing countries will be allowed to self-designate a certain number of products (twelve percent of tariff lines) as “Special Products” or SPs using indicators based on food security, livelihood security and rural development. These SPs would be subjected to lower-than-normal tariff cuts and up to five percent of SP tariff lines may enjoy zero cuts. However, the overall average cut for SPs should be eleven percent. In the simulations, it was assumed that developing countries will generally want to use the SSM for the same SPs which are sensitive and important for their food security and rural development objectives. Of course, the issue of whether SPs will also be allowed access to the SSM is still subject to negotiations. Some exporting countries have argued that their market access will already be imperiled since SPs will be subjected to lower, if not zero, tariff cuts, and will suffer even more if SSM remedies are additionally applied.
- 16 China’s access rate declined because of a rule (Paragraph 66 of Rev 4) exempting products of recently acceded members or RAMS whose tariffs were ten percent or less from any further tariff reduction. Since this meant that the bound rates for such products would be the same as their pre-Doha starting tariffs through the implementation period, no remedies could be made available when the caps were introduced.
- 17 The “current” bound rate is the bound tariff level prevailing during the year. Since most tariffs would be subjected to reduction during the implementation period, the current bound rate would usually go down each year.
- 18 These additional stipulations under W7 were supposed to apply only to instances when pre-Doha bound rates would be breached when applying SSM remedies. In the simulations however, they were applied as a general rule inasmuch as remedies under W7 were almost always higher than those available under Rev 4 if Paragraph 142 caps were applied.
- 19 In the sample table below, the months during which SSM was imposed between 2000 and 2002 are colored in red.

MONTH	ACTUAL IMPORTS			IMPORTS IN MONTHS W/O SSM			ADJUSTED IMPORT VOLUMES		
	2000	2001	2002	2000	2001	2002	2000	2001	2002
Jan	10	109	2	10	109	2	10	109	2
Feb	183	170	21	183	170	21	183	170	21
Mar	173	355	56	173	355	56	173	355	56
Apr	316	225	174	316	225	174	316	225	174
May	267	132	163	267	132	163	267	132	163
Jun	146	156	265	146	156	265	146	156	265
Jul	214	232	328	0	232	328	214	232	328
Aug	264	261	176	0	0	176	264	261	176
Sep	154	71	130	0	0	130	182	197	130
Oct	54	4	255	0	0	255	182	197	255
Nov	2	0	178	0	0	178	182	197	178
Dec	40	1	57	0	0	57	182	197	57
Total/Ave	1,822	1,717	1,806	182	197	150	2,303	2,429	1,806

The first adjustment is to set the import volumes during these SSM months to zero. The remaining months in each year are then averaged to come up with the proxy import volume for each year. For example, the proxy volume for 2000 is 182 (tons), which is the average for the six months from January to June 2000 when SSM was not imposed.

The zero volumes are then replaced with the corresponding proxy figures. For example, the 54 (tons) in October 2000 becomes 182, which is the proxy for 2000. However, if the actual import volume is higher than the proxy, the actual volume is retained. This is the case with July 2000 when the higher 214 (tons) figure is retained in lieu of the proxy of 182. The adjusted figures for each year are then added up and the totals for each of the three years are averaged to arrive at the pro-rated volume trigger.

- 20 Using the same set of data as in endnote 18, the import volumes in each SSM month are similarly set to zero. Instead of computing annual proxies however, the monthly volumes during all the remaining non-SSM months during the 36-month period are averaged to come up with a single monthly proxy - in this case, 171 (tons). This proxy figure takes the place of import volumes during the SSM months, except if the actual import volume is higher than the proxy (as in July and August 2000 and August 2001). The adjusted figures for each year are also then added up and the totals for each of the three years are averaged to arrive at the pro-rated volume trigger.

MONTH	ACTUAL IMPORTS			IMPORTS IN MONTHS W/O SSM			ADJUSTED IMPORT VOLUMES		
	2000	2001	2002	2000	2001	2002	2000	2001	2002
Jan	10	109	2	10	109	2	10	109	2
Feb	183	170	21	183	170	21	183	170	21
Mar	173	355	56	173	355	56	173	355	56
Apr	316	225	174	316	225	174	316	225	174
May	267	132	163	267	132	163	267	132	163
Jun	146	156	265	146	156	265	146	156	265
Jul	214	232	328	0	232	328	214	232	328
Aug	264	261	176	0	0	176	264	261	176
Sep	154	71	130	0	0	130	171	171	130
Oct	54	4	255	0	0	255	171	171	255

MONTH	ACTUAL IMPORTS			IMPORTS IN MONTHS W/O SSM			ADJUSTED IMPORT VOLUMES		
	2000	2001	2002	2000	2001	2002	2000	2001	2002
Nov	2	0	178	0	0	178	171	171	178
Dec	40	1	57	0	0	57	171	171	57
Total/Ave	1,822	1,717	1,806			171	2,257	2,197	1,806

- 21 WTO Committee on Agriculture, Special Session, JOB/AG/7, “G-33 Submission on the SSM: Pro-Rating”, 5 March 2010. See also TN/AG/GEN/30, “Refocusing Discussions on the Special Safeguard Mechanism (SSM): Outstanding Issues and Concerns on Its Design and Structure”, 28 January 2010.
- 22 Under the “cross-check” mechanism, the volume SSM cannot be imposed if domestic or import prices are not declining at the same time as an import volume surge.
- 23 WTO Committee on Agriculture Special Session, JOB/AG/3, “G-33 Submission on the SSM: Price and Volume Cross-Check Conditionalities”, 5 February 2010.
- 24 In comparison, Paragraph 140 of Rev 4 allowed for an imposition period of twelve months for most products except so-called “seasonal” products. The SSM could then be re-imposed for another period of twelve months. However, if the remedy was used for two consecutive periods, it would not be available in the next two succeeding periods. Rev 4 did not contain any spillover provision or limitation.
- 25 In the simulation model, the spillover period was set to twelve months to mimic a scenario where the volume SSM would be allowed to spill over to the next year without limit.
- 26 While the simulation used the calendar year as the implementation year, WTO member countries are free to designate a different twelve-month implementation period for any of their products.
- 27 Here, “thresholds” refer to specific percentages by which imports exceed the volume trigger, below or above which certain SSM remedies may or may not apply. For example, remedies may not be allowed unless imports breach the 120 percent threshold; i.e., imports exceed the trigger by more than twenty percent. Or, higher remedies may be allowed if the 140 percent threshold is breached.
- 28 If a certain product had a current tariff rate of thirty percent, and the cap was set to eight percentage points, then the maximum allowable SSM duty would be eight percent, thus bringing up the total duty to thirty eight percent. On the other hand, if the allowable SSM duty was one-third of the current tariff, or ten percent, the total duty would add up to forty percent. In the simulations on remedy caps, Senegal was allowed to exceed its pre-Doha starting tariffs by forty percentage points or forty points, whichever was higher. However, since W7 allowed a remedy of up to fifty percent of bound tariffs for surges exceeding 140% of the trigger, Senegal was assumed to have the option to apply this potentially higher remedy.
- 29 For example, if the maximum allowable remedy of fifty percentage points is added to a bound tariff of 15 percent, it would be equivalent to increasing the bound rate by an additional 333 percent. On the other hand, adding fifty percentage points to a 100 percent tariff would increase the bound rate by only fifty percent.
- 30 See endnote 9.
- 31 See endnotes 6 and 10.
- 32 See endnotes 3 and 11.
- 33 See endnote 11.
- 34 Refer to Section 5.4 for a discussion on cross-checks for price SSM.

- 35 See endnote 13.
- 36 See endnote 14.
- 37 As explained earlier, both volume and price SSM rules were assumed to apply and operate simultaneously, with the importing country using either a volume or price remedy, whichever was higher, in any given month. Volume SSM remedies were temporarily set to zero in order to isolate the behavior of the price SSM.
- 38 Here, the privilege given to LDCs like Senegal to breach their Doha bound rates by forty percentage points or by forty percent was again retained. However, if the adjustment in remedy caps yielded a higher remedy, it was assumed that Senegal would avail of the higher SSM duty.
- 39 A country may choose to apply either a volume or price SSM duty, but not both at the same time. It is assumed in the simulations that a country will choose the remedy that yields the highest safeguard duty on a per-shipment (monthly) basis.
- 40 The results from the simulations under the “low” and “medium” scenario were inflated by the performance of Senegal which, as an LDC, was allowed to exceed its Doha bound rates by forty percentage points or forty percent, whichever was higher.
- 41 WTO Committee on Agriculture Special Session, JOB/AG/4, “G-33 Submission on the SSM: Seasonality”, 5 February 2010.
- 42 WTO Committee on Agriculture Special Session, TN/AG/GEN/29, “G-33 Proposal on the Treatment of SSM Provided to the SVEs”, 10 February 2009. See also JOB/AG/6, “G-33 Submission on the SSM: Flexibilities for SVEs”, 4 March 2010.
- 43 Note that baseline parameter settings in Sections 4 and 5 were not the same as when conducting baseline simulations for Section 6. For example, the imposition period was reduced from twelve to six months in Section 6. This explains why the combined rates were sometimes lower than the individual results in Sections 4 and 5.
- 44 To recall, Paragraph 133 of Rev 4 set three tiers with different remedy levels: below 115%, 115 to 135%, and above 135% of the volume trigger. A re-imposition of the SSM could, for example, be allowed if an initial surge which fell within the second tier graduated into a surge of more than 135% of the volume trigger after the first period of imposition.
- 45 For example, a rule could be set such that remedial duties could not exceed twenty percentage points, provided this did not exceed 100% in ad valorem terms. Hence, if a country had a tariff of ten percent, it would be allowed a maximum SSM duty of only ten percentage points, which was equivalent to 100% over the current duty, and not twenty points, which would be 200% of the current tariff rate.
- 46 Hereafter the “import price”.
- 47 A shipment shall not be considered for purposes of paragraphs 135 and 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 the importing developing country Member.
- 48 The trigger price shall be publicly disclosed and available to the extent necessary to allow other Members to assess the additional duty that may be levied.
- 49 Hereafter the “reference price”. The reference price used to invoke the provisions of this paragraph shall be the average monthly c.i.f. unit value of the product concerned.
- 50 For the purposes of this provision a “product” is identifiable at the 6-digit level of the Harmonized System (HS) nomenclature, but with the understanding that this can entail a maximum of [4 - 8] tariff lines per product below that 6-digit level.

## ANNEX A. WORLD TRADE ORGANIZATION COMMITTEE ON AGRICULTURE (SPECIAL SESSION) REVISED DRAFT MODALITIES FOR AGRICULTURE TN/AG/W/4/REV.4 (6 DECEMBER 2008) EXCERPTS ON THE SPECIAL SAFEGUARD MECHANISM (SSM)

### I. DOMESTIC SUPPORT

.....

### II. MARKET ACCESS

.....

### D: SPECIAL AND DIFFERENTIAL TREATMENT

...

#### *Special Safeguard Mechanism (SSM)*

132. The SSM shall have no *a priori* product limitations as to its availability, i.e. it can be invoked for all tariff lines in principle. A price-based and a volume-based SSM shall be available. In no circumstances may any product be, however, subject to the simultaneous application of price - and volume-based safeguards. Nor shall there be application of either of these measures if an SSG, a measure under GATT Article XIX, or a measure under the Agreement on Safeguards is in place.

133. As regards the volume-based SSM, it shall be applied on the basis of a rolling average of imports in the preceding three-year period (hereafter "base imports"). On this basis, the applicable triggers and remedies shall be set as follows:

- (a) where the volume of imports during any year exceeds 110 per cent but does not exceed 115 per cent of base imports, the maximum additional duty that may be imposed on applied tariffs shall not exceed 25 per cent of the current bound tariff or 25 percentage points, whichever is higher;

(b) where the volume of imports during any year exceeds 115 per cent but does not exceed 135 per cent of base imports, the maximum additional duty that may be imposed on applied tariffs shall not exceed 40 per cent of the current bound tariff or 40 percentage points, whichever is higher;

(c) where the volume of imports during any year exceeds 135 per cent of base imports, the maximum additional duty that may be imposed on applied tariffs shall not exceed 50 per cent of the current bound tariff or 50 percentage points, whichever is higher;

(d) where, formally, these triggers could be met, but the absolute level of imports is manifestly negligible in relation to domestic production and consumption, remedies would not be applied.

134. Imports under any scheduled tariff rate quota commitment may be counted for the purpose of determining the volume of imports required for invoking the volume-based SSM (except where a volume increase is entirely attributable to a scheduled tariff rate quota increase under Doha implementation phasing), but no additional duty shall be imposed on imports within such tariff rate quota commitments.

132. As regards the price-based SSM, it shall be applicable where the c.i.f. import price<sup>46</sup> of the shipment<sup>47</sup> entering the customs territory of the developing country Member, expressed in terms

of its domestic currency falls below a trigger price<sup>48</sup> equal to 85 per cent of the average monthly MFN sourced price<sup>49</sup> for that product for the most recent three-year period preceding the year of importation for which data are available, 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 currency against such international currency or currencies for the three-year period referred to above.

133. The price-based SSM remedy shall apply on a shipment-by-shipment basis. The additional duty shall not exceed 85 per cent of the difference between the import price of the shipment concerned and the trigger price.
134. Developing country Members shall not normally take recourse to the price-based SSM where the volume of imports of the products concerned in the current year is manifestly declining, or is at a manifestly negligible level incapable of undermining the domestic price level.
135. The calculation of volume or price triggers, and the application of measures in accordance with the relevant provisions of this section, shall be on the basis of MFN trade only.
136. Any shipments of the product in question which, before the imposition of the additional duty, have been contracted for and were en route after completion of custom clearance procedures in the exporting country, either under the price- or volume-based SSM, shall be exempted from any such additional duty, provided that where a volume-based SSM may be applicable in the next twelve-month period, the shipment of the product in question may be so counted in that period for the purposes of triggering the SSM.
137. The volume-based SSM may be maintained for a maximum period of 12 months from the initial invocation of the measure, unless a seasonal product is involved, in which case the SSM shall apply for a maximum of six months or to cover the period of actual seasonality, whichever is the longer. For the next immediate (consecutive) period, the three year rolling average shall be inclusive of that immediately preceding period of imports when the SSM was in place. However, where this would have the effect of lowering the three year rolling average below the level which triggered the SSM in the initial period, the trigger level for the initial period shall apply. No product shall be subject to the volume-based SSM consecutively for more than two periods and where such consecutive application has occurred this may not be resorted to again before the elapse of a further two consecutive periods.
138. The operation of the SSM shall be carried out in a transparent manner and the basis upon which ongoing calculations of rolling averages of import volumes and prices shall be accessible to all Members so that they can be fully informed of the basis upon which any potential actions may be taken. Any developing country Member taking action shall give notice in writing, indicating the tariff lines affected by the additional SSM duty and including relevant data, to the Committee on Agriculture as far in advance as may be practicable or, where this is not possible, no later than 15 days after the implementation of such action. The Member taking action shall afford any interested Members the opportunity to consult with it in respect of the conditions of application of such action.

139. The above provisions on triggers and remedies apply subject to the limitation that the pre-Doha bound tariff is respected as the upper limit and shall prevail as such.
140. For least-developed country Members they may, nevertheless, apply the maximum remedy provided for above even if this would otherwise entail breach of a pre-Doha bound tariff, provided that the maximum increase over a pre-Doha bound tariff does not exceed 40 *ad valorem* percentage points or 40 per cent of the current bound tariff, whichever is higher. This would be provided that all other relevant conditions for application of the measure have been met.
141. [In the case of SVE's referred to in footnote 11 to these modalities, they may apply the maximum remedy provided for above even if this would otherwise entail breach of a pre-Doha bound tariff, provided that the maximum increase over a pre-Doha bound tariff does not exceed 20 *ad valorem* percentage points or 20 per cent of the current bound tariff, whichever is higher, for up to a maximum of (10-15) per cent of tariff lines in any given period. This would be provided that all other relevant conditions for application of the measure have been met.
142. For developing country Members other than those referred to in the preceding paragraph, they may apply the maximum remedy provided for above even if this would otherwise entail breach of a pre-Doha bound tariff provided that (a) the maximum increase over the pre-Doha bound tariffs would be no more than 15 *ad valorem* percentage points or 15 per cent of the current bound tariff, whichever is the higher; (b) the maximum number of products for which this provision would be invoked would be no more than 2-6<sup>50</sup> in any given period; and (c) this would not be permissible for two consecutive periods. All other provisions would be applicable.]
143. The relevant Articles of the Agreement on Agriculture shall be amended to reflect the above modalities.

## ANNEX B. WORLD TRADE ORGANIZATION COMMITTEE ON AGRICULTURE (SPECIAL SESSION) REVISED DRAFT MODALITIES FOR AGRICULTURE TN/AG/W/7 (6 DECEMBER 2008) SPECIAL SAFEGUARD MECHANISM

1. Based on constructive consultations to this point, we have made genuine progress on the SSM as relates to what happens in cases where it would mean going above the bound rate. And the progress that we have made, while even reaching something that I could describe as tantamount to convergence on some elements, has still been uneven. In other words, we have made real progress, but the unavoidable reality is that we are still short of a clean text, let alone actual agreement on key matters. That being so I could hardly pretend that there was something cooked and ready to go that could be inserted in the revised draft text.

144. But I could not leave things just like that, because we have manifestly moved on. The constructive engagement we have had did at least quarry out certain lines of direction and, one of these days, a solution is actually going to have to be found that works for everyone. We need something to work on in a spirit of getting to a conclusion. In that spirit, and based on what I have heard, the best I can suggest is the following as an effort to represent the elements of convergence that are emerging. It is not in final legal drafting form but could, hopefully, operate as a structure to get us to closure. Adjustments could obviously be made to the drafting below, but if this issue ever going to be resolved, my sense is that it something not a million miles from what is outlined below could be a way to create a springboard to closure.

145. The following shall be the basis upon which the SSM may be triggered for "above the bound rate":

*The volume-based SSM shall, subject to the conditions in sub-paragraph x below, be applicable within a twelve month reporting period. This twelve month period may be a marketing year, calendar year, fiscal year etc at the discretion of the Member concerned. But, once chosen, it is the binding basis for application.*

*The SSM shall become applicable when, within that twelve month period, the trigger levels, calculated in respect of the average of the preceding three years' imports, have been met. If, however, an SSM was in force during that three year period, the monthly average of the imports net of that period of SSM application shall be calculated and applied as the proxy imports for the months during which the SSM was in force, unless actual imports during its application were higher.*

*Where the volume of imports during any period exceeds 120 per cent but does not exceed 140 per cent, the maximum additional duty that may be imposed shall not exceed one-third of the current bound tariff or eight percentage points, whichever is the higher.*

*Where the volume of imports during any period exceeds 140 per cent, the maximum additional duty that may be imposed shall not exceed one-half of the current bound tariff or 12 percentage points, whichever is higher.*

*These remedies shall not normally be applicable unless the domestic price is actually declining. There may however be exceptional circumstances where the authorities have good reason to believe that there would be at least an imminent foreseeable decline but*

*may lack sufficiently reliable data to be in a position to verify that robustly at the time. If so, action may be taken in such exceptional circumstances, subject to an expedited review by a standing panel of experts in the event that this is requested. In any case, in the event that reliable data is subsequently available it shall be used and, if it does not verify decline, the measure shall be rescinded.*

*Once the SSM has been triggered, it may be applied for a maximum of [4/8] months and shall not be re-applicable thereafter until an equivalent period of months has elapsed.*

*If the SSM is not triggered until within [2/4] months of the end of any given twelve month period it may, however, be applicable into the next 12 month period provided that this is for no more than [2/4] months and that the maximum period of application and conditionality for reapplication is also respected.*

*The SSM shall not be applied to more than 2.5 percent of tariff lines in any 12 month period.*

146. I feel that the above indicates elements where there has been more manifest convergence emerging and I am relatively more optimistic that the above could be used as a robust enough working structure for getting to an agreement. The area below is less well advanced because the concept of any kind of pause is still more sensitive than other matters. At this point at least, there is still not as much emergent consensus as on some other elements and it may prove to be the case that it is intractable. There are some Members who would see no need to even go here. On the other hand I cannot ignore that this area has, for other Members, proved to be an important one which is perhaps all the more so because it is perceived to be the only possible way of allaying even to a small degree anxieties about seasonality

effects. I think it's useful to at least lay out some options to help to foster convergence, if the will is there. Some would like there to be no pause. Others would like to ensure that there can be no consecutive application at all. If there is to be a compromise the following are the best I can offer. They need not be mutually exclusive:

*[In the event that the SSM for seasonal perishable product tariff lines is triggered and applied in two consecutive twelve month periods such that its total period of application is 12 months or more, it may not be applied in (or spill-over into) the subsequent twelve month period.]*

*[There shall be a review after 2 years of the operation of the SSM as it applies to seasonal perishable product lines, with particular emphasis on the impact on developing country Members exports. The purpose of such a review will be to determine whether there is any disproportionate effect on seasonally traded products and, if so, to recommend ways and means to redress any such impact in a manner which is compatible with effective functioning of the SSM.]*

*[In the event that an SSM should be applied for three consecutive twelve month periods, the standing group of experts shall, on request by an affected Member, evaluate whether or not the measure is effectively functioning as a measure 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. They shall render their views and opinions including non-binding recommendations as appropriate.]*

147. I should also note the fact that there are other matters still requiring subsequent decision. It has not been feasible to turn to such matters in any detail since July because the working priority has been

to sort out the “above the bound rate” approach first.

- (a) Status of LDCs: Irrespective of a “general” solution, it has been the working hypothesis (no-one has objected) that LDCs will have a more flexible arrangement as was originally conceived in Rev.3, although the triggers and remedies were never settled and LDCs had sought greater flexibilities than in the Rev.3 text.
- (b) Status of SVEs: If there is a “general” solution found, is it to be

assumed that this is applicable to all developing countries including SVEs?

- (c) Status of “Under the bound rate”: Consultations subsequent to July indicated that a number of Members had areas in Rev 3 that they disagreed with as regards “under the bound rate” paragraphs. But it was recognised that this could not be progressed one way or another until “above the bound rate” was resolved. It is not clear how far reaching any changes might prove to be here.

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Founded in 1996, the International Centre for Trade and Sustainable Development (ICTSD) is an independent non-profit and non-governmental organisation based in Geneva. By empowering stakeholders in trade policy through information, networking, dialogue, well targeted research and capacity building, the Centre aims to influence the international trade system such that it advances the goal of sustainable development.