

AGRICULTURAL SUBSIDIES AND NEGOTIATIONS IN THE WTO DOHA ROUND

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A. INTRODUCTION

This paper, on request by Ecuador, is on the agricultural negotiations in the World Trade Organization's (WTO) Doha Round, with a special focus on subsidies. The paper begins with background sections on the WTO agriculture framework and the basic issues in the agriculture negotiations. Section D gives a brief analysis of the draft text of the Chair of the agriculture negotiations that was issued in December 2008. This is the draft that is considered to be the basis of the current negotiations. Section E gives information on the agricultural subsidies of the developed countries, especially the USA and European Union (EU), and their effects on developing countries, taking Mexico and Ghana as examples.

Section F deals with the issue of import surges in developing countries and their efforts to establish an effective special safeguard mechanism (SSM) to be used by developing countries. Section G then addresses some of the issues that Ecuador faces at the WTO and in the Doha Round. Section H concludes with the implications of the Constitution and the National Plan for Good Living for Ecuador's agricultural policies and positions in the negotiations, and makes some recommendations.. Finally the paper has two Annexes: Annex 1 has detailed tables linking the Constitution and the National Plan for Good Living (NPGL) to policies and positions in agriculture, while Annex 2 provides detailed information on the SSM negotiations.

B. WTO AGRICULTURE FRAMEWORK

The Uruguay Round brought back agriculture into the world trading system. Agriculture had for many decades been left out of the rules of the General Agreement on Tariffs and Trade (GATT) system, at the request of the developed countries, whose agriculture systems were uncompetitive. However the expected benefits to developing countries of this return of agriculture to the multilateral system have not been realized. There are many loopholes in the system that allow the developed countries to continue to subsidise and protect their agriculture, at the expense of the developing countries.

The WTO's Agreement on Agriculture (AoA) comprises rules in three areas -- market access, domestic support and export subsidies. In all these areas, the developed countries were expected to reduce their protection. In reality, however, the developed countries have been able to continue to maintain high levels of protection. Many of them set very high tariffs on several products; thus, even after the required 36% tariff reductions of the Uruguay Round, they remain prohibitively high. Domestic support has also remained very high; in fact, the total amount of domestic subsidies in Organisation for Economic Co-operation and Development (OECD) countries has in some years actually risen above the pre-WTO levels as there was an increase in permitted types of subsidies which more than offset the decrease in those subsidies that come under the disciplines. The export subsidies budget in developed countries is also to be reduced by only 36% under the Agreement.

On the export subsidy issue, there has been some progress, as the WTO's Hong Kong Ministerial conference in 2005 agreed that as part of the Doha deal, export subsidies of the developed countries would be eliminated by the end of 2013. However, presumably, this will be valid only if the negotiations conclude by that year.

On the question of domestic subsidies, there has been the most controversial debate. The AoA has a loophole allowing developed countries to keep up their total domestic support by shifting from one type of subsidy to other types of subsidy, while maintaining or even increasing the total amount of subsidies. Under the AoA are the following types of domestic support: (1) The Aggregate Measure of Support or AMS (widely termed the Amber Box), which is price-based and which is categorized as directly trade-distorting, (2) The de minimis support (certain amounts of domestic subsidy that are allowed, calculated as a percentage of the value of agricultural production); (3) the Blue Box (grants to farmers to assist them in setting aside production; which are considered trade-distorting but to a lesser degree than the Amber Box); and the Green Box (direct payments to farmers, and grants to maintain the environment, and other “indirect” subsidies), which is supposed not to be trade distorting, and there are no disciplines to limit the amounts that can be given to farms on this account.

However, in reality, the Blue and Green Box subsidies also have significant effects on the market and trade, and are thus also trade-distorting. They allow the farm to obtain parts of its revenue from different and new sources, and to remain in business, which otherwise it might not. Since the conclusion of the Uruguay Round, there has been a significant shift of US domestic support from the Amber Box to the Green Box. The EU is also following this trend.

Developing countries have expressed concern that what the major developed countries are doing is not so much to reduce their actual domestic subsidies, but merely shifting the subsidies from one box to other boxes.

Green Box subsidies as an escape from need to reduce agriculture subsidies

Some studies have given evidence that the Green Box (GB) subsidies are after all trade-distorting. The GB subsidies are supposed to be non trade-distorting, because they are said to have no or minimal effect on the market or on world agricultural trade.

Present WTO rules do not have disciplines to cap or reduce the GB subsidies. In the current Doha talks, the developed countries have successfully insisted that there be no new rules that would place a cap on the GB subsidies.

Developing countries in the WTO have long been suspicious of the claim made by the developed countries that the GB is "non trade distorting". They have expressed concern that there will merely be "box-shifting" by the major subsidising countries, i. e. reducing subsidies that are "trade distorting" (and thus subject to caps and reduction) while increasing their subsidies in the Green Box.

A study by UNCTAD¹ described the ways in which GB subsidies distort the agricultural trade and production system. It also provides estimates showing the large extent of this distortion. "Recent research shows that current Green Box subsidies do not meet the criterion of 'no or at most minimal' trade-distorting effects and that the so-called 'decoupled' programmes under Green Box do in fact distort trade," said the report.

The paper's most striking conclusion is that if the Green Box (GB) subsidies were reduced or removed, the developed countries such as the US, EU, Canada, Switzerland and Japan would suffer major declines in their agricultural exports. Their production would also be reduced.

¹ UNCTAD India, "Green Box Subsidies: A Theoretical and Empirical Assessment"

The paper states that studies have shown that the so-called 'decoupled' programmes under GB could distort trade. A large amount of money paid to farmers, decoupled with current production, nevertheless is likely to distort trade and production because of the wealth and risk effects associated with it.

Other important channels through which direct payments and insurance programmes can affect output are through their effects on capital and labour markets. Programmes that reduce income variability can increase farm investment by lowering the risk of loan default, thereby increasing rural credit availability. Investment aid takes different forms in different countries. In France and Germany it is used to a large extent to subsidize interest rates for farmers. French farmers, for instance, paid 274 million euro less in interest in 2003 than they would have done without the assistance.

The paper stresses that recent research has identified various ways through which GB subsidies can affect agricultural trade and production through wealth and risk effects, cost effects, insurance effects, expectation effects and productivity increases.

The developed countries' subsidies enable their farm products to be sold locally and also exported, often at levels below the production cost. Farmers in developing countries lose export opportunities and revenues from having their market access blocked in the developed countries that use subsidies and also in third countries. They also often lose part of their own domestic market to the artificially cheap imports. In recent years, many developing countries have experienced surges in imports of many agricultural products. Often, imports were artificially cheapened by domestic and/or export subsidies.

C. DOHA ROUND AGRICULTURE ISSUES

In the Doha negotiations, the basic framework for establishing the negotiating modalities for agriculture was agreed to at a mini-Ministerial meeting in July 2004, and endorsed by the General Council.

Two main issues are in the framework: (1) subsidies and (2) market access (mainly tariff cuts, and special safeguard mechanism for developing countries).

The negotiations since then have mainly been an elaboration of this framework.

Domestic subsidies

In the domestic subsidy aspect, a key concept that has emerged is the overall trade-distorting domestic support (OTDS), comprising the AMS or amber box, the blue box and the de minimis support (a minimum of domestic support that is provided). The Green Box subsidies are excluded from OTDS. Much of the Doha discussion since July 2004 has been on the maximum OTDS that the developed countries should be allowed.

This framework gives the EU and US considerable leeway to (1) move trade-distorting subsidies from the Amber Box to the Blue Box and de minimis in order to make fuller use of their total allowed TDS; (2) make creative use of the Green Box which has no limits and has loose criteria at present, and thus enable some subsidies that are in effect trade-distorting to be counted as non-trade-distorting subsidies.

The level of the actual OTDS is presently far below the level of total allowed TDS for the US and the EU. Therefore the developed countries can afford to reduce the level of allowed TDS significantly, before the cut reaches the level where the present actual TDS is affected. In the informal language of WTO negotiations, this would mean the US and EU would only cut “water” (i.e. the difference between allowed and actual subsidies) and not their actual subsidies.

Market Access

On market access, it has been agreed that tariffs be cut according to a “tiered formula” in which there are four bands according to tariff ranges, with the band of highest tariffs to be cut by the highest percentage, and so on. The bands are different for developed and developing countries, and the latter would have lower tariff cuts (two thirds of the reduction rates of developed countries). In the draft modalities issued by the Chair of the agriculture negotiations in December 2008, the developed countries’ reduction rates are as follows: for tariffs in the tier of 0-20% the tariff cut is 50%; for the tier 20-50% the cut is 57%; for the tier 50-75% the cut is 64%; and for the tier of tariffs above 75%, the cut is 70%. Developed countries also have to undertake an overall minimum average cut of 54%.

For developing countries, the tariff reductions are as follows: For tariffs within the tier of 0-30%, the cut is 33%; within the 30-80% tier the cut is 37.6%; within the 80-130% tier the cut is 42.2% and within the tier of tariffs above 130% the cut is 46.2%. The maximum overall average cut for developing countries is 36%, and the cuts within the tiers can be adjusted if necessary so that the maximum of the average cut is 36%. The least developed countries are exempted from any tariff reduction, while small, vulnerable economies” do not have to cut their tariffs according to the tiered formula, but are to be subjected to more lenient treatment in tariff reduction.

The market access outcome is complicated by the introduction of a category of tariff lines known as “sensitive products” and “special products”, which are allowed to have treatment that is more lenient (i.e. result in lower tariff reductions) than if the cuts in the tiered formula are adhered to. In the December 2008 text of the Chair, developed countries can designate 4% of their agricultural tariff lines as “sensitive products”, whose tariff reductions can deviate by one-third, or half or two-thirds from the tiered formula rates. However some “compensation” for this leniency has to be made through an expansion of tariff quotas for those products that are selected to be sensitive products. Developing countries can also make use of “sensitive products”: they can have one third more tariff lines than the developed countries to be designated as sensitive products.

Developing countries have also been fighting to establish two “special and differential treatment” elements in market access: “special products” (SPs) and a special safeguard mechanism (SSM). These elements are championed by the Group of 33 (G33) developing countries.

On special products, the G33 have proposed that developing countries can designate a certain percentage of their agricultural products as special products. The Chair’s December 2008 draft proposed that 12% of tariff lines can be designated as SPs, that 5% of tariff lines can be allowed zero tariff reduction, while on average the tariff cut for SPs would be up to 11%.

On SSM, the G33 developing countries with defensive interests have proposed that developing countries be allowed to defend their domestic farmers from being damaged by import competition, by

establishing a special safeguard which does not need to follow the normal safeguard procedures in the WTO. In the SSM, a developing country can take safeguard action without having beforehand to show injury to small farmers and to relate this to imports as the cause. Under the SSM, action in the form of imposing an additional tariff can be triggered when either the price of the import goes below a certain threshold, or the volume of import increases above a certain threshold.

While the WTO membership has agreed to the establishment of a SSM for use by developing countries, those members with an export interest (including the United States, Australia and some agricultural-exporting developing countries) have proposed many restrictions to the use of the SSM, such as that the change in price or volume of import has to be large before the SSM can be used, and that the SSM can be used on only a small number of products at any one time and only for a limited duration. They also proposed that the additional duty to be imposed, once the SSM is triggered, be limited; in particular that only in exceptional circumstances can the new duty exceed the pre-Doha bound duties.

Conclusion

In conclusion, there are many imbalances in the existing WTO rules on agriculture, as the markets of developed countries are still extremely protected, and the rules were crafted in such a way that enabled this continued protection, especially in domestic subsidies. Meanwhile, the developing countries cannot compete with the developed countries in subsidies due to their financial constraints, but they have significantly liberalised their agricultural imports and many have experienced an increase in import surges, which have had damaging effects on local production. The Doha Work Programme was supposed to correct this imbalance, by addressing the loopholes, and especially by cutting the actual (and not just the allowed) domestic subsidies of developed countries.

D. THE AGRICULTURE MODALITIES PAPER (6 DEC 2008)

On 6 December 2008, the Chair of the WTO's agriculture negotiations issued a paper on modalities of the agriculture negotiations. This is still used as the main basis for further negotiations. This section discusses some of the key elements of this paper.

Overall trade distorting domestic support (OTDS)

In the Chair's text, the allowable OTDS for the US is to be cut by 70%. Thus the present \$48.3 billion allowable level is cut to \$14.5 billion. The \$14.5 billion level is far below the estimated 2007 actual OTDS of \$7-8 billion. The US actual or applied OTDS level in 1996-97 was also \$7 billion before rising to \$19 billion in 2005 (according to the US data notified to the WTO) before dropping to \$11 billion in 2006 and \$8 billion in 2007 (according to G20 estimates).

Thus the proposed \$14.5 billion allowable level is double the 2007 level, or even the 1996-97 level, allowing the US to have a lot of "water" to increase from the \$7- 8 billion level.

The allowable OTDS for the EU is proposed to be cut by 80%. This is in line with what the EU has said it would do (i.e. to be 10 points higher than the US). The EU's present allowable OTDS is Euro

110.3 billion. A cut of 80% would bring it to Euro 22 billion.

In 2004 the EU's applied level was Euro 57.8 billion (according to Canadian simulations in a WTO paper). According to one researcher, the estimated level in line with the EU's own Common Agricultural Policy (CAP) reform would be Euro 27 billion in 2008, and according to another estimate it is expected to drop to Euro 12 billion at the end of the CAP reform in 2014. Thus the cut to Euro 22 billion, through it appears to be large, would allow for "water" vis-à-vis what is planned.

The lowering of the US' and EU's applied OTDS of recent years has been accompanied by a rise in their Green Box support (which is not part of the OTDS). While actual OTDS is cut, subsidies are shifted to the Green Box and total domestic support may not decline.

Recent studies have exposed that Green Box support can be and has been trade and production distorting. The Chair's new text proposes some changes to the Green Box, but these do not alter the basic elements, especially that there is no cap on the Green Box and these subsidies can increase without limit in the future.

Thus the cuts in allowable OTDS for US and EU may appear large (70%, 80%) but in fact will not reduce applied or planned reductions in OTDS and moreover these will be offset by an increase (in the case of the EU) in the Green Box.

An objective conclusion would be that the OTDS figures of 70% cut for the US and 80% cut for the EU are not adequate as they do not constitute effective and substantive or real cuts. In particular, the \$14.5 billion OTDS for the US is not adequate. Above all, the \$14.5 billion figure cannot be used as a "trigger" or reason to demand such high obligations from developing countries in agriculture, services and non-agricultural market access (NAMA).

Sensitive products

Many developing countries including those in the G20 have been demanding a tariff cap of 100% for developed countries in agriculture. This was opposed by some developed countries. Some of their agricultural tariffs exceed 200 to 300%, with the highest tariff at over 1,500%.

As a compromise, the Chair's new text allows the sensitive products of developed countries to exceed the 100% cap. These are the products most likely to have very high tariffs. Moreover the developed countries can also designate 1% of tariff lines that are not sensitive products to have tariffs above 100%. Therefore the sensitivities of developed countries are catered for.

Another sensitivity catered to is that developed countries can have "sensitive products" which can deviate significantly (by one to two thirds) from the formula cut. The number of allowed products in the paper is 4% with an additional 2% (for countries where 30% of products fall into the top tier of the formula. Developed countries have to "pay" for the reduced tariff cuts by the expansion of tariff quotas in the sensitive products.

Developing countries can also make use of sensitive products, with one-third more in numbers (5.3 or 8%). The deviation from full formula cut is the same as for developed countries.

Special Products

The majority of developing countries, championed by the G33, have argued for more lenient treatment of their “special products” to promote their food security and farmers’ livelihood concerns, arguing that SPs should not be subjected to tariff cuts (or at most have minimal cuts) especially since developed countries’ subsidies continue to distort the market.

The G33’s amended position was for at least 20% of tariff lines to be self designated as SPs (with half of that having zero cut). The G33 then made concessions in mid-2008 with a 2-tier system (one tier of zero cut, 2nd tier with average 12% cut).

In the Chair’s text (which followed a proposal by the WTO Director General) only 12% of tariff lines can be special products . Within the 12% tariff lines, 5% can have zero cut, but the 12% as a whole will have an average cut overall of 11%.

This is far from the original G33 position of at least 20% of tariff lines as SPs, with half of that having zero cut, a quarter having 5% cut and a quarter having 10% cut.

On top of this, the developing countries have to cut non-SP tariffs by a significant extent. In the Chair’s text, tariffs above 130% are cut by 46.7%, tariffs in the 80-130% range are cut by 42.7%, tariffs in the 30-80% range are cut by 38% and tariffs below 30% are cut by 33.3%. The overall maximum average cut is set at 36%, which is much higher than the Uruguay Round average cut of 24%.

Special Safeguard Mechanism (SSM)

The Chair’s paper recognises SSM to be a very sensitive issue, as it has the reputation of being the deal-breaker at the July 2008 mini Ministerial. It treats the main SSM issue in the main text, and places in another document the most sensitive questions of whether the extra SSM duty can be used to exceed the pre-Doha (i.e. Uruguay Round or accession) levels, and if so on what conditions and with what remedy (i.e. what extra duty is allowed).

The Chair’s text continues to specify so many conditions on the use of the SSM as to render it operationally ineffective. The SSM will in name help developing countries’ farmers but in practice it will not, thus giving a false impression that livelihood and food security concerns are taken care of.

The major problem with the Chair’s draft is that it severely restricts the ability of SSM to bring the applied tariff to above the current (the Uruguay Round or the pre-Doha) bound levels, and to the extent necessary to fulfil its task, i.e. to be a special safeguard so as to avoid losses to local farmers and displacement of their products.

The Chair’s text has a two-tier volume trigger, with one tier being a volume increase of 120-140% and the second tier being over 140%. In tier one, the maximum additional duty shall not exceed one third of the current bound tariff or 8 percentage points (whichever is higher). In the second tier, the maximum additional duty shall not exceed half the current bound tariff or 12 percentage points, whichever is higher.

The remedies remain extremely restrictive as this low level of extra duty allowed will in many cases be insufficient to address the problem of import surges or declining import prices.

Therefore the objective of SSM – to protect food security and farm livelihoods by effectively addressing the problem of import surges and price declines – will not be met in these many cases.

The normal safeguard (i.e. the Agreement on Safeguards in the WTO) and the present Special Agricultural Safeguard (SSG) do not have any limit on whether the additional safeguard duty can exceed the duty level of the previous Round. By having such a condition, the SSM becomes weaker than the normal safeguard or the SSG, thereby erasing its purpose, which is to be special.

Further, there are many other conditions placed on when the volume-based SSM can be used and on the duration it can be in place, if the remedy were to exceed the pre-Doha rates.

Firstly, the Chair has placed the condition that “these remedies shall not normally be applicable unless the domestic price is actually declining”. This implies that the use of the volume trigger is conditional on the second trigger (price decline) being also present.

Secondly, once the volume-based SSM is triggered, it can be applied for only a maximum of 4/8 months (the figure is to be negotiated) and shall not be re-applicable thereafter until an equivalent period has elapsed.

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

Fourthly, the SSM shall not be applied to more than 2.5% of tariff lines in any 12 month period. There is no such limitation in the normal safeguard nor the present SSG.

In the Chair’s main text, in the section on SSM, which deals with the situation where the extra duties do not lead to the pre-Doha bound rates being exceeded, there are other problematic conditions imposed, even for this situation.

Firstly, there is a restriction on the remedy for the price-based SSM. Para 136 of the paper says that the additional duty shall not exceed 85% of the difference between the import price and the trigger price. There is no such restriction in the normal safeguard or the SSG, and it seriously limits the usefulness of the SSM.

Secondly, para 137 also imposes a cross-checking mechanism in the price-based SSM. Para 137 says that developing countries “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.” Like the cross-checking for the volume-based trigger, this goes against the mandate that either a price-based or a volume-based trigger can be used.

Thirdly, the paper forbids the use of the SSM for imported goods related to bilateral free trade agreements (FTAs). Para 138 says that the calculation of triggers and the application of measures “shall be on the basis of MFN trade only.” In an earlier draft, the Chair had agreed that the SSM

mechanism can also apply to FTA-related products if the country had, with consistency, also done its calculations with the inclusion of the FTA products. The G33 has also insisted on the inclusion of FTA products. But the Chair's proposal met with opposition from exporting countries, and he has reversed his previous position, to the detriment of the SSM's utility. At the least, the Chair could have remained silent on this point. According to a trade expert, silence on this issue would allow the country the choice of making use of the SSM for FTA imports, unless the relevant FTA explicitly prohibits the use of the SSM.

All these and other conditions severely limit the usefulness of the SSM, and makes even this limited use very cumbersome, such that developing countries will be discouraged from using it.

[Section F provides more background information on the SSM issue and Annex 2 also provides additional analysis of the SSM and the text].

E. EFFECTS OF DEVELOPED COUNTRIES' SUBSIDIES ON DEVELOPING COUNTRIES

The agricultural subsidies of developed countries remain high, and have affected the developing countries in various ways.

According to the OECD's estimates², the subsidies given to farm producers in all OECD countries totalled US\$252 billion in 2009, which is 22% of the total value of gross farm receipts in that year. This is about the same level as in 2007 and 2008. The level of support is even higher than this average in some countries; in 2006-08, it was 27% in the EU, 49% in Japan, 60% in Switzerland and 62% in Norway (OECD 2009, p17).³ The level of support is very high in certain products; in the case of rice, commodity-specific support amounted to 60% of total producer rice receipts in 2006-08 (OECD 2009, p16).

Other types of support include general services support (including research and development, infrastructure and marketing and promotion) which totalled US\$95 billion and consumer support in 2009. If all these three items are included, the total support estimate was \$384 billion in 2009, which is higher than the \$362 billion in 2007.

As a result of these high subsidies, the OECD farmers could receive farm receipts 27% higher in 2008 than if they had not been supported by policies.⁴

Most of the subsidies in US and many European countries go to the bigger and richest farms. Data from the Environment Working Group⁵ show that the US gave out \$246.7 billion in subsidies in 1995-2009. 62% of farmers did not collect subsidy payments. In that period, of those that did get the subsidies, the top 10% collected an average of \$29,658 per year or 74% of all subsidies; the bottom 80% collected \$572 per year.

² OECD (2010), Agricultural policies in OECD countries, at a glance.

³ OECD (2009), Agricultural policies in OECD countries: Monitoring and evaluation.

⁴ OECD (2009), p43.

⁵ EWG's Farm Subsidy Database - <http://farm.ewg.org>

According to the EWG database, in the US gave out payments totalling \$4.1 billion for corn production, \$2 billion for wheat, \$2 billion for soyabean, \$1.6 billion for cotton and \$440 million for rice. (See Table 1).

Table 1: Top agricultural subsidy programs in the United States, 2008

Rank	Program (click for top recipients, payment concentration and regional rankings)	Number of Recipients 2008	Subsidy Total 2008
1	Corn Subsidies**	730,165	\$4,194,744,978
2	Disaster Payments	412,032	\$2,063,638,823
3	Soybean Subsidies**	561,169	\$2,048,279,911
4	Wheat Subsidies**	621,346	\$2,045,784,321
5	Conservation Reserve Program	456,143	\$1,899,243,083
6	Cotton Subsidies**	130,632	\$1,614,592,913
7	Env. Quality Incentive Program	80,202	\$748,418,523
8	Rice Subsidies**	32,248	\$439,775,626
9	Livestock Subsidies	210,986	\$334,725,625
10	Sorghum Subsidies**	250,353	\$314,296,781
11	Tobacco Subsidies	60,442	\$210,697,776
12	Peanut Subsidies**	18,499	\$197,425,655
13	Barley Subsidies**	133,580	\$123,387,418
14	Sunflower Subsidies**	29,964	\$83,991,428
15	Wetlands Reserve Program	1,044	\$59,652,661
16	Canola Subsidies**	10,076	\$32,360,164
17	Dairy Program Subsidies	1,744	\$12,840,964
18	Oat Subsidies**	189,249	\$8,688,454
19	Flax Subsidies**	5,558	\$5,743,781
20	Wool Subsidies	10,670	\$3,981,099

Source: Environment Working Group, US.

In Europe, European Commission statistics show that in 2004, US\$36 billion (€28.2bn) was paid out in direct subsidies out of a total Common Agricultural Policy (CAP) budget of \$58bn (€45.6bn) – and the biggest 7% of Europe’s producers obtained more than half of these payments, according to Oxfam⁶. The EU paid its biggest 2,460 farmers on average \$667,000 (€524,000) each, or \$1.7bn (€1.3bn) in total. In Germany, 14% of the biggest farm producers got 65% of all payments, and 1,510 individual producers got \$1bn (€802m) between them; In France, 29% of the biggest farm producers got 72% of all payments, and 20 individual producers got \$12.5m (€9.85m) between them; In the UK, 31% of the biggest farm producers got 84% of all payments, and 460 individual producers got \$269m (€211m)

⁶ Oxfam, G8 subsidies contributing to WTO crisis, Press Release 11 July 2006

between them; and In Italy, 1.6% of the biggest farm producers got 34% of all payments, and 200 individual producers got \$169m (€133m) between them.

Subsidies for EU poultry exports

An example of European subsidies is in the poultry sector. The subsidies provided for exports of EU-produced chickens are massive. The subsidies include export refunds for poultry meat, and domestic subsidies for the feed (cereals and protein feed) for poultry that constitute over half the cost of production of the poultry.

According to estimates made by Berthelot,⁷ in 2002, 15 EU countries produced 9.010 million tonnes of poultry meat, and 1.147 million tonnes were exported, at a value of Euro 928 million, or an average of Euro 809 per tonne. There was Euro 90.5 million in refunds on poultry meat exports. The direct payment to farmers for cereals that were fed to the exported poultry was Euro 139.4 million. The value of protein feed in poultry meat exports was Euro 61.6 million. Thus the total domestic subsidy in poultry feed was Euro 201 million. This coupled with the export refund added up to a total of Euro 291.5 million of subsidies for exported poultry meat. Thus, the value of exported poultry was Euro 928 million while total subsidies obtained by producers was another Euro 291.5 million. Per tonne the export value was Euro 809 while total subsidy was Euro 254.

Though this provides a picture of the high extent of subsidies, allowing the price to be lower than what it would have been if there had not been any subsidy, the degree of dumping is even higher. As pointed out, much of the poultry meat exported to Africa comprises parts of the poultry that are not in demand in Europe and that would thus have had little value in the home markets. European producers and traders can thus afford to sell these poultry parts even more cheaply abroad.

European subsidies for tomato

Another example of European farm subsidies is in the tomato sector. The subsidies are in various categories. In 2004, budget appropriations to support tomatoes amounted to Euro 965 million, made up of export refunds, compensation for withdrawals and buying in, operational funds for producer organisations and production aid for processed tomato (see Table 2).

⁷ Jacques Berthelot (2006), Feed subsidies to EU and US exported poultry and pig meats.

Table 2: EU subsidies related to tomato: 2004 Appropriations

Type of subsidy	Appropriations 2004 (euro)
Export refunds on fruit and vegetables	41,000,000
Compensation for withdrawals and buying-in	82,000,000
Operational funds for producer organisations	543,000,000
Production aid for processed tomato products	298,000,000

Source: ActionAid International (2005), Trade Traps (2005:p16). Data from EU DG Budget 2005.

There are at least three adverse effects of the developed countries' subsidies on farmers in developing countries: (1) They are unable to export to the subsidising developed countries' markets. (2) They are unable to be competitive in third markets because the developed countries' products are sold artificially cheaply; (3) They have to compete in their own local markets with subsidised products coming from developed countries, and their market share, incomes and livelihoods are adversely affected.

There are now many case studies of the incidence and damaging effects of import liberalisation on local communities and rural producers in developing countries. These studies show how farmers in many sectors (staple crops like rice and wheat; milk and other dairy products; vegetables and fruits; poultry; sugar) have had their incomes reduced and their livelihoods threatened by the influx of imports. The problems caused to small rural producers in developing countries are now very widespread.

The following are some examples of these adverse effects.

Mexico farmers affected by US exports under NAFTA

A recent study by Timothy Wise (Tufts University)⁸ analysed U.S.-Mexico agricultural trade under the North American Free Trade Agreement (NAFTA) under which Mexico reduced its tariffs on food imports. The results were an increase in U.S. exports, a drop in Mexican producer prices, and a drop in Mexican food production. For the period 1997-2005 the study calculated the extent to which Mexican

⁸ Timothy Wise (2010), Who pays for agricultural dumping? Farmers in developing countries (<http://triplecrisis.com>)

producer prices were lowered by U.S. dumping, and then estimated how much more Mexican producers would have earned if they had received non-dumping prices – at least high enough to cover U.S. costs of production.

The study showed that Mexico was flooded by US imports. The eight products studied all saw significant growth in U.S. exports, from the 159% increase in soybean exports to the 707% increase in pork exports. All eight products showed positive dumping margins – 5-10% for the meats, 17-38% for the crops. For all eight products, real producer prices in Mexico fell dramatically, with real 2005 prices 44%-67% lower than their levels in the early 1990s. Mexican production fell for all the crops except corn, and rose significantly for meats, reflecting the rising demand for meat-based protein in the Mexican diet. Import dependency increased dramatically for all products.

The study calculated the cost to Mexican producers of these dumping-level prices. It estimated the nine-year cost at \$12.8 billion (in 2000 US\$). The annual losses are more than 10% of the value of all Mexican agricultural exports to the United States. The losses from U.S. dumping surpass the total value of Mexico's annual tomato exports to the United States, widely touted as Mexico's biggest NAFTA success story in agriculture.

Corn farmers suffered the highest losses. U.S. exports increased 413%, arrived at prices 19% below production costs, and real producer prices in Mexico declined 66%. Mexican corn farmers suffered losses of \$6.6 billion over the nine-year period, over \$700 million per year. These losses amount to \$99/hectare per year.

An estimated 2.3 million people have left agriculture in a country desperate for livelihoods and food dependency has risen dramatically, which cost Mexico dearly when commodity prices spiked in 2006-8.

According to Wise: “Mexico certainly serves as a warning to developing countries considering agricultural trade liberalization. The case also highlights the weakness of international rules for defining and disciplining agricultural dumping. That weakness, and the vulnerability of developing-country farmers to import surges, makes all the more reasonable developing-country demands in the stalled Doha Round negotiations for strong Special Product measures to protect key food crops and effective Special Safeguard Measures to protect against import surges. Until agricultural dumping can be disciplined effectively, developing countries must retain the policy space to defend themselves.”

Ghana rice, tomato, poultry affected by subsidised imports from US, Europe

Ghana is an example of an African country whose agriculture sector has been badly affected by reduction of tariffs and the surge of imports of highly subsidised food from the US and EU.

The policies of food self-sufficiency and government encouragement of the agriculture sector (through marketing, credit and subsidies for inputs) had assisted in an expansion of food production (for example in rice, tomato, poultry). The policies were reversed starting from the mid-1980s, and especially in the 1990s. The fertilizer subsidy was eliminated, and its price rose very significantly. The marketing role of the state was phased out. The minimum guaranteed prices for rice and wheat) was abolished, as were many state agricultural trading enterprises and the seed agency responsible for producing and distributing seeds to farmers, and subsidized credit was also ended.

Applied tariffs for most agricultural imports were reduced significantly to the present 20%, even though the bound rate was around 99%. This, together with the dismantling of state support, led to local farmers being unable to compete with imports that are artificially cheapened by high subsidies, especially in rice, tomato and poultry.

Rice output in the 1970s could meet all the local needs, but by 2002 imports made up 64% of domestic supply. Rice output in the Northern region fell from an annual average of 56,000 tonnes (in 1978-80) to only 27,000 tonnes for the whole country in 1983. In 2003, the US exported 111,000 tonnes of rice to Ghana. In the same year, the US government gave US\$1.3 billion subsidies for rice. A government study found that 57% of US rice farms would not have covered their cost if they did not receive subsidies. In 2000-2003 the average costs of production and milling of US white rice was US\$415 per tonne, but it was exported for just \$274 per tonne, a price 34% below its costs.

Tomato was a thriving sector, especially in the Upper East region. As part of a privatization programme, tomato-canning factories were sold off and closed, while tariffs were reduced. This enabled the heavily subsidized EU tomato industry to penetrate Ghana, and this displaced livelihoods of tomato farmers and industry employees. Tomato paste imported in Ghana rose from 3,200 tonnes in 1994 to 24,077 tonnes in 2002. Local tomato production has stagnated since 1995. Tomato-based products from Europe have made inroads into African markets. In 2004, EU aid for processed tomato products was \$298 million euros, and there are many more millions of euros in indirect aid (export refunds, operational funds for producer organisations, etc).

Ghana's poultry sector started its growth in the late 1950s, reached its prime in the late 1980s and declined steeply in the 1990s. The decline was due to withdrawal of government support and the reduction of tariffs. Poultry imports rose by 144% between 1993 and 2003, and a significant share of this were heavily subsidized poultry from Europe. In 2002, 15 European countries exported 9,010 million tonnes of poultry meat for Euro 928 million, at an average of Euro 809 per tonne. It is estimated that the total subsidy on exported poultry (including export refunds, subsidies for cereals fed to the poultry, etc) was Euro 254 per tonne. Between 1996 and 2002, EU frozen chicken exports to West Africa rose eight fold, due mainly to import liberalization. In Ghana, the half million chicken farmers have suffered from this situation. In 1992, domestic farmers supplied 95% of Ghana's market, but this share fell to 11% in 2001, as imported poultry sells cheaper.

In 2003, Ghana's parliament raised the poultry tariff from 20% to 40%. This was still much below the bound rate of 99%. However, the International Monetary Fund (IMF) objected to this move and thus the new approved tariff was not implemented. The IMF representative in Ghana told Christian Aid that the IMF pointed out to the government that the raising of tariffs was not a good idea, and the government reflected on it and agreed. Many farmers' groups and non-governmental organisations (NGOs) in Ghana have protested about this to the government.

F. IMPORT SURGES AND THE SPECIAL SAFEGUARD MECHANISM FOR THE DEVELOPING COUNTRIES

One of the most critical issues being negotiated in the World Trade Organization's Doha Work Programme is the establishment of a Special Safeguard Mechanism (SSM) within the WTO's Agreement on Agriculture.

The SSM is one of two new instruments that many developing countries with mainly defensive interests in agriculture are advocating in order to defend their triple concerns of food security, farmers' livelihoods and rural development. The other instrument is the concept of "Special Products" (SPs), i.e. that products important for food security, farmers' livelihoods and rural development, should be subjected to no or low tariff reductions in the Doha Work Programme.

Both instruments have emerged from the concern of these developing countries that increased imports and import surges are affecting the livelihoods of local farmers as many of their products have been overwhelmed by cheaper imports.

The SSM is a tool to enable developing countries to raise their tariffs above the bound rates in the event of a fall in price of the imported product or an increase in volume of the imported product, beyond certain levels. The increase in tariffs is meant to result in maintaining the import price (or at least to ensure that the increase will be moderated) so that the local agricultural products will not be adversely affected (or at least not affected to the same degree as if no action were taken).

The group leading the advocacy for SP and SSM is the Group of 33, which comprises more than 40 developing countries in the WTO.

However, although all WTO members have in principle accepted that a SSM will be established, some developed countries (particularly the United States) and some developing countries with an export interest in agriculture (such as Thailand, Argentina, Paraguay, Uruguay) have sought to restrict the use of the SSM, for example by limiting the number of times it can be used, and by limiting the remedy (i.e. the degree to which the SSM import tariffs can be raised).

While the G33 argues that the SSM must be simple to use and effective in that it can provide an adequate remedy to the threat of import surges, the proposals of the opposite camp would seriously limit the ability of developing countries to make use of the instrument (and when they do make use of it, to limit the extent to which it can be useful in terms of controlling the import price fall or the import volume surge).

The proposed SSM is seen as an important tool for developing countries to safeguard their vital agriculture sector for purposes of food security, livelihood security and rural development. It is especially needed because there are continuing distortions in the global agricultural market, caused by export subsidies and domestic subsidies, mainly in developed countries, that artificially depress prices and thus facilitate cheap imports into the developing countries.

The adverse impact of cheap imports on farmers in developing countries is well documented in many studies by researchers, NGOs, the media, and by international agencies. An FAO paper, 'Some trade policy issues relating to trends in agricultural imports in the context of food security' (March 2003), shows very high incidences of import surges in 1984-2000 for 8 key products in 28 developing countries, with the incidence rising after 1994.

For example, Kenya experienced 45 cases of import surges, in wheat (11 cases), rice (3), maize (5), vegetable oils (7), bovine meat (4), pigmeat (6), poultry meat (5), milk (4). Philippines had 72 cases of import surges, Bangladesh 43, Benin 43, Botswana 43, Burkina Faso 50, Cote d'Ivoire 41, Dominican Republic 28, Haiti 40, Honduras 49, Jamaica 32, Malawi 50, Mauritius 27, Morocco 38, Peru 43,

Uganda 41, Tanzania 50, Zambia 41. Many other countries which are not in the study have also been affected. For example, Indonesia also experienced many import surges.

The import surges documented by the FAO were also accompanied in some cases by domestic production shortfalls in some of the same products where there were import surges. For example, in Kenya, in wheat there were 11 cases of import surges and 7 cases of production shortfall; in maize there were 5 cases of import surge and 4 cases of production shortfall. This indicates that the import surges were sometimes linked to declines in output by the farmers in the importing countries. The rise in imports led to the decline in output and incomes of the farmers, affecting their livelihoods. As the FAO report concluded, "Given the large number of cases of import surges and increasing reports of the phenomenon from around the world, this could be potentially a serious problem."

A major imbalance of the AoA is that the special safeguard (SSG) mechanism is not allowed for use except in cases where a country has "tariffed" a product in the Uruguay Round. Only 20 developing countries are eligible. Thus most developing countries have no proper instrument to counter import surges. The FAO study also found that during the period 1995-2001, only 2 developing countries made use of the SSG.

The FAO study also cites several recent studies on import surges that trace the problem to unfair trade practices (eg dumping), export subsidies and domestic production subsidies. It says: "Indeed, import surges seem to be more common in product groups that are subject to high levels of subsidies in exporting countries, notably dairy/livestock products (milk powder, poultry parts), certain fruit and vegetable preparations and sugar."

One major cause of import surges is the giving up of quantitative restrictions (under the Uruguay Round) and reduction of tariffs (due to structural adjustment policies and the Uruguay Round) in developing countries. ActionAid has pointed out that more developing countries have moved from being net food exporters to becoming net food importers. According to its study, developing countries had an overall agricultural trade surplus of US\$7 billion. With rising imports, this surplus fell to \$1 billion in the 1970s. This turned into a deficit of \$11 billion in 2001. By 2030, the FAO predicts, the developing world will import \$50 billion of food. (ActionAid 2007).

Contentious Issues in the Special Safeguard Mechanism Negotiations

Currently, the SSM negotiations in the Doha Round are moving in a direction which would make the mechanism difficult to use and even ineffective in terms of the remedies that can be instituted. The G33 has put forward many solid proposals including in early 2010, on how the negotiating texts of the SSM can be improved.

The previous Section on the Chair's December 2008 text has described some of the issues relating to the SSM text. A more detailed account of the problems of the SSM negotiations are in Annex 2. The following is a list of some of the problems that may make the SSM unworkable or ineffective.

The Volume-Based SSM

a) The volume trigger is too high and by the time the country is able to use it, it may be too late to

prevent the damage to the local farmers.

b) The volume triggers are a moving target, and too many imports must be flooding the country before the volume safeguard can be used.

c) The remedies (additional duties that can be applied) offer insufficient protection

d) Applying the remedies will be too difficult: There are too many conditionalities that must be fulfilled before the SSM can be used. These conditions include (1) Cross-check (domestic prices are actually declining); (2) Limits to how long the remedy can be used and how soon it can be reinstated once it is removed); (3) Seasonality (even more stringent conditions for seasonal and perishable products); (4) Pro-rating (a higher trigger is given if the country has previously used the SSM on the tariff line); (5) Exclusion of negligible trade (SSM remedies cannot be used if the imports are negligible).

All these conditionalities unnecessarily hinder the effective usage of the SSM and should be removed from the negotiating texts.

The Price-Based SSM

The idea of the G33 regarding the price-based SSM is that as shipments arrive at the importing country's port, the price of the shipment is evaluated. If it has declined, compared to the preceding three year-average price, an additional duty can be levied to bring it up to the level of the preceding three-year average price.

Unfortunately, like the volume-based SSM, the negotiating texts on the price-based SSM proposes inadequate remedies and restrictive conditionalities. The following are some of these:

a) Remedies offer insufficient protection: The remedy will only partially address the price decline, meaning that domestic products are still likely to be out-competed by the cheap imports.

b) Applying the remedies will be too difficult, and thus there may be no usage of the price-based SSM in effect. Firstly, en route shipments are excluded from the use of the SSM; secondly, there will also be a cross-check mechanism, in which the price-based SSM cannot be used when the volume of imports is in decline.

Exclusion of Preferential Trade from SSM Usage:

The text also excludes SSM usage when import surges take place as a result of preferential trade agreements. An earlier negotiating draft text included the possibility of using the instrument also for preferential trade.

Conclusions

The G33 countries proposing the SSM continue to push for a useful tool. Yet they are continuously under pressure in the negotiations to back down from their positions – by countries (developed and

developing) which perceive themselves to have strong export interests. Whether the SSM will come through at the end of the negotiations as an instrument that is useful and effective remains an open question at this point, and all countries hoping to use it would have to vigorously fight to advance good positions in the course of the on-going negotiations.

G. ECUADOR AND THE AGRICULTURAL NEGOTIATIONS AT THE WTO

Ecuador is a country that has prioritised agricultural production and food security. The 2008 Constitution enshrines food sovereignty as a goal – the first country in the world to do so in its Constitution. It states that Ecuador will

‘Promote food sovereignty by transforming the national agro-food system; introduce organic and ecological technologies for sustainable agricultural production, adopt fiscal and redistributive policies to increase resources for farmers to protect the national economy from food import dependency and prohibit the use of biotechnology and genetically modified seeds harmful to human and environmental health’⁹

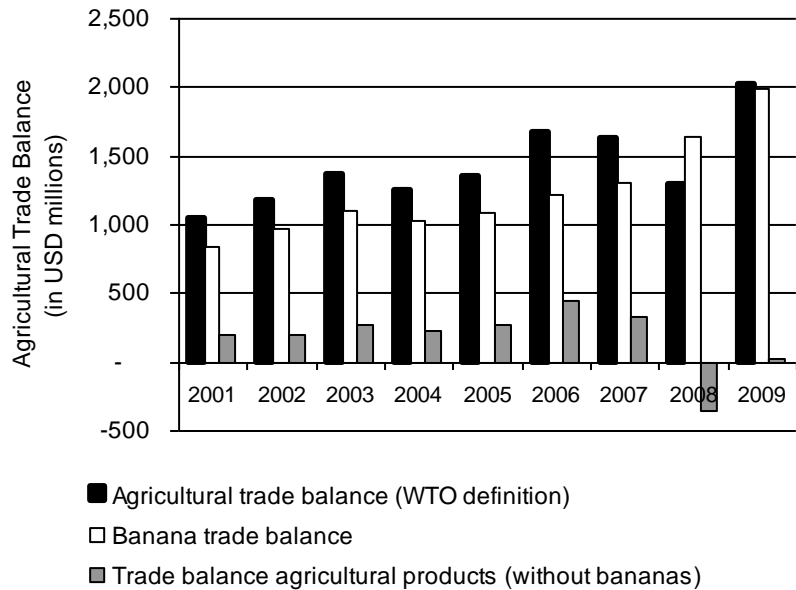
Key elements to note because of relevance to this paper are the goals of introducing redistributive policies to support farmers, and also the protection of the national economy from food import dependence.

An Overview of the Country’s Agricultural Imports and Exports

Bananas are Ecuador's second most important export (totalling \$6.3 billion in 2009). Including bananas, Ecuador is a net agricultural exporter (with a balance of about \$2 billion). However, when its banana exports are taken out, the country in 2009 essentially broke even - agricultural imports and exports were more or less on par, as illustrated in Diagram 1 below.

⁹ Translation of parts of the Constitution was obtained from <http://www.foodfirst.org/en/node/2301>

Diagram 1: Ecuador is Neither an Agricultural Net-Importer or Exporter when Bananas are Excluded



Source: South Centre, using data from ITC TradeMap,

Ecuador is quite heavily dependent on the import of staple foods. Rising food prices in 2008 caused a decline in the agricultural balance, as can be seen in Diagram 1. In the future, higher food prices would certainly contribute to a deteriorating agricultural trade balance.

This should have important implications for Ecuador’s overall position in the market access pillar of the WTO agriculture negotiations. Ecuador should have an interest in the possibility to keep high tariffs and other simple to use import-restrictive instruments that would allow effective remedies under certain conditions, including the Special Safeguard Mechanism.¹⁰

How Dependent is Ecuador on Staple Food Imports?

Production and Imports – Wheat, Corn, Rice

Although the above picture seems to show that the country is doing well in terms of the agricultural sector, Ecuador is actually importing fairly large amounts of wheat and corn.

Wheat consumption has increased quite dramatically in the country since 1995, from about 300,000 MT to over 500,000 MT by 2010. Ecuador produces only a minuscule amount of what is consumed, amounting to 7,900 MT in 2009. In contrast, imports amount to about 500,000 MT. Wheat imports costs the country about USD 145 million a year.¹¹

¹⁰ Nevertheless, for bananas, a satisfactory further market access opening for bananas should be achieved, either multilaterally (e.g. Geneva Banana Agreement) or bilaterally through Free Trade Agreements with the major banana consuming markets.

¹¹ USDA Foreign Agricultural Service 2010 ‘Ecuador – Grain and Feed Annual : Production, Consumption, Imports, Exports of Wheat, Corn and Rice and Policy Related Issues in Ecuador during 2010’, Gain Report – Global Agricultural Information Network.

The Ecuador Government is in fact attempting to encourage increases in wheat production, whilst at the same time also addressing rural development issues, for instance, in the highlands. This is also an attempt to address the country's balance of payments problem. For instance, it was agreed in 2009 that the government would provide a minimum support price for wheat producers. Nevertheless, imports are expected to continue. Wheat imports originate primarily from Canada, followed by the US.¹²

Whilst the country produces the majority of its own corn consumption (total consumption is projected to be 1.28 million MT in 2010), imports are likely to have amounted to 375,000 MT in 2010 – almost a third of total consumption. The U.S. is the primary source of these imports, supplying 84% of total imports, followed by Brazil and Argentina (15%). Corn is a staple both for people, and is also used for animal feed.

There are government policies and supports which are in place to support corn farmers. For instance, the Ministry of Agriculture implements mandatory buying of all domestically produced corn by corn importers before imports are allowed. Imports are also banned during the domestic corn harvest season. The government also sets a minimum price for corn which is apparently equal to the corn CIF (cost, insurance and freight) import cost.¹³

Despite these supports, the corn sector, however, remains fragile, with yields being quite unstable due to dependence on rainfalls, the results of droughts, lack of irrigation systems and limited access to credit.

Rice is another major staple product in the country. The majority of all that is produced is consumed domestically. The country only imports minimum quantities of rice. In fact, rice imports are a sensitive issue and there have been programmes to increase rice production to attain self-sufficiency.

Food Import Surges

A look into Ecuador's agricultural imports also shows that on average, between 2004 – 2007, the country experienced import surges on 15.5% of all its agricultural imports. An import surge in this case is defined as a 10% increase in import volume for a tariff line (HS 6 digit) over the preceding average three-year import volume.

The following diagrams illustrate the principle products for which import surges have been experienced, by volume, and also by value.

The key products to take note of are wheat and corn (the staples mentioned above) which experiences some of the largest amounts of import surges, and also processed foods.

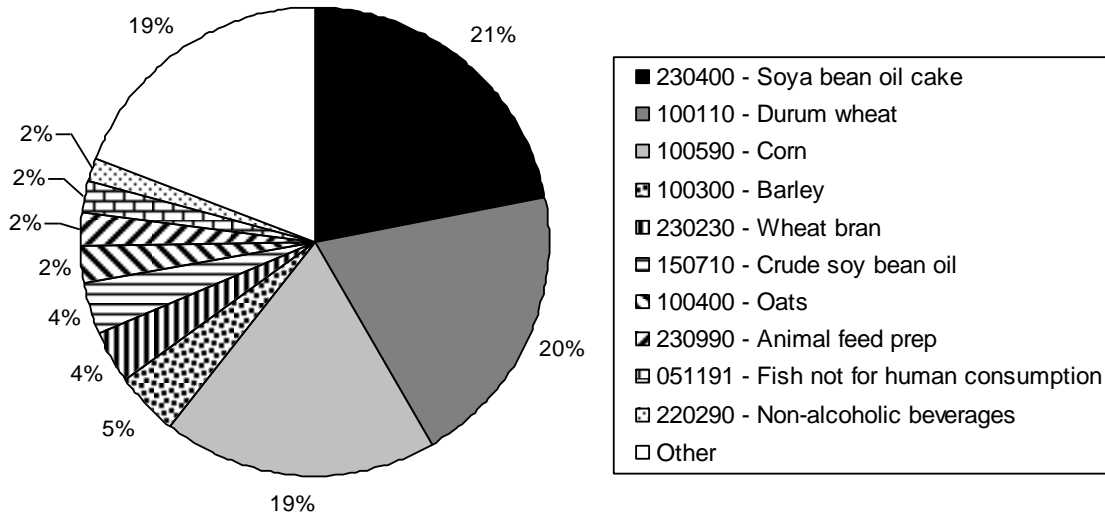
Products for animal feed also make up a significant portion of all the import surges experienced e.g. soy bean oil cake, and other animal feed preparations, barley and oats.

¹² USDA Foreign Agricultural Service 2010 *ibid.*

¹³ USDA Foreign Agricultural Service 2010 *ibid.*

Diagram 2:

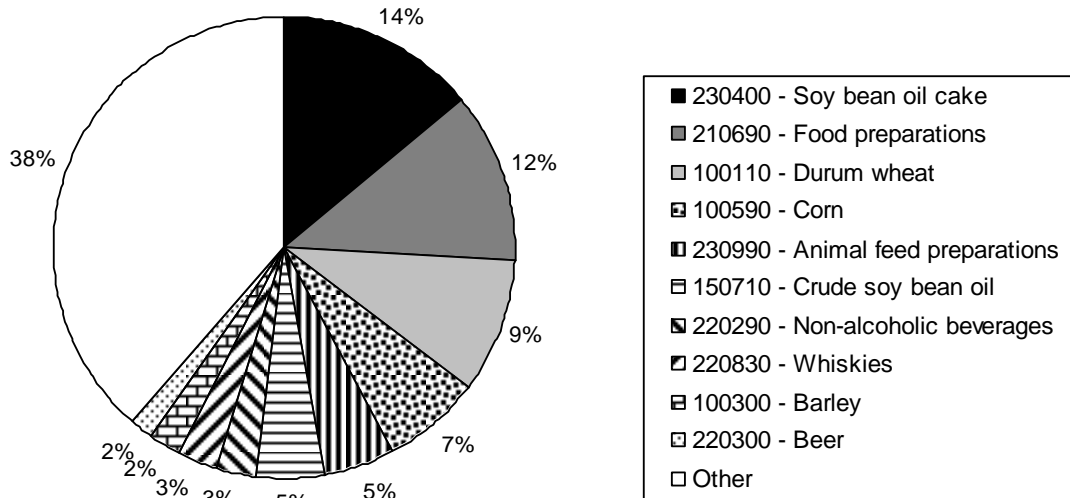
**Distribution of import surges by product at HS6 level (volume),
2004-2007**



Source: South Centre Import Surge Database

Diagram 3:

**Distribution of import surges by product at HS6 level (value),
2004-2007**



Source: South Centre Import Surge Database

Ecuador's WTO Commitments

Ecuador became a member of the WTO on 21 January 1996. Rather heavy commitments were taken on by the country in this process.¹⁴

- Elimination of domestic support. Ecuador committed to eliminate all trade-distorting domestic subsidies prior to joining the WTO and to never to introduce them in future.¹⁵

However, it should be noted that all WTO members including Ecuador can provide some minimal trade distorting subsidies. For developing countries, this is equivalent a 'de minimis' of 20% of the value of production.

Developing countries also have the right under the Uruguay Round's Agreement on Agriculture (Article 6.2) to provide investment subsidies or input subsidies to low-income or resource-poor farmers. Ecuador notified zero such subsidies in 2006 – 2007, and \$51 million and \$52 million respectively for 2008 and 2009.

- Elimination of export subsidies. Ecuador committed to eliminate all export subsidies prior to joining and never to introduce them in future. This is a common commitment for WTO accession.¹⁶
- Tariff Structure. The country also had to bind their tariffs, as all WTO members do. However, it took on rather low average bound tariff levels, as illustrated in the Table below.

Table: Ecuador's Agriculture Tariff Profile

Product group	Average bound tariff	Average MFN applied tariff	Binding overhang
Animal products	29.2	28.9	0.3
Beverages & tobacco	26	24.2	1.8
Coffee, tea	26.7	24.5	2.2
Fruit, vegetables, plants	23.8	20.2	3.6
Cereals & preparations	28.7	21	7.7
Dairy products	41.1	31.8	9.3
Other agricultural products	19.2	5.4	13.8
Cotton	18	4	14
Oilseeds, fats & oils	28.9	13.8	15.1
Sugars and confectionery	34.1	12.1	22

Source: *World Tariff Profiles, 2010*

<http://stat.wto.org/TariffProfile/WSDBTariffPFView.aspx?Language=E&Country=EC>

It is important to note that the country's applied tariff levels and its bound tariff levels are quite close. WTO members have the right to increase their most favoured nation (MFN) applied tariff levels up to

¹⁴ WTO Report of the Working Party on the Accession of Ecuador, 14 July 1995. Document number WT/L/77. Also, WTO, Report of the Working Party on the Accession of Ecuador, Corrigendum, 7 August 1995. Document number WT/L/77/Corr.1.

¹⁵ In contrast, some WTO members that joined the WTO after 1995 could maintain domestic support, such as include Bulgaria (now EU Member), Jordan, Croatia, Moldova, Chinese Taipei, FYR Macedonia and Saudi-Arabia.

¹⁶ Only Bulgaria and Panama were able to maintain some export subsidies

the bound rates but not beyond. The gap between the applied and bound tariff rates is important – it gives countries the right to increase tariffs if necessary, in order to protect domestic producers. This gap for Ecuador, for many products, is not large.

The country's bound rates are so low that it has already found it difficult to keep within these bound rates in the case of some products. The WTO Secretariat carried out a trade policy review of Ecuador in 2005. Of the tariff lines in the Schedule that are strictly comparable to HS 2002, the WTO Secretariat identified four 10-digit lines for which the applied rates at the beginning of 2005 could have been above the bound rates. For 585 tariff lines, the applied rates are the same as the bound rates. If certain charges applied solely to imports are taken into account, including the redeemable quota and the contribution to the Children's Development Fund, the rates actually applied to these products would be higher than the bound rates.

The above indicates that Ecuador has already used up the “water” it has on a number of tariff lines and thus arguably has four tariff lines (for two types of motor vehicles, live cows and dye) above the bound tariffs due to the low bindings in its WTO accession . So it needs to be able to go above its bound rates at the WTO, including for agriculture. [Thus this indicates it would find the use of the SSM beneficial].

Ecuador's Tariff Structure Compared with the US and EU's

Much of Ecuador's trade already takes place on tariff lines with very low tariffs. The Table below illustrates that 27.5% of trade takes place where tariff lines are bound at 10% or less; 31% of trade takes place where tariff lines are bound at between 10% -15%; and 38.8% of trade takes place where tariff lines are bound at between 15 – 25%. This means that 97.4% of all trade takes place where the bound and applied tariff levels are 25% or below.

To gain a better perspective of Ecuador's WTO commitments, comparison with the EU's tariff structure and trade is also provided in the Table.

Table: Frequency Distribution of Tariffs, Ecuador and the European Union

WTO member	Tariff	Duty free	0-5	5-10	10-15	15-25	25-50	50-100	>100
Ecuador	Final bound	0	2.3	0.9	10	51.4	32.9	2.5	0
	MFN applied (2009)	23	1.7	5	10	36.3	22.1	1.9	0
	Imports (2008)	5.1	3.7	18.7	31.1	38.8	2.6	0	0
European Union	Final bound	32.5	9.9	15.6	12.7	11.1	10.2	5	0.9
	MFN applied (2009)	29.8	10.1	16.1	14.2	12.6	8.8	4.2	1.1
	Imports (2008)	41.3	14.5	15.5	10.7	5.7	8	4.1	0.2

Source : *World Tariff Profiles 2010*

Whilst Ecuador only has 2.6% of trade where tariff levels are higher than 25%, the EU has 12.3% of trade with tariffs are higher than 25%.

The Table below shows that when comparing the level of maximum tariffs that Ecuador has, compared to the maximum tariffs of the EU and US, Ecuador's tariff levels are at the low end.

Table: Maximum Bound and Applied Tariffs

Product group	Bound			Applied		
	EU	US	Ecuador	EU	US	Ecuador
Animal products	162	26	86	162	26	86
Dairy products	180	126	72	163	126	54
Fruit, vegetables, plants	161	132	30	161	132	30
Coffee, tea	55	69	30	55	69	30
Cereals & preparations	111	98	68	111	98	68
Oilseeds, fats & oils	94	164	39	94	164	32
Sugars and confectionery	118	79	45	118	79	30
Beverages & tobacco	198	350	30	166	350	30
Cotton	0	20	20	0	20	10
Other agricultural products	117	70	45	117	70	45

Figures in bold denote the *lowest* tariff

Source: World Tariff Profiles 2010

Ecuador and the Doha Agriculture Negotiations

Should the Doha Round be completed, Ecuador will have to undertake yet another round of tariff cuts. Clearly, given its low tariff structure, it will be affected more than countries with high bound tariff rates. It has Special and Differential Treatment, as a Small and Vulnerable Economy (SVE). Ecuador is also a Recently Acceded Member (RAM). The Table below shows the treatment for SVEs and RAMs in terms of commitments in tariff cuts in the Doha Round.

Table: Modalities on Tariff Cuts for SVEs and RAMs in the Doha Agriculture Negotiations

Tariff cut modality	Tariff cutting formula	Special and Differential Treatment – Special Products
RAMs: paragraph 66	Bound tariff 0-30%: 25.33% Bound tariff 30-80%: 30% Bound tariff 80-130%: 34.66% Bound tariff > 130%: 38.66% “All RAMs shall be entitled to exempt their final bound tariffs at or below 10 per cent from reductions in bound tariffs”	Maximum tariff line entitlements to Special Products is 13% and the overall average cut to be achieved for the designated tariff lines may be further reduced to 10%
SVEs: paragraph 65 above plus the Special Product entitlement (paragraph 130, first option)	Bound tariff 0-30%: 23.33% Bound tariff 30-80%: 28% Bound tariff 80-130%: 32.66% Bound tariff > 130%: 36.66%	12% of tariff lines can be selected as Special Products, with an average cut of 11%. Up to 5% of tariff lines can be excluded
Alternative SVE Treatment: paragraph 130, second option	Average tariff cut of 24%	Members can use all tariff cut combinations to reach the target of 24%

Source: WTO TN/AG/W/4/Rev.4

NB: In the agriculture negotiations, the options proposed above are mutually exclusive. A country would choose one of the above options.

In fact, given the sensitivities implied in cutting their low tariffs further, Ecuador has joined the RAMs to ask for SVE *and* RAM treatment – so that they can have an average tariff cut of 21%.¹⁷ This would be an improvement from the SVE treatment (3rd option in Table above), where SVEs could choose to do an average tariff cut of 24%.

Ecuador and the Special Safeguard Mechanism (SSM)

Developing countries in the agriculture negotiations have been asking for a Special Safeguard Mechanism (SSM) which would allow countries to increase tariffs should there be agricultural volume import surges or price declines in agricultural imports. The key proponent for this is the Group of 33 (G33), led by Indonesia, with 45 other developing countries.¹⁸

The Special Safeguard Mechanism (SSM) is also useful for Ecuador for the following reasons:

- As seen above, the country has a low tariff structure, with a significant amount of imports entering the country with tariffs of less than 10%. In order to support domestic farmers to increase production domestically, the SSM can therefore help the country institute higher tariffs when volume import surges take place or when import prices decline.
- Ecuador experiences import surges on approximately 15.5% of its overall agricultural trade. That is, import surges are routine. Since imports can subdue domestic production, SSM duties can help to shield and support domestic production, which is in keeping with Ecuador's goal of food sovereignty.
- Ecuador's balance of payments position has deteriorated sharply at the end of 2008 and in early 2009. Although the situation has improved in 2010, it is possible that given its dollarized economy, and the fragility of the US and global economy, a recurrence of the BOP crisis could take place. The country is constrained in that it cannot pursue an independent monetary and exchange rate policy in order to manage its balance of payments. Reducing food imports can help to give some relief to the balance of payments situation. (See WT/BOP/R/91, 11 June 2009 for further information).
- Excluding bananas, Ecuador's agricultural exports and imports break even. However, when food prices increase, Ecuador is vulnerable (as in 2008). The government is mindful of the need to increase domestic food production in order to be able to cope better with volatile world food prices. The SSM can help in this regard.

Ecuador is currently not part of the G33 that is proposing the SSM. This could be because the country has traditionally seen itself to be a net food exporter, not an importer. Given the above reasons, it is in Ecuador's interest to become a G33 member and to support the SSM.

¹⁷ WTO JOB/AG/12 'The RAMS Group Stance on the Agriculture Negotiations', 6 July 2010.

¹⁸ The 46 developing country G33 members at the WTO include Antigua & Barbuda, Barbados, Belize, Benin, Bolivia, Botswana, China, Congo, Côte d'Ivoire, Cuba, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Korea, Mauritius, Madagascar, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, St Kitts & Nevis, St Lucia, St Vincent & the Grenadines, Senegal, Sri Lanka, Suriname, Tanzania, Trinidad & Tobago, Turkey, Uganda, Venezuela, Zambia, Zimbabwe.

It should however be noted that currently, the SSM negotiations in the Doha Round are moving in a direction which would make the mechanism difficult to use and even ineffective in terms of the remedies that can be instituted. This has been discussed in the earlier Section and details are in Annex 2.

Ecuador should join the G33 and advocate the establishment of an effective SSM. An easy to use and effective safeguard can be a useful tool for Ecuador, given the 15.5 % of import surges occurring on average (between 2004-2007). The instrument would also support Ecuador in its goals of increasing staple food production and increasing supports to its small farmers. Domestic production can guard against the country falling into a balance of payment crisis should the world price of food increase to levels seen in 2008. Indeed, world prices of key agricultural/ food items are likely to be volatile in the years to come for several different reasons, including that of speculation of agricultural commodities on the financial markets.

H. CONCLUSIONS

The WTO Doha agriculture negotiations have proceeded in an imbalanced manner. The global agricultural system is distorted because of the high subsidies of the developed countries. The WTO's Agriculture Agreement was designed in a manner that allows the developed countries to continue with their high subsidies. The main proposals in the Doha agriculture process unfortunately are inadequate to discipline these subsidies. Moreover there are instruments like "sensitive products" that also allow the tariffs of important products of developed countries to remain high.

Meanwhile the developing countries are asked to reduce their tariffs by an extent larger than during the Uruguay Round. Many developing countries are concerned that there will be an increase in import surges, as a result of their increased import liberalization. Thus the developing countries, led by the G33, have advocated the special safeguard mechanism to help them cope with the import surges. Unfortunately, the agricultural exporting countries are placing many obstacles to the establishment of an effective and easy to use SSM.

The people of Ecuador, through their Constitution, have taken a stand in favour of "food sovereignty" and for intensifying food production and security.

Ecuador's Constitution (2008) and the National Plan for Good Living (NPGL), 2009-2013 must be complied with¹⁹ and they provide the principles, objectives and policy guidelines for any agriculture liberalisation. Therefore in addition to complying with these in its domestic policies, where the Constitution and NPGL establish requirements for Ecuador's position on agriculture, Ecuador would have to take positions that are consistent with these two documents during bilateral, regional or international negotiations in any fora.

Some of the ways in which the Constitutional and NPGL provisions can be translated into agriculture liberalisation principles, objectives and policy guidelines are set out in the Tables in the Annex. For

¹⁹ For example Article 280 of the Constitution and public standards and acts which do not conform to the Constitution are not legally binding, Article 424 of the Constitution

example, the Constitution states that ‘Food sovereignty is a strategic objective and an obligation of the State in order to ensure that persons, communities, peoples and nations achieve self-sufficiency with respect to healthy and culturally appropriate food on a permanent basis. . . the State shall be responsible for: adopting fiscal, tax and tariff policies that protect the national agri-food and fishing sector to prevent dependence on food imports.’ (Article 281). The Constitution is very clear about how to achieve this, for example it says the State shall discourage imports that negatively affect domestic production (Article 306) and the NPGL has specific goals to achieve this, such as to increase the participation of national food production in relation to total supply to 98% by 2013. (Page 86).

Other requirements on agriculture in the Constitution set Ecuador’s position in other chapters/agreements (such as intellectual property,²⁰ services²¹ and government procurement²²). The NPGL clearly states that ‘The negotiation of agreements resembling free trade agreements must be prevented.’

The Tables give some details of the link between the Constitution and the NPGL with positions to be taken at the WTO and in any FTAs. Further details are given in the longer tables in Annex 1.

Table 1: some of the Constitutional requirements and their implications for agricultural policy

Article of the Constitution	Provision of the Constitution	Agricultural policy required to implement this Constitutional provision
281	Food sovereignty is a strategic objective and an obligation of the State in order to ensure self-sufficiency in food	Ecuador already experiences considerable import surges of agricultural products and has already had to raise its tariffs above its bound rate to cope with imports. If Ecuador lowers its agricultural tariffs further at the WTO in the Doha Round or EU FTA negotiations (while the EU and USA continue to subsidise their agricultural products), Ecuador’s farmers will find it even harder to continue to make a living from farming

²⁰ For example the Article 281.6 requirement to promote free exchange of seeds cannot be complied with if Ecuador joins the International Convention for the Protection of New Varieties of Plants (UPOV) 1991 as the EU presses countries to do in its FTAs.

²¹ For example, Article 281.11 requires the state to prevent food speculation, however if Ecuador makes commitments in the relevant services and investment sectors, it may not be able to ban food speculation, unless it provides compensation.

²² For example, Article 288 requires priority in public procurement to be given to domestic products and services. However the EU is proposing that countries (including Ecuador) open their government procurement in services (and goods up to 50% of the value of the contract) in the current services negotiations at the WTO. The EU also demands government procurement is opened in its FTA negotiations.

Article of the Constitution	Provision of the Constitution	Agricultural policy required to implement this Constitutional provision
281.2	The State is responsible for adopting tariff policies that protect the fishing sector to prevent dependence on food imports	In addition to the non-agricultural market access (NAMA) formula cuts in the Doha Round exposing Ecuador's fishing sector to increased competition from imports, there is an anti-concentration clause which is not bracketed in the Chair's text, ²³ so the Chair appears to think it has been accepted. The anti-concentration clause will make it difficult to effectively protect Ecuador's fishing sector from cuts on tariffs on imported fish. ²⁴
281.11	The State is responsible for preventing food speculation	Speculation caused a significant portion of the price rises in the recent food crisis and the UN Special Rapporteur on the Right to Food therefore recommends heavily restricting and possibly even banning certain types of speculation. ²⁵ However, if Ecuador has committed to liberalise the relevant sector(s) eg at the WTO or in FTAs without relevant exceptions, this recommended reregulation may not be possible without providing compensation. ²⁶
288	Priority in public procurement shall be given to domestic products and services	However, the EU is likely to require this government procurement be opened to EU suppliers and products in the government procurement and competition chapters of an EU FTA. ²⁷ The EU is also proposing that government procurement in services (and goods up to 50% of the value of the contract) be opened in the current General Agreement on Trade in Services (GATS) negotiations. ²⁸
306	The state shall discourage imports that negatively affect domestic production	From 2004-2007, Ecuador already experienced import surges on 15.5% of its agricultural imports. These occurred before Ecuador lowers its agricultural tariffs on imports further under the current Doha Round negotiations at the WTO or in an EU FTA. A special safeguard mechanism (SSM) is being negotiated in the Doha Round, which if strong enough could help protect domestic production from these import surges.

NOTE: This is a summary table with the more important points. For the full table, see Annex 1

²³ Paragraph 7(d) of December 2008 Chair's text, WTO document TN/MA/W/103/Rev.3.

²⁴ See for example explanation at <http://www.twinside.org.sg/title2/wto.info/twninfo20080744.htm>.

²⁵ <http://www.scribd.com/doc/38119753/Food-Commodities-Speculation-and-Food-Price-Crises>

²⁶ Unless the health exception in Article XIV of the General Agreement on Trade in Services (GATS) (and its equivalent in any FTAs) is sufficient to protect Ecuador's health measures. In practice, the equivalent health exception in Article XX of GATT has proven very difficult to use successfully because there must be no alternative measures possible that could be reasonably expected to be used and that cause less violation of GATT, even if the alternatives are administratively difficult, http://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_07_e.htm#article20C3aiii.

²⁷ See for example www.twinside.org.sg/title2/par/CARIFORUM.Feb09.doc

²⁸ WTO document S/WPGR/W/54

Table 2: Some of the National Plan for Good Living (NPGL) requirements and their implications for agricultural policy

Page	Requirement	Agricultural policy required to implement this
7, 58 45 (see also 55, 57-59)	-The diversification of exports -generation of added value for primary goods is an urgent measure	One way to diversify exports is for Ecuador to do value-added processing of its primary products. If this is what pages 7 and 58 of the NPGL refer to, this can be more difficult to achieve without being able to impose taxes on the exports of unprocessed agricultural and other raw materials, see discussion of export taxes. ²⁹ The EU requires strong limitations or prohibitions on export taxes in its FTAs and has a proposal to bind export taxes (including Ecuador's) at a level to be negotiated in the NAMA, (which includes fish ³⁰) negotiations in the Doha Round.
45	'The negotiation of agreements resembling free trade agreements must be prevented'	This is a clear prohibition on certain types of agreements (FTAs).
57 (see also 60)	Selective substitution of imports	If this includes agricultural products, this usually requires the ability to raise agricultural tariffs, which is not possible if Ecuador has committed to lower them at the WTO or via an FTA
79, 86, 95 86	-Policies include to reduce dependence on food imports -goal: to increase the participation of national food production in relation to total supply to 98% by 2013	See comments on page 57 of NPGL See also analysis in intellectual property (IP) paper for the ways that stronger IP protection (eg due to an EU FTA) is likely to raise the costs of inputs for Ecuador's farmers.
79	Goal: to substitute imports of corn, soya paste, wheat and barley and reduce foreign participation in domestic consumption to 40% by 2013	This is usually achieved by raising or maintaining tariffs on agricultural products. Therefore Ecuador cannot lower them at the WTO especially when developed countries continue to subsidise their agricultural products. As Ecuador already has low bound tariffs due to its WTO accession, this also shows the necessity of an effective SSM.

NOTE: This is a summary table with the more important points. For the full table, see Annex 1.

²⁹ See for example www.twinside.org.sg/title2/par/Export_Taxes.doc.

³⁰ Page 13 of WTO document TN/MA/W/103/Rev.3.

Given this framework, Ecuador should consider formulating a strategy for the Doha Round and for the WTO generally and also for a national agriculture policy. This should include the following elements:

1. Developed countries should reduce their overall trade distorting domestic support as much as possible, with as few loopholes as possible.
2. There should be genuine reduction of their subsidies with no or minimal “box shifting”. In this regard, there should be adequate disciplines and limits placed on the “Green Box” subsidies of the developed countries.
3. Developing countries must have adequate policy space to enable them to have domestic subsidies that they require for supporting farmers’ livelihoods and food security. Ecuador could examine methods by which it could make use of domestic subsidies, for example through the de minimis subsidies, and if this is not sufficient, to seek if it can use more subsidies, including those in the Green Box.
4. Developing countries should have adequate policy space to make use of tariffs to defend the interests of their domestic farmers and in the interests of food security and rural development. Ecuador, being a small and vulnerable economy and a recently acceding member to WTO, should attempt to have a low rate of tariff reduction in the Doha negotiations.
5. Since near self sufficiency in food is a national objective, Ecuador should also consider joining the G33 and collectively fight to make the best use of the special products instrument, and to establish a special safeguard mechanism that is effective and easy to use.
6. FTAs with developed countries such as the USA or Europe, given their template, would make it even more difficult to achieve food security goals because of the steep tariff cuts and new rules. Ecuador should therefore be extremely cautious about negotiating such FTAs.
7. Ecuador should formulate or update a national agriculture and food policy, in line with the Constitution, and should draw up in detail the positions it should take in international fora such as the WTO which would support the national policy.

ANNEX 1

Preliminary analysis of some of the implications for Ecuador's agricultural policy and position on agricultural liberalisation of the Constitution and National Plan for Good Living (NPGL)

These Tables do not cover the impact on government funded agriculture programs and objectives due to tariff revenue loss from reductions of tariffs on agriculture (and non-agricultural market access (NAMA)) via World Trade Organization (WTO) negotiations or free trade agreements (FTAs). International Monetary Fund economists note that middle income countries are only likely to recover 45-60% of this lost tariff revenue from other taxation sources and low-income countries are at best likely to recover 30% or less of lost tariff revenue from other taxation sources.³¹ They note that a value-added tax is not proven to make up for the lost revenue from lowering tariffs. Therefore according to this analysis, when Ecuador cuts its tariffs at the WTO or in FTAs, it will permanently lose a minimum of 40% of that revenue.

Since this paper is on the agriculture negotiations, the Tables also do not consider the impact of other chapters and negotiations on the right to food. For example:³²

- The United Nations (UN) Special Rapporteur on the Right to Food noted that ‘The right to adequate food can only be fully realized by States within a multilateral trading system which enables them to pursue policies aimed at realizing the right to food. Such a system should not only refrain from imposing obligations which directly infringe upon the right to food. It should also ensure that all States have the policy space they require to take measures which contribute to the progressive realization of the right to food under their jurisdiction.’³³ He concluded that ‘States should ensure that the positions they take in trade negotiations . . . will not result in obstacles to the realization of the right to food’. He also stated that ‘It is a particular source of concern that, in a large number of cases, States have been unable to use flexibilities allowed under the WTO agreements – or to apply certain tariffs remaining under their bound tariffs –, because of prescriptions from such [international financial] institutions or because of bilateral free trade agreements.’³⁴
- The Special Rapporteur’s analysis of the Agreement on Agriculture (AoA) found that if trade is ‘to contribute to the realization of the right to adequate food, it needs to allow more flexibilities to developing countries, particularly in order to shield their agricultural producers from the

³¹ ‘Tax Revenue and (or?) Trade Liberalization’, Baunsgaard and Keen, June 2005, IMF Working Paper, WP/05/112, <http://www.imf.org/external/pubs/ft/wp/2005/wp05112.pdf>.

³² These examples do not consider the extraterritorial human rights obligations that developed countries have: not to ‘dump’ subsidized food in developing countries etc according to the UN Special Rapporteur on the Right to Food, who concluded that ‘Governments must recognize their extraterritorial obligations towards the right to food. They should refrain from implementing any policies or programmes that might have negative effects on the right to food of people living outside their territories. Governments should respect, protect and support the fulfilment of the right to food in other countries, including through their decisions taken under their roles within WTO, IMF and the World Bank’, E/CN.4/2005/47. Similarly, the Committee on Economic, Social and Cultural Rights has identified ‘the failure of a State to take into account its international legal obligations regarding the right to food when entering into agreements with other States or with international organizations’ as a specific instance of violation of the right to food, U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 12 (1999), The right to adequate food (art. 11), U.N. doc. E/C.12/1999/5, at para. 19.

³³

http://carnegieendowment.org/files/Background_document%20UN%20Special%20Rapporteur%20on%20the%20Right%20to%20Food%20-%20Mission%20to%20the%20WTO.pdf

³⁴

http://carnegieendowment.org/files/Background_document%20UN%20Special%20Rapporteur%20on%20the%20Right%20to%20Food%20-%20Mission%20to%20the%20WTO.pdf

competition from industrialized countries' farmers'.³⁵ He highlighted the importance of domestic production for the right to food: 'States should strengthen their own agricultural sector, and thereby to allow the poorest segment of the population to benefit from an increased income and additional source of employment. In the long term, due to the unavoidable rise of the cost of transport, there is no other way to sustainable food security. That is not to say that there is no role for international trade. But it should work for the benefit of those who, today, are most food insecure'.³⁶ However, if Ecuador lowers its agriculture tariffs in the Doha Round or in an FTA, this will discourage local production. He was clear that 'The provisions contained in the current version of the AoA are insufficient to allow countries to react to the disruptions caused by import surges.' This could be addressed by an effective special safeguard mechanism (SSM) such as the G33 has proposed in the Doha Round negotiations. Unfortunately, developed countries are persistently trying to water down the proposed SSM and make it ineffective and difficult to use. After analysing the impact of the WTO's AoA on the right to food, the United Nations (UN) Special Rapporteur on the Right to Food invited States to 'ensure they do not accept undertakings under the WTO framework which would be incompatible with their right to food obligations'.³⁷

- the intellectual property chapter of free trade agreements (FTAs) with developed countries can harm the right to food. The UN Special Rapporteur on the Right to Food noted that 'Article 11 of the International Covenant on Economic, Social and Cultural Rights imposes on States three levels of obligations in the realization of the right to food. First, States have an obligation to respect existing access to adequate food. This requires that States do not take any measures that result in preventing such access (see E/C.12/1999/5, para. 19). The introduction of legislation or other measures which create obstacles to the reliance of farmers on informal seed systems may violate this obligation, since it would deprive farmers from a means of achieving their livelihood'.³⁸ According to the Special Rapporteur, these obligations mean the commercial seed system 'has to be regulated in order to ensure that farmers have access to inputs on conditions which are reasonable, thus helping them to achieve an adequate standard of living'.³⁹ Furthermore, States should also 'ensure that informal, non-commercial seed systems can develop: they should not interfere with such systems without adequate justification; they should protect such systems from interference by third parties; and they should proactively ensure that these systems can expand, despite the pressure imposed by the commercial seed system'.⁴⁰ He concludes that 'No State should be forced to establish a regime for the protection of intellectual property rights which goes beyond the minimum requirements of the TRIPS Agreement: free trade agreements obliging countries to join the 1991 UPOV Convention or to adopt UPOV-compliant legislation, therefore, are questionable.'⁴¹ Yet the EU pushes countries

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http://carnegieendowment.org/files/Background_document%20UN%20Special%20Rapporteur%20on%20the%20Right%20to%20Food%20-%20%20Mission%20to%20the%20WTO.pdf

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³⁸ A/64/170 available at http://www.srfood.org/images/stories/pdf/officialreports/20091021_report-ga64_seed-policies-and-the-right-to-food_en.pdf.

³⁹ http://www.srfood.org/images/stories/pdf/officialreports/20091021_report-ga64_seed-policies-and-the-right-to-food_en.pdf

⁴⁰ http://www.srfood.org/images/stories/pdf/officialreports/20091021_report-ga64_seed-policies-and-the-right-to-food_en.pdf

⁴¹ http://www.srfood.org/images/stories/pdf/officialreports/20091021_report-ga64_seed-policies-and-the-right-to-food_en.pdf

it signs FTAs with towards International Convention for the Protection of New Varieties of Plants (UPOV) 1991 compliance.⁴²

- Services liberalisation at the WTO or in FTAs is also relevant to the right to food. The UN Special Rapporteur on the Right to Food has found that a significant portion of the increases in price and volatility of essential food commodities in the food crisis of 2007-2008 was due to speculation.⁴³ He therefore stated that ‘States should ensure that dealing with food commodity derivatives is restricted as far as possible to qualified and knowledgeable investors who deal with such instruments on the basis of expectations regarding market fundamentals, rather than mainly or only by speculative motives. These measures would enable States to fulfill their legal obligations arising under the human right to food.’⁴⁴ Some countries have considered additional regulation⁴⁵ and others have already banned speculation in food commodities⁴⁶. The Special Rapporteur also recommends consideration of ‘an outright ban on momentum-based speculation’.⁴⁷ However, if Ecuador has committed to liberalise the relevant sector(s) eg at the WTO or in FTAs without relevant exceptions, this recommended reregulation may not be possible without providing compensation.⁴⁸ Furthermore, if Ecuador agrees to services provisions in an EU FTA that trigger Article V of GATS, the EU is likely to insist that Ecuador liberalise 80% of its services sectors, which makes it more difficult to exclude sectors like this from liberalisation.

⁴² See for example <http://www.bilaterals.org/spip.php?article14281> and http://trade.ec.europa.eu/doclib/docs/2008/february/tradoc_137971.pdf.

⁴³ <http://www.scribd.com/doc/38119753/Food-Commodities-Speculation-and-Food-Price-Crises>

⁴⁴ <http://www.scribd.com/doc/38119753/Food-Commodities-Speculation-and-Food-Price-Crises>

⁴⁵ <ftp://ftp.fao.org/docrep/fao/012/i0753e/i0753e00.pdf>

⁴⁶ Eg due to the food crisis, India has banned futures trading in key agricultural commodities over concerns that it has caused sharp increases in the price of food staples like lentils, wheat, and rice, http://www.southcentre.org/index.php?option=com_docman&task=doc_download&gid=769&Itemid=.

⁴⁷ A number of his other reregulation proposals in <http://www.scribd.com/doc/38119753/Food-Commodities-Speculation-and-Food-Price-Crises> may also violate any services commitments in the relevant sector(s) at the WTO or in an FTA.

⁴⁸ Unless the health exception in Article XIV of the General Agreement on Trade in Services (GATS) (and its equivalent in any FTAs) is sufficient to protect Ecuador’s health measures. In practice, the equivalent health exception in Article XX of GATT has proven very difficult to use successfully because there has to be no alternative measures possible that could be reasonably expected to be used and that cause less violation of GATT, even if the alternatives are administratively difficult, http://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_07_e.htm#article20C3aiii.

Table 1: Some⁴⁹ Constitutional requirements and their implications for agricultural policy

Article of the Constitution	Provision of the Constitution	Agricultural policy required to implement this Constitutional provision
13 281 281.2	-Preference for locally produced food -Ensure that achieve self-sufficiency in food - The State is responsible for adopting tariff policies that protect the national agri-food and fishing sector to prevent dependence on food imports	Ecuador already experiences considerable import surges of agricultural products and has already had to raise its tariffs above its bound rate to cope with imports. If Ecuador lowers its agricultural tariffs further at the WTO in the Doha Round or EU FTA negotiations (while the EU and USA continue to subsidise their agricultural products), Ecuador's farmers will find it even harder to continue to grow locally produced food.
281.1	The State is responsible for fostering the production and the agri-food and fishing transformation of small and medium-sized production units	In addition to increased competition from imports if Ecuador lowers its tariffs on imports, see above, if this includes food and fish processing units, this can be more difficult to achieve without being able to impose taxes on the exports of unprocessed agricultural and fish products, see discussion of export taxes. ⁵⁰ The EU requires strong limitations or prohibitions on export taxes in its FTAs and has a proposal to bind export taxes (including Ecuador's) at a level to be negotiated in the NAMA, (which includes fish ⁵¹) negotiations in the Doha Round.
281.2	The State is responsible for adopting tariff policies that protect the fishing sector to prevent dependence on food imports	In addition to the NAMA formula cuts in the Doha Round exposing Ecuador's fishing sector to increased competition from imports, there is an anti-concentration clause which is not bracketed in the Chair's text, ⁵² so he appears to think it has been accepted. The anti-concentration clause will make it difficult to effectively protect Ecuador's fishing sector from cuts on tariffs on imported fish. ⁵³

⁴⁹ The Tables do not have space to consider the interlinkage between different human rights, because as Article 32 of the Constitution points out, the fulfillment of the right to health is linked to other human rights such as the right to food and water.

Since space is limited and the authors are not sufficiently familiar with Ecuador's economy, society and laws, this is only a preliminary indication of some of the areas that need to be investigated. Further analysis is needed based on wide consultation of relevant Ministries and sectors (for example small farmers producing staple crops for domestic consumption) and careful consideration of the implications of Ecuador's current agriculture commitments at the WTO and its proposed commitments in current negotiations (eg in any EU FTA and the Doha Round) on its ability to comply with its obligations under the Constitution and National Plan for Good Living (NPGL).

⁵⁰ See for example www.twinside.org.sg/title2/par/Export_Taxes.doc.

⁵¹ Page 13 of WTO document TN/MA/W/103/Rev.3.

⁵² Paragraph 7(d) of December 2008 Chair's text, WTO document TN/MA/W/103/Rev.3.

⁵³ See for example explanation at <http://www.twinside.org.sg/title2/wto.info/twninfo20080744.htm>.

281.6	The State is responsible for promoting the free exchange of seeds	Since UPOV 1991 does not permit the free exchange of seeds, ⁵⁴ this Constitutional provision makes it clear that Ecuador cannot join or comply with the provisions of this treaty.
281.11	The State is responsible for preventing food speculation	See discussion of the impact of food speculation on the right to food for the ways in which service liberalisation commitments can prohibit governments from preventing food speculation
281.14	The State is responsible for acquiring food and raw materials for social and food programs, giving priority to associative networks of small producers	If this is intended to direct procurement by Ecuador's government to Ecuadorian suppliers and products, the EU is likely to require this government procurement be opened to EU suppliers and products in the government procurement and competition chapters of an EU FTA. ⁵⁵ The EU is also proposing that government procurement in services (and goods up to 50% of the value of the contract) be opened in the General Agreement on Trade in Services (GATS) negotiations. ⁵⁶
284.4, (334.4)	The economic policy shall aim to promote the incorporation of added value (and the State's duties include to develop policies to add value)	If this refers to value-added processing, then Ecuador should not agree to Doha Round proposals (or likely EU demands in EU FTA negotiations) to limit export taxes as these have been successfully used by developed and developing countries to encourage value addition ⁵⁷
288	Priority in public procurement shall be given to domestic products and services	See comments on Article 281.14
304.1, 304.3 (see also 334.4)	Trade policy objectives include to develop, strengthen and give impetus to domestic markets and to bolster domestic production	See comments on Article 13.
306	The state shall discourage imports that negatively affect domestic production	Ecuador has already suffered import surges on 15.5% of its agricultural imports. A special safeguard mechanism (SSM) is being negotiated in the Doha Round, which if strong enough could help deal with these import surges. ⁵⁸

⁵⁴ See for example the opinion of the Office of the Union that provisions allowing farmers to exchange seed in the Malaysian plant variety protection law would be prohibited under UPOV 1991,

http://www.upov.int/en/documents/c_extr/22/c_extr_22_2.pdf and

http://www.iprcommission.org/papers/pdfs/final_report/CIPRfullfinal.pdf.

⁵⁵ See for example www.twinside.org.sg/title2/par/CARIFORUM.Feb09.doc

⁵⁶ WTO document S/WPGR/W/54

⁵⁷ See for example www.twinside.org.sg/title2/par/Export_Taxes.doc

⁵⁸ See for example: <http://www.actionaid.org/docs/cheap%20imports%20and%20protection%20of%20ag.pdf>,

<http://www.actionaid.org/docs/safeguard%20for%20ag%20protection%20in%20wto.pdf>,

<http://www.actionaid.org/docs/south%20south%20trade%20not%20affected%20by%20ag%20protection.pdf>. Spanish versions available at: <http://www.actionaid.org/docs/cheap%20imports%20and%20protection%20of%20ag-spanish.pdf>,

<http://www.actionaid.org/docs/safeguard%20for%20ag%20protection%20-%20spanish.pdf>,

416.11	It advocates as a priority the economic integration of the Andean Region, South America and Latin America	This means that any lowering of agricultural tariffs by Ecuador should be prioritised to be on products from these regions to promote economic integration of these regions. (Otherwise if Ecuador lowers tariffs on products from other regions, such as the EU, this will undermine regional integration because it will increase Ecuador's integration with the EU instead)
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Table 2: Some National Plan for Good Living requirements and their implications for agricultural policy

Page ⁵⁹	Requirement	Agriculture policy required to implement this
7, 58 45 (see also 55, 57-59)	-The diversification of exports -generation of added value for primary goods is an urgent measure	One way to diversify exports is for Ecuador to do value-added processing of its primary products. If this is what pages 7 and 58 of the NPGL refer to, this can be more difficult to achieve without being able to impose taxes on the exports of unprocessed agricultural and other raw materials, see discussion of export taxes. ⁶⁰ The EU requires strong limitations or prohibitions on export taxes in its FTAs and has a proposal to bind export taxes (including Ecuador's) at a level to be negotiated in the NAMA, (which includes fish ⁶¹) negotiations in the Doha Round.
23 (and 25 requires affirmative action)	The principles for good living include space for specific policies of affirmative action to mend the historic advantages enjoyed by certain groups	One way to do this that other developing countries (such as Malaysia and South Africa) have successfully used is to set aside government procurement for these disadvantaged groups. This is less possible if Ecuador liberalises government procurement (to allow foreign products and suppliers to supply the government or public hospitals/schools etc with food) at the WTO or in FTA negotiations
45, 61 62, 79, 105	-Prioritises South-South integration -Prioritises UNASUR, ALBA and OELAC integration	This means that any lowering of agricultural tariffs by Ecuador should be prioritised to be on products from the South/those regions to promote economic integration with other

<http://www.actionaid.org/docs/south%20south%20trade%20not%20affected%20by%20ag%20protection-%20spanish.pdf>.

⁵⁹ This refers to the Summarised Version in English

⁶⁰ See for example www.twinside.org.sg/title2/par/Export_Taxes.doc.

⁶¹ Page 13 of WTO document TN/MA/W/103/Rev.3.

Page ⁵⁹	Requirement	Agriculture policy required to implement this
		developing countries. (Otherwise if Ecuador lowers tariffs on products from other regions, such as the EU, this will undermine regional integration because it will increase Ecuador's integration with the EU instead)
45	'In view of the possible <i>war of devaluations</i> , a legitimate and operative exchange safeguard mechanism, with border control measures, needs to be incorporated within the international regulations to block the entrance of products that could harm the national production in a timely manner.'	This shows the importance of an effective SSM
45	'The negotiation of agreements resembling free trade agreements must be prevented'	This is a clear prohibition on certain types of agreements (FTAs).
57 (see also 60)	Selective substitution of imports	If this includes agricultural products, this usually requires the ability to raise agricultural tariffs, which is not possible if Ecuador has committed to lower them at the WTO or via an FTA
75	Policy to assure food made with local products	If this refers to the ability of Ecuadorian farmers to compete with subsidised imports, see comments on page 57. If this refers to government procurement of local products to be served as food in government canteens, hospitals, schools etc, the EU is likely to require this government procurement be opened to EU suppliers and products in the government procurement and competition chapters of an EU FTA. ⁶² The EU is also proposing that government procurement in services (and goods up to 50% of the value of the contract) be opened in the General Agreement on Trade in Services (GATS) negotiations. ⁶³
62	Subsidies, duties and safeguards for the selective substitution of imports, within the framework of international agreements, may also play an important role	This shows the importance of minimal further lowering of agricultural tariffs at the WTO/in FTAs and an effective SSM that can prevent import surges, as well as formulating policies for domestic agricultural subsidies where needed
79, 86, 95	-Policies include to reduce dependence	See comments on page 57 of NPGL

⁶² See for example www.twinside.org.sg/title2/par/CARIFORUM.Feb09.doc

⁶³ WTO document S/WPGR/W/54

Page ⁵⁹	Requirement	Agriculture policy required to implement this
86	on food imports -goal: to increase the participation of national food production in relation to total supply to 98% by 2013	See also analysis in intellectual property (IP) paper for the ways that stronger IP protection (eg due to an EU FTA) is likely to raise the costs of inputs for Ecuador's farmers.
79	Goal: to substitute imports of corn, soya paste, wheat and barley and reduce foreign participation in domestic consumption to 40% by 2013	This is usually achieved by raising or maintaining tariffs on agricultural products. Therefore Ecuador cannot lower them at the WTO or in FTA negotiations, especially when developed countries continue to subsidise their agricultural products. As Ecuador already has low bound tariffs due to its WTO accession, this also shows the necessity of an effective SSM that can go above the bound rate for long enough and can also be applied to import surges under FTAs
86	To promote changes in consumption patterns in order to reduce imports	This is typically done by raising tariffs on imports. This shows the importance of: not lowering tariffs further at the WTO/in FTAs and an effective SSM that can also be used for import surges due to FTAs
86	Goal: to increase the proportion of the role of small and medium-size companies (SMEs) in the State's purchasing of goods and services to 45% by 2013	If this means directing public procurement to Ecuadorian SMEs, this is less possible if Ecuador agrees to EU demands to open Ecuador's government procurement to EU suppliers and products. The EU has proposed that government procurement in services (and goods up to 50% of the value of the contract) be opened in the General Agreement on Trade in Services (GATS) negotiations. ⁶⁴ The EU is likely to also demand this in the government procurement and competition chapters of an EU FTA. ⁶⁵

⁶⁴ WTO document S/WPGR/W/54

⁶⁵ See for example www.twinside.org.sg/title2/par/CARIFORUM.Feb09.doc

ANNEX 2: THE PROBLEMS IN THE SPECIAL SAFEGUARD MECHANISM NEGOTIATIONS

Currently, the SSM negotiations in the Doha Round (are moving in a direction which would make the mechanism difficult to use and even ineffective in terms of the remedies that can be instituted. The G33 has put forward many solid proposals including in early 2010, on how the negotiating texts of the SSM can be improved.

The following aspects of current negotiating texts (WTO TN/AG/W/4/Rev.4 and TN/AG/W/7) make the SSM unworkable, or ineffective.

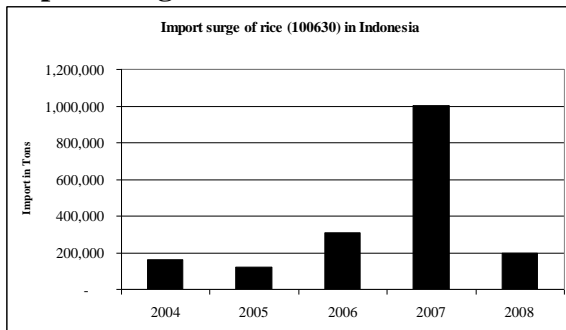
The Volume-Based SSM

a) Volume Trigger – Too High, Too Late

According to the current texts, in order for the volume-based SSM to be triggered, imports must reach at least 110% over the preceding 3-year average or 120% for a better remedy. These trigger levels are too high and too late. Why?

The trigger is calculated based on the average volume of the preceding 3 years' imports (the reference period). The case of Indonesia is illustrative. Indonesia experienced an import surge in 2007.

Import Surge of Rice in Indonesia

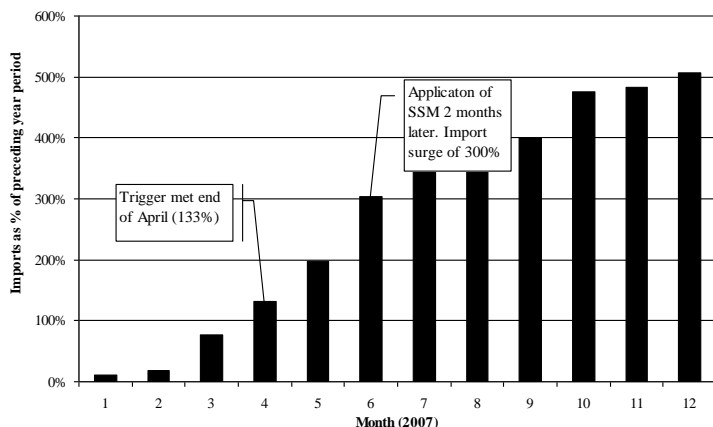


Source: South Centre Import Surge Database 2009⁶⁶

As the next graph shows, the 110% trigger is breached in April. However, the authorities would only know this and invoke the SSM at best 2 months later (since customs statistics would have to be collated). Even more realistically, this process could be 3-4 months. For some lower-income countries, it could take even up to the rest of the year.

Indonesia's Cumulative Rice Imports in 2007 as a Percentage of the Preceding 3-Year Period

⁶⁶ The South Centre Import Surge Database uses import statistics obtained from TradeMap, managed by the International Trade Centre (ITC). Only countries that reported their trade statistics to the UN in all of years between 2001 and 2007 have been considered. The resulting representative sample consists of 56 developing countries. Products in HS Chapter 1 (live animals), 6 (plants and flowers) and HS Code 2402 (cigars, cigarettes) have not been considered due to incomparability across years (units vs tons). No other data modifications have been performed on the data received.



Source: South Centre Import Surge Database

In the best case scenario then, the SSM would be implemented in June. By this date, imports have already hit 300% of the preceding 3-year period. If, more realistically, the process of collecting data and implementing the SSM takes 4 or 5 months, the actual imports would already be 400% over the imports of the preceding 3-year period.

It is therefore important that the trigger be set at the lowest level possible – even at 105%. Countries will not invoke the SSM at these levels, but the triggers are an early warning signal, and countries can already begin the process of putting an SSM in place. By the time the SSM is actually implemented, import volumes would have surpassed these trigger levels, possibly by large amounts as in the case above.

b) Volume Triggers are a Moving Target

Since developing countries' food import volumes are increasing very quickly, the volume trigger of 110% or 120% of imports of the preceding 3-year period means that the trigger level is also increasing. That is, more and more imports must be flooding into the country before the volume safeguard can be used. This limits the effectiveness of the SSM to safeguard domestic farmers' livelihoods. It is preferably if the 3-year period against which current imports are measured is a fixed time frame.

c) Remedies Offer Insufficient Protection

The SSM remedies – that is the additional duties to be applied - need to be sufficient to stop the import surge that is taking place. Unfortunately, the SSM remedy currently crafted is extremely limited and may not be sufficient to stop the damage the imports are causing to domestic producers (see Table below for detailed proposals).

Proposed SSM Remedies

TN/AG/W/R/ Rev.4:

Import surge as % of base imports (average of preceding 3 years)	Remedy added to <i>applied tariffs</i> (Rev.4)	Final duty cap
110% - 115%	25% of pre-Doha bound rate or 25 percentage points (pp), whichever higher	<p>Remedies on the left can lead to overall remedies going beyond the Uruguay Round bound tariffs, but within the following limits:</p> <p>LDC: 40% of pre-Doha bound rate or 40pp, whichever higher</p> <p>[SVE: 20% of pre-Doha bound rate or 20pp, whichever higher Max 10-15% of tariff lines] (brackets are in the negotiating text).</p> <p>Other developing country: 15% of pre-Doha bound rate or 15pp, whichever higher Max 2-6 products on HS6 level (i.e. max. 48 lines)</p>
115-135%	40% of pre-Doha bound rate or 40pp, whichever higher	
> 135%	50% of pre-Doha bound rate or 50pp, whichever higher	

TN/AG/W/7:

Import surge as % of base imports (average of preceding 3 years)	Remedies / cap	Limit on tariff lines in 12 month period
120% - 140%	1/3 of pre-Doha bound rate or 8 percentage points (pp), whichever higher	<p>Max 2.5% of tariff lines (This remedy is for developing countries, it can be assumed that SVEs would have better treatment, but this was not elaborated upon in the W/7 document).</p>
>140%	1/2 of pre-Doha bound rate or 12pp, whichever higher	

Both current texts propose that bigger remedies should be available for bigger import surges. However, these bigger remedies are severely limited by ‘caps’ on the SSM additional duty. These ‘caps’ limit the extent to which the addition SSM duty can breach countries’ tariffs which they had bound in the Uruguay Round.

Past experience of developing countries suggest that these remedies are likely to be insufficient (see Box below).

Box: Cote d'Ivoire and Poultry Import Surges

Poultry imports in Cote d'Ivoire rose from 1 815 tonnes to 17 226 tonnes between 1997 and 2003. Between 2001 and 2003, imports increased more than 650 per cent. During this time, FAO reported that over 1,500 poultry producers ceased production.⁶⁷

The country's bound tariff is around 83%⁶⁸. In 2004 -2005, the country raised its duty from 300 CFA per kg to 1000 CFA.⁶⁹ This translates into a new duty of about 134%.⁷⁰

The additional tariff has been quite successful and has stemmed the rise in poultry imports.

However the final tariff is over 50 percentage points above their Uruguay Round bound rate and is beyond the SSM remedies offered to Small and Vulnerable Economies (SVEs) in the current negotiating texts.

d) Applying the Remedies will be too Difficult: Cross-Check, Seasonality, Pro-rating, Exclusion of Negligible Trade

The negotiating texts also put in many conditionalities which must be fulfilled before the SSM can be applied. This will make the SSM largely unworkable and inoperable.

For example, countries 'shall not normally' apply remedies that exceed the pre-Doha bound rate "unless domestic prices are actually declining"⁷¹, known as the "cross-check". If followed strictly, for Ecuador, this conditionality could block the use of the volume-based SSM for 92% of all import surge quantities the SSM could potentially be used for (based on 2004 -2007) data.

Table: price-cross check would render volume-based SSM inoperable on 92% of imported quantities

Year	Quantity of imports coming in as import surge (110%)	Effect of cross check on volume-based SSM	Quantity of imports left	Loss
2004	347,355	-301,466	45,889	87%
2005	353,381	-327,355	26,026	93%
2006	247,227	-230,832	16,395	93%
2007	304,003	-285,796	18,207	94%
			Average	92%

Source: South Centre Import Surge Database

The example of corn below illustrates how this cross-check conditionality becomes a problem. Although corn imports are quickly increasing between 2001 – 2007, domestic price during this time does not drop, but increases slowly between 2001 – 2006, and then sharply around 2007.

⁶⁷ FAO 2007 'FAO Briefs on Import Surges. Countries no.12. Insights on rice, poultry and sugar imports into Cote d'Ivoire'.

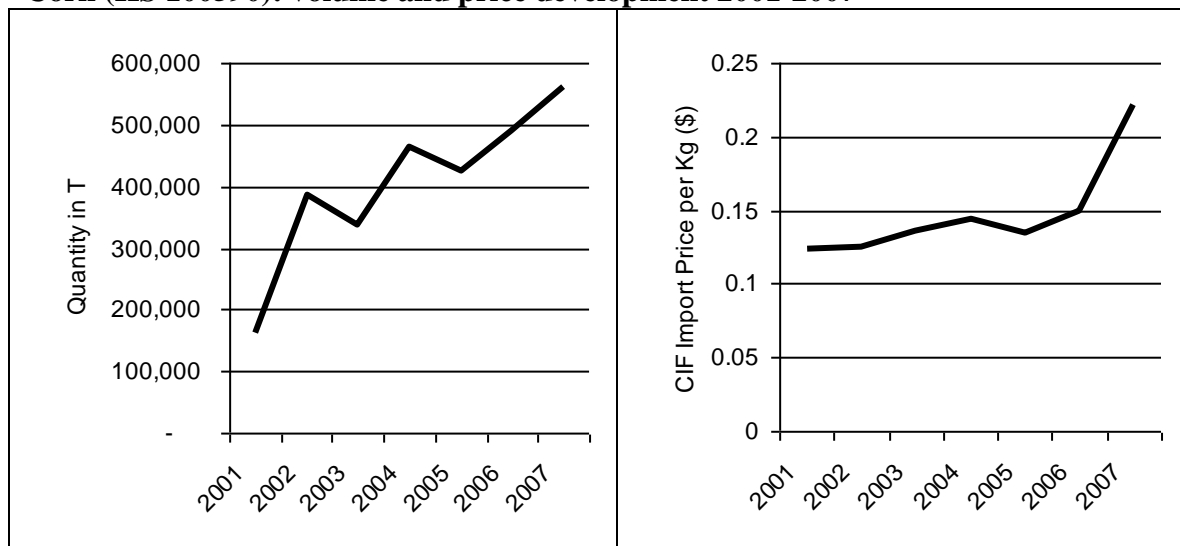
⁶⁸ Based on Ad valorem bound tariff rate

⁶⁹ International Egg and Poultry Review, Cote d'Ivoire Increases Poultry Import Tariff, 17 May 2005, <http://www.thepoultrysite.com/poultrynews/7807/international-egg-and-poultry-review>

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

⁷¹ TN/AG/W/7

Corn (HS 100590): volume and price development 2001-2007



Source: South Centre Import Surge Database

The Chair's texts also impose conditions on how long remedies can be used for and how soon they can be reinstated once removed. According to one negotiating text⁷², when a remedy has been in place on a product for 2 consecutive periods, it cannot then be used for a subsequent 2 consecutive periods. The other proposal⁷³ is even more constraining, stating that the SSM should only be applied for a maximum of '[4/8]' months, and shall not be reapplied thereafter for the same number of months.

It should be noted that the parallel mechanism used largely by the developing countries, the Special Safeguard Provision (or the SSG) does not have such conditions.

Conditions are even more stringent for seasonal and perishable products – limiting coverage to only 6 months in one text.⁷⁴ Although not explicitly stated, seasonal products in the SSM discussions refer to the products which are seasonal for the exporters. The exporting countries want to ensure that their seasonal products are not being blocked by the SSM.

In contrast, the SSG has a completely different approach to seasonal products – referring to seasonal products for the importing country. The treatment provided in the SSG for seasonal products is very favourable to the importer using the safeguard– allowing countries to change their reference periods so that the SSG can more easily be invoked to protect the domestic producers of seasonal and perishable products of the importing country.

Yet another conditionality constraining the use of the volume-based SSM in the present negotiating text⁷⁵ is that countries can only apply SSM remedies when imports are more than 'manifestly negligible in relation to domestic production and consumption'.

Finally, "pro-rating" is introduced for the SSM, a retrograde innovation as compared to the SSG. This

⁷² TN/AG/W/4/Rev.4

⁷³ TN/AG/W/7

⁷⁴ TN/AG/W/4/Rev.4 states that the SSM for seasonal products can only be applied for 6 months. TN/AG/W/7 further suggests that if the SSM has been in place for 2 consecutive 12 month periods (eg. 6 months in one year, than another 6 months in another year), the SSM cannot then be used for another 12 months.

⁷⁵ TN/AG/W/4/Rev.4

condition effectively imposes a higher trigger on developing countries if they have previously used the SSM on those tariff lines. For example, one proposal⁷⁶ states that should a previous SSM application have lowered import volumes (hence lowering the volume trigger level), the next application of the SSM should use the previous, higher SSM trigger level. A more drastic proposal⁷⁷ is that proxy import figures should be used to calculate the trigger if the SSM has been applied within the last three years. These proxy figures would disregard the period for which the SSM was applied and therefore should produce a higher trigger. (If this should not be the case, then the original higher figure would be used).

This means that if an SSM application has previously been effective, countries are essentially punished in any future use. It also means that the volume trigger can never be lowered – even if total imports due to SSM usage have declined.

All these conditionalities and others unnecessarily hinder the effective usage of the SSM and should be removed from the negotiating texts.

The Price-Based SSM

The idea of the G33 regarding the price-based SSM is that as shipments arrive at the importing country's port, the price of the shipment is evaluated. If it has declined, compared to the preceding three year-average price, an additional duty can be levied to bring it up to the level of the preceding three-year average price.

Unfortunately, like the volume-based SSM, the negotiating texts on the price-based SSM proposes inadequate remedies and restrictive conditionalities.

a) Remedies Offer Insufficient Protection

The chair's proposal is that the remedy will only partially address the price decline, meaning that domestic products are still likely to be out-competed by the cheap imports.

The chair proposes that the trigger price should be 85% of the reference price. The reference price is defined as the average price of the last 3 years⁷⁸. The remedy is 85% of the difference between the new import price and the trigger price.

For example, a product which used to be imported at \$100 would have a trigger price of \$85. If the new import price is \$50 the SSM remedy would be 85% of the difference between \$85 (trigger price) and \$50 (the new import price). In such a scenario, the remedy would be \$29.75, bringing the import price plus SSM remedy to \$79.75. This is still \$20.25 less than the original price. If the domestic product is selling at \$100 or even more, the SSM would do little to shield domestic producers from injury.

The G33 has proposed that the remedy should make up 100% of the difference between the import price and the reference price, hence bringing the import price back to \$100 in the case above. The

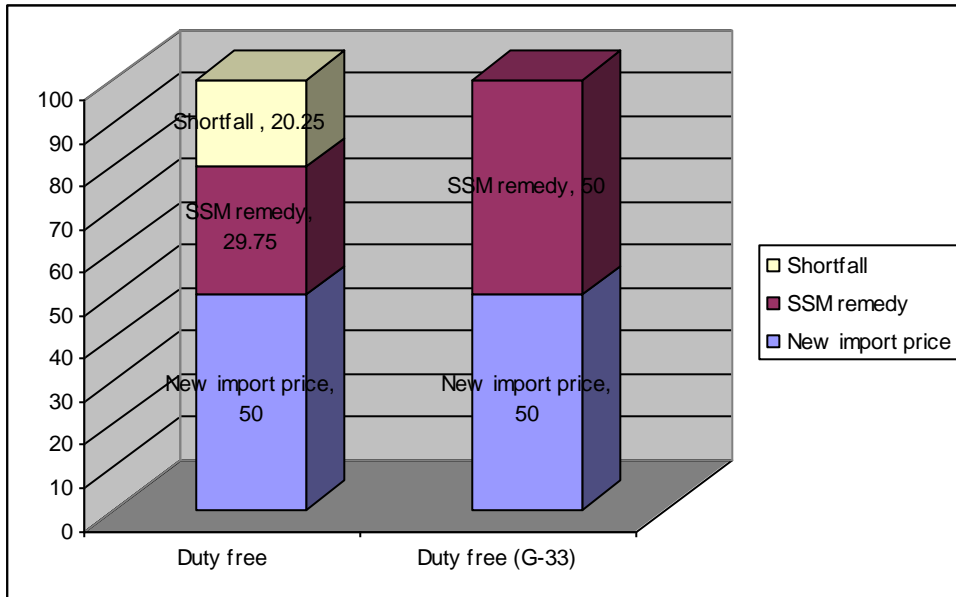
⁷⁶ TN/AG/W/4/Rev.4

⁷⁷ TN/AG/W/7

⁷⁸ The issue of whether there should be a fixed reference period (as with the price-based SSG), or a moving reference period has not actually been discussed.

difference between the Chair’s text and the G33 position is illustrated in the graph below. The hypothetical example used is one where the product imported faces no duty.

The Price-based SSM Remedy: Comparing the Chair’s Text and the G33 Position



Source: South Centre

The negotiating text has also overlooked the situation where a product may have an ad valorem tariff. These are tariffs that are calculated as a percentage of the value of the product. For example a 50% tariff for a product costing \$100 would be \$50. When prices fall, the ad valorem tariff in price terms also falls. If the \$100 product has a tariff of 50%, when prices fall to \$50, the tariff would also drop from \$50 to \$25. This decline has not yet been factored into the price-based SSM negotiating text⁷⁹. The G33 has addressed this issue in a paper in February 2010 (JOB/AG/5/Rev.1).

b) Applying the Remedies will be too Difficult: No price-based SSM in Effect as En Route Shipments are Excluded from SSM use; Cross-Check Mechanism

As was the case for the volume-based SSM, stringent conditions make the price-based SSM practically impossible to implement.

Again, “cross-check” conditions are imposed. In this case, this means that developing countries cannot use the price-based SSM when the volume of imports is in decline. They also cannot use it when the imports are at a “negligible level incapable of undermining the domestic price level”.

There are three main problems here.

First, price declines are not always accompanied by import surges and therefore the cross-check condition would not be fulfilled.

⁷⁹ One way of doing so is by defining the reference price as the price encompassing the c.i.f. price (cost, insurance and freight price) and also the duty in price terms. When prices (and tariffs in price terms) drop, the remedy will have to bridge the difference between the new import price (c.i.f. plus duty) and the old import price (c.i.f. plus duty in price terms).

Second, it is impossible for countries to know, as shipments arrive, whether the levels of imports are increasing or declining overall, since it is likely that import data would not yet have been collated.

Third, if challenged, developing countries would bear the burden of proof that import levels were not “manifestly negligible”. This is especially difficult as these terms are undefined.

A final problem with the SSM is that en route shipments are excluded from coverage. The text notes that any shipments that “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”. Yet, the text also notes that the price-based SSM will apply on a shipment-by-shipment basis!

Due to this contradiction, countries have on paper, a price-based SSM, but in effect, they cannot invoke the instrument.

Exclusion of Preferential Trade from SSM Usage

The latest Chair’s text also excludes SSM usage when import surges take place as a result of preferential trade agreements. An earlier negotiating draft text included the possibility using the instrument also for preferential trade, should countries chose to do so. This flexibility is also available for US and the EU and the other developed countries that largely use the Special Safeguard Provision.

Conclusions

An easy to use and effective safeguard can be a useful tool for Ecuador, given the 15.5 % of import surges occurring on average (between 2004-2007). The instrument would also support Ecuador in its goals of increasing staple food production and increasing supports to its small farmers. Domestic production can guard against the country falling into a balance of payments crisis should the world price of food increase to levels seen in 2008. Indeed, world prices of key agricultural/ food items are likely to be volatile in the years to come for several different reasons, including that of speculation of agricultural commodities on the financial markets.

The G33 countries proposing the SSM continue to push for a useful tool. Yet they are continuously under pressure in the negotiations to back down from their positions – by countries (developed and developing) which perceive themselves to have strong export interests. Whether the SSM will come through at the end of the negotiations as an instrument that is useful and effective remains an open question at this point, and all countries hoping to use it would have to vigorously fight to advance good positions in the course of the on-going negotiations.

(Paper prepared for the Government of Ecuador, 2011.)