

# The special safeguard fiasco in the WTO: the perils of inadequate analysis and negotiation

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**Abstract:** The July 2008 attempt by a group of ministers to agree on modalities for the WTO's Doha Round broke down in part because they could not agree on a proposed 'Special Safeguard Mechanism' (SSM) for developing countries in agriculture. This paper offers a corrective to the conventional story that the breakdown was due to a simple conflict of interests over the SSM between the United States and India. The term SSM was first used in a Doha Round text in 2004, but neither the principles nor the commercial implications had ever been discussed by ministers before July 2008. The conceptual origins of the SSM go back to proposals in the late 1990s for a 'Development Box', but by the time of the ministerial, negotiators had been unable to agree on the purpose of the safeguard, or how it would work, including the agricultural products it would cover, how it would be triggered, the remedies (additional tariffs) allowed, or the transparency requirements for its operation. The SSM was therefore one of the least 'stabilized' parts of the text placed before ministers in July 2008. Members were far from reaching a consensual understanding of the SSM, which resulted in a fiasco that might have been avoided. Ministers should not have been asked to engage in a poorly prepared discussion of a sensitive issue, because inevitably they staked out incompatible positions. Members may subsequently find it difficult to back down.

## Introduction

### *An obscure proposal blows up a ministerial*

Rounds of negotiations in the World Trade Organization (WTO) have many elements, all of which are linked together in a Single Undertaking.<sup>1</sup> If Members do

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This paper draws on reporting from *Inside US Trade*, *Bridges*, and the *Financial Times*, among many other media sources; all the reports are on file with the author, but are not cited for reasons of space. The analysis also rests on confidential interviews with senior members of a wide range of delegations and officials in the WTO secretariat, as well as on secretariat press briefings. I am grateful for the comments of Jacalyn Duffin, Patrick Messerlin and two anonymous reviewers; and for the support of this project by the Groupe d'Economie Mondiale, SciencesPo, Paris. Visits to Geneva were supported by the Social Sciences and Humanities Research Council of Canada.

<sup>1</sup> When the WTO Ministerial Conference in Doha in 2001 adopted the 'Doha Development Agenda', it launched an integrated 'work program' (now known as the Doha Round) in nine broad areas with the

not understand significant elements of the package, they cannot negotiate. If they talk past each other, they cannot reach agreement. Pascal Lamy, the WTO Director-General, invited selected ministers to come to Geneva in July 2008 for an informal ministerial meeting to agree on the core modalities or blueprint for finishing the Doha Round.<sup>2</sup> Despite trying for nine days, a GATT/WTO record for ministers, they failed. The July ministerial broke down in part because ministers did not agree on the principles, operation, or commercial implications of a proposed ‘Special Safeguard Mechanism’ (SSM) for developing countries in agriculture.

In an valuable analysis of how the various options for a SSM might work (which will not be covered below), the secretariat repeated the conventional wisdom that the breakdown was due to philosophical differences on whether the SSM was meant to provide protection from the world for poor farmers, or a time-limited measure meant to facilitate liberalization (WTO, 2008a). Members never properly addressed those differences. This paper will show that the outcome was due to inadequate analysis of the SSM, and a persistent failure to negotiate, going back to the beginning of the round. It also offers a corrective to the frequently repeated story that the breakdown was due to a simple conflict of interests over the SSM between the United States and India.<sup>3</sup>

Members agreed in the 2001 Doha declaration on the principle of special and differential treatment for developing countries. The 2004 July Framework recorded agreement on the creation of a SSM. The 2005 Hong Kong declaration added that the SSM should have price and volume triggers. To this point, ministers had not agreed on the purpose of the safeguard, or how it would work, including the agricultural products it would cover, how it would be triggered, the remedies (additional tariffs) allowed, or the transparency requirements for its operation – and yet the need for the measure had become an unchallengeable article of faith.

The remedies posed the biggest difficulty whenever the SSM was discussed. For Members who have reduced the tariff actually applied, or who plan to reduce the tariff rate previously bound in their Schedules as part of the Doha Round, the SSM remedy is relatively uncontroversial. But for Members whose applied and bound rates are close together, who have no so-called ‘water’ in their tariff rates, any remedy added to the applied rate will quickly take it above the rate bound before

understanding that ‘the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking (WTO, 2001: paragraph 47)’. Musings by some participants and analysts after the breakdown notwithstanding, Members show no inclination to conclude the round on any other basis than as a Single Undertaking.

<sup>2</sup> For an analysis of the July Ministerial as a whole, see (Wolfe, 2009).

<sup>3</sup> Political scientists will observe that the analytic framework owes more to constructivist approaches that stress arguing than to concepts drawn from the negotiation analysis literature. A consideration of whether the parties used mostly distributive bargaining strategies would be fruitful, but is beyond the ambitions of this paper.

the Doha Round. Breaking previously negotiated bound tariffs raises matters of principle (that bargains should be respected) as well as commerce.

Other so-called ‘trade remedies’ (e.g., anti-dumping) can have a similar effect. European Communities (EC) dumping duties are sometimes as much as four times the bound rate for the affected product. But the use of trade remedies is subject to demanding procedural rules, including strict notification requirements, and misuse is easily challenged in the dispute settlement system. The SSM in contrast is meant to be something more easily applied, with no investigation required, and no injury test. The commercial implications as will be seen below are in the impossibility of knowing how many products would be affected, how often, and for how long.

### *The fiasco did not begin in July*

Neither the principles nor the commercial implications of the SSM had ever been discussed by ministers before July 2008, other than in a limited way at the 2005 Hong Kong ministerial, nor had it been fully explored by any of the Doha Round clubs, the various ‘G-x’ listed in the Glossary below.<sup>4</sup> G-33 ministers discussed it, but only among themselves. The SSM was not discussed at any of the ‘mini-ministerials’, such as the annual gathering of selected ministers on the margins of the Davos meetings in February (on mini-ministerials, see Wolfe, 2004). It had never been discussed by the so-called G-4 (US, EC, India, and Brazil). The Cairns Group never had a serious conversation about the SSM, because their Members had such opposing views – even New Zealand had an ambiguous stance. Brazil in a neutral role tried to coordinate discussions at ambassadorial level in the G-20 in 2006 and 2007, but the issue was too controversial – the SSM was put aside for political reasons. Within ASEAN, Thailand and Malaysia were not able to discuss the issue with Indonesia and the Philippines because it was feared that a discussion would destroy ASEAN solidarity on other issues. References by ministers in G-20 or Cairns communiqués are always anodyne or pro forma.<sup>5</sup> Even key ministers like Kamal Nath of India and Mari Pangestu of Indonesia may have never discussed the

4 WTO negotiations are largely conducted in small group meetings, where some of the participants are present as representatives of clubs (see Wolfe, 2008). The most important club for the SSM was the G-33, which now has 44 Members. This club was known at its creation at the time of the 2003 Cancún WTO ministerial as the Alliance for Special Products and the Special Safeguard Mechanism (referred to as SP and SSM.) It was formed to advance the defensive interests of import-sensitive poor farmers because the Cairns Group (a group of exporters led by Australia since its creation in 1986) and the G-20 (a mixed group led by Brazil since its creation in 2003) were dominated by offensive objectives in the negotiations. G-33 Members include India and China. The G-33 coordinator, Indonesia, said that its main objective was to ensure that the issue of food security, rural livelihood, and rural development becomes an integral part of the agriculture negotiations – the ‘engine’ and central issue of the WTO Doha Development Agenda. The goal of G-33 is to have the concepts of SP and SSM embodied within the modalities. Their success on SP is not addressed in this paper. For an analysis of the role clubs played in July 2008, see Wolfe (2009).

5 In November 2007 and June 2008 they said, ‘The G-20 highlights the importance of SPs, in addressing the food security, rural development and livelihood concerns of developing countries, and of the SSM.’

SSM with other ministers, except in the G-33.<sup>6</sup> On this issue, unlike other thorny problems in the agriculture negotiations, the G-33 and its adversaries had barely tried to talk to each other. In short, many ministers may well have been surprised when the SSM blew up in July. One ambassador said that ‘until we got into the Green Room, I never knew SSM was a big issue. We were all terribly prepared. We thought the tough issue was Special Products.’

The failure in July, therefore, at least on the SSM, did not begin in July. The problem was partly that Members had simply spent more time talking about developed country issues, such as the complicated technical problems with ‘sensitive’ products,<sup>7</sup> but the real problem was deeper. Members had systematically avoided coming to grips with SSM issues, in part because their leaders – the agriculture Chairperson before the Hong Kong ministerial (New Zealand Ambassador, Tim Groser), and the Director-General more recently – had thought that Special Products should come first. One of the Members’ clubs, the G-33, was dedicated to little else but special and differential treatment in agriculture, but the other clubs were so conflicted that they could not discuss the SSM at all. The SSM was one of the least ‘stabilized’ parts of the July 10 text prior to the ministerial. Members were far from reaching a shared understanding of the SSM. Few negotiators understood it. Some people saw that; others were blind. Failure to agree on principles and purpose meant that discussion of details was fraught.

My argument in sum is that the SSM fiasco was both a conceptual and a negotiating failure, but proving the absence of agreement is harder than explaining success. The detail of the first section of the paper helps to explain the issues in contention in the second section.<sup>8</sup> Section 1 describes the origins of the idea and the substantive difficulties with it, which in themselves might have impeded agreement. Belief in the importance of an objective (rural livelihoods) does not imply that a particular tool (a special safeguard) is necessarily the best means to the end. Section 2 of the paper traces the persistent inability of Members to engage in real negotiations, which made a difficult problem impossible to resolve. At the time of writing, Members had still not found a way out of the impasse on either dimension.

<sup>6</sup> They may also not have spent much time discussing it with each other, since they are reported to have described its purpose differently in the July Green Room discussions – was it only a response to import surges (Nath) or something to be used in other circumstances too (Pangestu)?

<sup>7</sup> For example, a group of senior officials representing proponents and their critics spent a great deal of time in the spring of 2008 working on a method to solve the ‘partial designation’ problem that affected proposed exceptions for ‘sensitive products’. The results of their efforts are now stabilized as Attachment A1 to the July 10 text, a 16 page technical description of the necessary modalities. A similar group spent months in 2004–2005 developing a method for calculating *ad valorem* equivalents of specific tariffs that was only finally sorted out by Ministers on the margins of the 2005 OECD Ministerial. No comparable work was ever done for the SSM.

<sup>8</sup> Full citation of all the negotiation texts mentioned will be found in the Annex. In order to focus on these two failures, the paper assumes a degree of knowledge about the WTO and agricultural trade policy. In addition to sources cited in the text, the WTO website provides excellent background material, especially on the issues at stake in the agriculture negotiations.

## 1. The source of a conceptual failure

The idea behind the SSM begins in a belief that the Uruguay Round Agreement on Agriculture (AoA) was a bad deal for developing countries. This belief affected how developing countries saw the new negotiations mandated by Article 20 of the AoA. During the preparatory period in the late 1990s, the Like-minded Group (LMG) called for: the elimination of tariff peaks, tariff escalation and export subsidies by developed countries; a lowering of domestic supports in rich countries; and the creation of a ‘Development Box’ that would allow developing countries to deviate from their commitments in order to meet development and food security needs (WTO, 1999b).

### *The starting point: the ‘Development Box’*

The Development Box reference was a neat if rhetorical twist on the ‘boxes’ into which agriculture subsidies were placed in the AoA. It is an ambiguous reference, however. The ‘Green Box’ allows supposedly non-trade distorting domestic support, for example, while the Amber Box restricted the use of other forms of support. The new proposals contained a mix of domestic support (subsidies) and market access (e.g. tariffs) issues, with no reference to their trade effects. A call for a Development Box was in one of the infamous square brackets in the draft ministerial texts for Seattle (WTO, 1999a); it was the subject of a formal proposal by the LMG when agriculture negotiations got underway (WTO, 2000); and it was reiterated by the G77 + China before the Doha ministerial in 2001.

Encouragement for the idea came from work conducted by NGOs and other international organizations.<sup>9</sup> Some of the developing country concerns were supported by the import-sensitive OECD countries, especially Switzerland, the EC and Japan, who were still trying to promote the concept of ‘multifunctionality’ (OECD, 2008). The notion of a new safeguard mechanism was part of these proposals, but it had little specificity. The emerging divides were evident in discussions in March 2001 of an Indian proposal for a ‘food security box’.<sup>10</sup> Developing countries were still promoting the Development Box at the Doha ministerial, but the concept was never used in any ministerial declaration.<sup>11</sup> Proponents were frustrated, since it seemed that the agriculture talks were dominated by the EC on the one hand, and exporters led by the US and the Cairns Group on the other, ignoring the problems of ‘small subsistence farmers’ (Friends of the Development Box, 2001).

<sup>9</sup> For examples, see Green and Priyadarshi (2001), FAO (2000), UNCTAD (2003); for a list of the early proposals, see Ruffer (2002); one of the best surveys of the ideas is Murphy and Suppan (2003).

<sup>10</sup> For a brief description of all the proposals made at this stage of the negotiations, see WTO (2004c).

<sup>11</sup> The declaration did stress special and differential treatment, emphasizing that the results would ‘enable developing countries to effectively take account of their development needs, including food security and rural development’.

The high water mark for discussion of the Development Box was February 2002, when it was discussed at a meeting of the agriculture committee (technically the negotiations are conducted in the Committee on Agriculture – Special Session, which is separate from the regular committee) and at a prior roundtable with presentations by NGOs and other international organizations. Many of the supposed advantages and disadvantages of safeguard measures emerged in the debate, but it was evident that much analysis needed to be done to be able to define the main targets of such an instrument.

The concept of a new ‘box’ gradually faded from committee discussion. While the underlying idea of special and differential treatment for developing countries in agriculture dominated the rest of the Doha Round, it was addressed through its components, restraint on developed country subsidies and flexibilities for developing countries, notably in the concepts of ‘special products’ (SP) and a ‘special safeguard mechanism’ (SSM). But as that transition took place, it became a discussion of mechanisms not the underlying principles. So the rhetorical claim that both the SP and the SSM were necessary to give effect to special and differential treatment slid by unchallenged. Members accepted the idea of a SSM before anybody had a real idea of what it meant.

The Doha Round mantra of the WTO being ‘Member driven’ and the negotiations proceeding ‘bottom up’ runs into problems on something so complex. In the period after the Seattle ministerial, NGOs with an ideological orientation seemed to be disproportionately affecting the negotiation positions of developing countries (Ostry, 2001). Within the G-33, the analytic base was weak, because most of the research done by, or more typically on behalf of the group was on Special Products (Mably, 2009). It is hard to trace the origin of the various papers put forward by the G-33, but it seems that many were written by the South Centre, influenced by work done at FAO (FAO, 2000, 2002, 2003, 2005). More recent work was done by or in association with ICTSD (e.g. Valdés and Foster, 2005; Montemayor, 2008). Many of the G-33 proposals seem to be selective in their use of the available research. They might note the evidence on import surges, for example, but not the limit analysts also suggest on temporary remedies.

This work did not help to address what emerged as the core problem in July. The protagonists simply did not agree on what a SSM should be and whether a SSM was really needed or appropriate (on which research was available, but limited), and they wasted their time in trying to cobble together a mechanical contraption that they could live with, on which research is close to non-existent (Martin and Anderson, 2008: 11).<sup>12</sup>

12 One example of how the lack of an adequate research base lead to misunderstandings on the part of the G-33 and their NGO advisers is the often-repeated belief that remedies under the AoA special safeguard (SSG) are applied to the *bound* rate, which seems to make it unfair that remedies under the SSM should be added to the *applied* rates (G-33 *et al.*, 2008; South Centre, 2008: para. 83). I believe the argument to be factually wrong, although Article 5 of the AoA is not specific, and it is not easy to determine what the SSG practice has been from the most recent secretariat report (WTO, 2004b), perhaps

*The case for a new safeguard*

Developing countries have been persuaded that import surges and price declines do happen in agriculture, that they can be harmful to vulnerable communities, and that developed country policies, especially subsidies, are a major cause of the surges and declines. One of the things that gets confused in the proposals, however, is the usual purposes of a safeguard. At least three are relevant in this debate. The first is temporary protection against injurious imports based on an injury test. The second is encouragement to accept liberalization, if available only for products subject to a reduction commitment. The third is protection from volatility in the global market for all products.

The first objective was rejected because the injury test in the Safeguards Agreement is difficult to apply to agriculture products.

The second objective was met in the Uruguay Round AoA by the ‘special’ safeguard in Article 5, known as the SSG. It allows for the imposition of higher duties in the case of an import surge, an exception to Article II of the GATT, which prohibits duties in excess of those in a country’s schedule. The SSG was designed to give Members who were turning non-tariff barriers into tariffs (‘tariffication’) the comfort that they could temporarily increase those new tariffs in response to unexpected events. The SSG is especially important to the EC, because in ending the variable levy it lost the ability to adjust the tariff to account for fluctuations in world prices or currencies. Other Members worried that while the SSG might promote some stability in markets, it risked encouraging managed trade. It seems that the hopes and fears were exaggerated. It did not vitiate the rest of the Agreement, but neither did it help to smooth the path of adjustment, especially in cases where it was used for years at a time (Hallaert, 2005).

The SSG is available only for products that were ‘tariffed’ in the Uruguay Round, which precludes its use by many developing countries. Those countries had a choice, developing country exporters point out, but the importers preferred the option of picking ceiling tariffs (across the board high tariffs, often around 100%), an option not available to developed countries.

Hence, the proposals for a new ‘special’ safeguard, the SSM in order to meet the third objective, of protection from market volatility. The claim is that the SSM should be more favorable to developing countries than the SSG, because developed countries have benefited from the SSG (as have some developing countries). Proponents of new safeguard measures have not noticed that the lesson of the SSG, and of Safeguards generally, is that it is difficult to design a good one (Bown and

because for the countries who are major users of the SSG (US, EU, Japan), the rates they *apply* and those *bound* in their schedules are virtually always the same – in the jargon, they have little ‘water’ in their tariff rates. The only justification offered for starting from the bound rate is the claim that Members do not need permission to raise an applied tariff to the bound rate (G-33, 2008), which would render much of the debate moot. It also ignores the bureaucratic problem that in some countries raising a tariff normally comes under the finance ministry (which may be reluctant), but a safeguard is applied by the trade ministry.



McCulloch, 2003, 2007). It is not clear that proponents understood that the ‘encouragement of liberalization’ objective was the only reason that exporters were ever willing even to discuss a SSM, since the G-33 strongly rejected the idea that the SSM was meant to encourage liberalization, and disparaged anyone who tried to make the argument. (Academic and NGO analysis also often made the link with supporting liberalization by allowing a safeguard.)

The proposed SSM from the outset was cast as a SSG adapted to the needs of developing countries, but it was divorced from being a response to trade policy change. Instead, it became (a) a response to the putative iniquities of developed country trade policy; and (b) a tool to ensure that all poor farmers could be insulated from global markets. The proposed SSM in the July 10 text therefore has no injury tests and would be available for all products, rather than just for products liberalized in the Doha Round.

*The Black Box problem, or the devil in the transparency details*

One of the obstacles to convergence on the SSM was a lack of confidence in how it would work in practice. Proponents argue that they need the SSM because they do not have and cannot afford the policies that support farmers in developed countries, policies that protect farmers from the vicissitudes of the market. In countries where farmers are a small part of the population, those subsidies almost disappear in the state budget. In countries where farmers are a large part of the population, the necessary subsidies, if affordable at all, would be obvious, and offensive, to the rest of the population. But all those farmers are voters too, so they must be helped if the global market appears to be threatening their livelihood. Rather using a domestic policy, it might seem much easier for developing country governments to use a SSM to raise tariffs when farmers appear to be at risk. However, passing the costs of adjustment to foreigners is exactly what the GATT/WTO system is intended to minimize, not least by providing a forum in which Members can determine whether a given action is consistent with WTO obligations.

Potential conflict created by the operation of an untransparent SSM is an example of the sort of problem for which the cumbersome WTO dispute settlement system would be useless. The only commercially relevant disciplines would be a monitoring and surveillance mechanism. If well designed, such a mechanism could both reassure trading partners and reduce the inevitable uncertainty for economic actors about when their products might suddenly be subject to the safeguard. Existing WTO transparency provisions, however, do not work as well as one might wish (Wolfe and Collins-Williams, 2008). Notifications under the AoA are sometimes late, by several years, or incomplete (WTO, 2006f: 133). Some Members ignore the requirement to notify SSGs; others ignore the requirement to notify before implementation (Hallaert, 2005). In light of the less than stellar experience with transparency under Article 18 of the AoA, the Cairns Group and the G-20 made proposals for improving the procedures. The result of negotiations so far is in Annex M of the July 10 text. On the SSM it states only that ‘A developing



country Member shall notify Special Safeguard Measure actions when initiated, and provide information on triggers and remedies, as well as an annual summary of these actions.’

One difficulty with this aspect of the SSM proposals is that many developing countries lack the resources to monitor import volumes or to conduct on-going price comparisons. Transparency and data problems were addressed directly in the Argentina, Paraguay, and Uruguay (APU) proposal, but such concerns have been dismissed by the G-33. The G-33 argue that a slight adaptation of the SSG transparency provisions will be sufficient, which is not plausible, given the problems with SSG transparency (Hallaert, 2005). The data problems are severe both in operation by the country itself and in subsequent monitoring and surveillance by its trading partners.

The section of the July 10 texts on SSM transparency, which is based on paragraph 7 of Article 5 (SSG) of the AoA includes the following provision:

*The operation of the SSM shall be carried out in a transparent manner and the basis upon which ongoing calculations of rolling averages of import volumes and prices shall be accessible to all Members so that they can be fully informed of the basis upon which any potential actions may be taken.* Any developing country Member taking action shall give notice in writing, indicating the tariff lines affected by the additional SSM duty and including relevant data [to the extent available], to the Committee on Agriculture as far in advance as may be practicable or, where this is not possible, no later than 15 [30] days after the implementation of such action. The Member taking action shall afford any interested Members the opportunity to consult with it in respect of the conditions of application of such action.

The highlighted words are not found in the G-33 proposal (WTO, 2006b), but are found in the APU proposal, which suggests much more stringent limits on the operation of a SSM (WTO, 2008g), and the square brackets indicate the G-33 preference on these points. The G-33 has been clear all along that it does not want more stringent transparency provisions (G-33, 2007), and it explicitly rejected the current formulation – arguing that ‘the SSM shall not be more burdensome for developing Members and LDCs to implement. 15 days is limited and therefore 30 days remain the appropriate period; and the G-33 cannot accept the suggestion of requiring advance information on on-going calculations of triggers, since it would be operationally difficult and burdensome’ (G-33, 2008).

Given experience with notifications, it seems improbable that developing countries would be likely to notify SSM measures on a timely basis, whichever variant is accepted. It is also not clear whether the committee or the secretariat would be able to support frequent consultations, which could be contentious. One can see why the G-33 might think the provision burdensome. If a Member cannot calculate the data on an on-going basis, however, it is not clear how it will know when to stop a given shipment. And if a Member cannot compile the information

and send it to Geneva within 15 days, it is not clear why 30 days would make a difference.

*A robust rationale for the SSM? Not yet*

Despite having been around for years, the SSM concept still has an inadequate analytic basis. One conceptual problem concerns developed country domestic support, where developing country negotiators do not necessarily understand its relative magnitude or significance. For example, in July, Indian Commerce Secretary, Gopal Pillai, said in an interview with *Inside US Trade* that the SSM fight was less about the actual policy than about the perception that developing countries needed a safeguard against subsidized imports when the US would not lower its 'overall trade-distorting support' (OTDS) below \$14.5 billion, roughly double what the US actually spent on these domestic farm subsidies in 2007. Pillai called agricultural subsidy reform the 'unfinished business of the Uruguay Round', noting that rich countries were still paying out hundreds of billions of dollars of subsidies.

The number is right, but compares apples to oranges. For more than two decades the OECD has been producing very sophisticated estimates of *all* the support provided to farmers. This number bears no relations to the 'boxes' of the AoA, or to the OTDS under negotiation in the Doha Round. It includes everything, from market price support from consumers through agriculture R&D to direct support to farmers, whether or not in the Green Box. That number for all OECD members is now estimated at over \$270 billion a year (OECD, 2007b). This number is large enough to justify the Indian claims, but, as a measure of overall support, it is much larger than, and not comparable to, the domestic support subject to negotiation in the Doha Round.

Also pertinent is that the OECD secretariat has tried to estimate that number for significant non-OECD countries. India refused to participate in the exercise. By the secretariat's best estimates, however, 'the level of agricultural support for India would appear to be slightly below the OECD average but considerably higher than that for other emerging economies reviewed by the OECD. Moreover, most of the support is provided in the form of market price support and input subsidies which are the least efficient and the most trade distortive forms of support' (OECD, 2007a: 38).

The G-33's NGO supporters also draw misleading conclusions from American research. A South Centre study cited US data (Schnepf and Womach, 2006) on the height of US subsidies earlier this decade (South Centre, 2008: 142), but does not draw the obvious conclusion. Since those subsidies were much lower in 2008 because food prices were high, and the latest Farm Bill could drive them up again when prices fall, the Doha Round results would bind the US subsidies at a low level. Analysts think that binding subsidies at lower levels will be worth having, even though most of the welfare gains from the round are likely to come from increased market access, not from reductions in domestic support (Martin and

Anderson, 2008).<sup>13</sup> The subsidies issue has enormous symbolic importance, but less economic significance, and it does not provide a robust rationale for the SSM.

## 2. A negotiation failure

Inadequate analysis of the SSM was matched by a failure to negotiate. As will be seen, Members have been talking past each other for years. In his first overview of the negotiations at the end of 2002, based on the proposals and negotiations to that time, it is clear that Hong Kong Ambassador, Stuart Harbinson, the then Chairperson, had nothing to work with on the SSG or the SSM (WTO, 2002). In his subsequent attempt to draft modalities, the so-called Harbinson text, he proposed ending the SSG, but on the SSM he wrote only that it 'is currently subject to technical work' (WTO, 2003c). That technical work never really happened.

### *A minor problem for the negotiators (2004–2006)*

Many people were complicit in this failure to do the essential analysis. Nobody understood what the SSM might be, but at least early on they did not think it would be important, or at least as important as Special Products.

- In August 2003, the EC/US paper before the Cancún ministerial (WTO, 2003b) simply proposed that, 'A special agricultural safeguard (SSM) shall be established for use by developing countries as regards import-sensitive tariff lines.'
- In August 2003, a paper submitted a few days later by a group of Members, who evolved into the G-20, called for a SSM, 'the scope of which would depend on the impact of tariff cuts' for developing countries (WTO, 2003a).
- In February 2004, a Cairns Group ministerial in Costa Rica blandly endorsed the SSM, concealing a strong debate that had taken place between exporters and importers.
- In June 2004 in his report to the Trade Negotiations Committee (TNC), the Chairperson of the agriculture negotiations (Tim Groser) reported convergence on flexibilities for developing countries, including the SSM. He thought that flexibilities for developed countries should come first, however, and so suggested that details of the SSM should be negotiated after the ministerial planned for that July.
- A June 2004 US informal paper for a meeting of the 'five interested parties' (US, EC, India, Brazil, and Australia) proposed the establishment of the SSM, with no detail.
- The July 2004 Framework under which the negotiations have been working ever since (WTO, 2004a) recorded agreement merely that, 'A Special Safeguard Mechanism (SSM) will be established for use by developing country Members.'

<sup>13</sup> Whether or not countervail would a better response than safeguards to alleged subsidization is also relevant, although the procedural requirements may be daunting for developing countries. Members on both sides were reluctant to discuss that approach.

- In March 2005, ministerial meetings of the G-20 and the Cairns Group supported the SSM, with no specificity.
- In October 2005, the US agriculture proposal proposed a SSM to provide transitional relief from import surges, without suggesting how it would work, and an EC agriculture negotiation proposal that month did not mention the SSM at all.
- In an April 2006 proposal (WTO, 2006e), the US proposed ending the SSG, since the Uruguay Round transition was finished, and establishing a SSM ‘for use by developing countries as a transitional tool to aid in the reform process’. It offered no suggestions on how to do that.
- In June 2006, G-10 ministers meeting thought that the SSG should be maintained.<sup>14</sup> They therefore welcomed the introduction of an appropriate SSM for developing countries, without saying why. This attempt to hang on to the SSG surely muddled the waters, because it allowed the SSG to be a legitimate reference point for the SSM. The G-33 frequently justified the SSM on the grounds that developed countries had the SSG, they used the SSG as a template for their negotiation proposals, and they justified making the SSM easier to use than the SSG on the grounds of special and differential treatment.<sup>15</sup>

### *The G-33 begins to refine the idea*

The first G-33 informal proposal (G-33, 2004) was a standard explanation of why the Safeguards Agreement and the SSG would not serve developing country needs, with a brief list of design parameters for a new SSM. Members were divided during discussion of the paper in the December 2004 committee meetings. The EC and the US did not support the extension of the SSM to all agricultural products, but thought that the SSM might apply only to staple food products, to products necessary for food security, or to products that already have low tariffs in order to facilitate the overall liberalization process.

The next more formal G-33 proposal (WTO, 2005c) used those parameters to suggest all the elements of a SSM using the existing Article 5 (SSG) of the AoA as a structure, but with no analytic justification. The paper was introduced during a negotiating group session in June 2005, but no time for discussion was available. Indeed the Chairperson decided that it was one of the issues to be left aside during the summer while the core issues of the Framework were addressed (WTO, 2005a). In the early fall, developing countries were anxious to begin discussions of

<sup>14</sup> The G-10, coordinated by Switzerland, is a group of import-sensitive Members (Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Norway, Switzerland, Chinese Taipei) who defend the concept of ‘sensitive products’.

<sup>15</sup> Whether it needs to be so much more favourable is debatable. The SSG price remedy is much like marginal income tax rates, with stepped increases in the remedy as the price gap widens. It is also based on an old fixed price (1986–1988) so import prices have to fall a long way before the safeguard can be triggered. Compare that to a trigger price of 85 % of the moving average of prices in the last three years (a range well within normal fluctuations), and a remedy that gives back a flat 85 % of the difference across the board. For a 30 % price drop with the SSG, it works out to getting back 6 % of the price drop (or 20 % of the difference), compared to getting back 85 % of the difference with the current text of the SSM.

the SSM in preparation for the Hong Kong ministerial, but the limited discussion that took place only confirmed, according to the Chairperson's report (WTO, 2005b), that wide divergences remained on key issues. Accordingly ministers were only able to agree that 'Developing country Members will also have the right to have recourse to a Special Safeguard Mechanism based on import quantity and price triggers, with precise arrangements to be further defined' (WTO, 2005b). Although the declaration says 'import quantity **and** price triggers', it came to be interpreted as 'import quantity **or** price triggers', which allowed the G-33 to trump the previous cross-check debates over whether the triggers were linked or separate – a volume trigger with a price check, and a price trigger with a volume check.<sup>16</sup>

The G-33 then submitted two proposals (WTO, 2005d, 2006b) that literally struck out or added sections to the text of Article 5 in order to arrive at draft legal language for the new mechanism. (The second proposal adds specific values on the remedies.) The proposal was imprecise on a key point: the SSM would permit developing countries to impose duties higher than the bound ceiling, but it did not mention going above the tariff rates bound in a Member's Schedules prior to the Doha Round.

Following three days of consultations on all agriculture issues among about 20 delegations in Room F in February 2006, the Chairperson (New Zealand Ambassador Crawford Falconer) reported to the informal meeting of the full membership that he saw little convergence. Although the part of the discussion on the SSM (effectively based on the G-33 paper) was useful, he could add little to what already existed on paper. And yet it was one of the few occasions when a serious exchange took place in the committee.

### *First skirmishes*

After his March 2006 consultations in Room F, Falconer noted that Members remained divided about the nature of the proposed SSM. Is it simply an emergency measure that should be available to all developing countries for all products (the G-33 view), or is it a tool to give confidence to developing countries when they liberalize (the view of G-20 and Cairns Group members outside the G-33)? The south/south divide on the SSM was increasingly evident at this meeting.

Although he considered the discussion to be useful, Falconer felt members were 'talking past each other' rather than responding to each other's concerns. This was the first meeting in which Members who were resistant to the SSM declared that it should not allow the 'remedy' (the additional tariff) to raise a Member's applied rate above its pre-Doha Round bound rate. Brazil reasoned that when the level of ambition in market access emerges, the question of the SSM will fall into place.

<sup>16</sup> Some scholars have analytic reasons for preferring one trigger or the other. The G-33 want the right to use one or the other but not necessarily both because their widely different circumstances mean that, for some products in some countries, only one of the triggers will be salient.

The Chairperson more presciently suggested that sorting out the fundamental questions of the SSM should not wait for the main market access numbers.

One of the most substantive proposals on the SSM was made by its strongest critics, Argentina, Paraguay and Uruguay, known as APU in this context (WTO, 2006d). While they accepted that the claim for Special Products (SP) rests on rural development indicators and livelihood security concerns, they insisted that the SSM is a trade policy instrument, an exceptional measure, to be used under exceptional circumstances resulting from the liberalization process. It should not imply 'a unilateral modification of schedules without any due compensation'. Perhaps most salient, they stressed that triggers should be 'constructed on the basis of available, representative, recent, accurate and accountable data ... which take into consideration normal growth of trade'. The APU proposal was not explicitly supported by other exporters, or by developed countries, perhaps because it would have been politically inopportune.<sup>17</sup>

The silence of potential supporters left APU standing alone, and allowed the G-33 to set the agenda. G-33 proposals tended to dismiss rather than engage with the concerns of their critics. The stance is exemplified in the claim, unsupported by citations, that research studies showed that SP and SSM 'will in no way undermine the export interests of the export-focused developed and developing country Members' (WTO, 2006c). One of the paradoxes is that 'SP and SSM' were always mentioned in the same breath, as if the political and commercial arguments for one justified the other. Even those opposed to the SSM could see some merit in SP. Had the two been negotiated together rather than sequentially, opponents of the SSM would potentially have had the leverage to be more open on the SP, while taking a tougher line on the SSM. Instead, Members exhausted themselves in the effort to agree on Special Products, and the unexamined SSM tagged along behind.

### *Mounting pressures (2007)*

Members of the G-33 met at ministerial level in Jakarta on March 2007, calling on developed countries to take the lead in unblocking the Doha Round negotiations. G-33 countries argued that liberalizing developing country agricultural markets was never one of the objectives of the Round (WTO, 2007c). In May, Falconer reported on the results of all his consultations (WTO, 2007a). On the SSM, he was at sea: 'there are, frankly, too many variables on this issue with positions that are too wide apart for me to be in a position to even begin to define a centre of gravity on this issue'. In subsequently trying again to draft a modalities paper later in July

<sup>17</sup> The document created some political and diplomatic difficulties. It was now obvious that the G-20 and Mercosur (the South American trade grouping) were split, since those groups should have tabled it, not APU alone. The Brazilian foreign ministry made strong representations to Paraguay and Uruguay. In Argentina support for the APU paper mainly came from the ministries of economy and the secretary for Agriculture, and less from the Ministry of Foreign Relations.

2007 (WTO, 2007b), Falconer was left to observe that the SSM was ‘clearly a fundamental element of the modalities also, but it is simply not yet developed well enough to go to precise text without that being either meaningless through the number of square brackets that would have to be inserted, or an artificial construct with no underlying consensus in the Membership’.

When discussions resumed in the fall of 2007, the contentious points were two fold:

- 1 finding an easily operational trigger that would not lead to the SSM being in effect almost constantly for hundreds of products, and
- 2 whether the remedy (a higher tariff) should be capped at the level bound in the Member’s schedules before the Doha Round.

Underlying this divide was the familiar but fundamental philosophical difference about the SSM:

- (a) should it be designed to deal with market disruptions resulting from Doha Round *liberalization*, or
- (b) should it respond to *any* market disruption (whether or not due to imports)?

Those who adhered to the former view strongly opposed raising tariffs above the pre-Doha Round bindings. They claimed that their domestic producers would not accept a deal that would roll back current bound tariffs. Those who held the latter view said that the pre-Doha Round bindings were not an appropriate criterion. Rather, they claimed that protecting vulnerable farmers ought to be the objective.

In informal meetings at the end of November 2007, the Chairperson suggested that no products would be excluded a priori from the mechanism, but the G-33 would have to provide some other concession to exporters. Limiting the number of products on which the safeguard could be invoked would be one such option, Falconer suggested, perhaps to a ‘single digit’ number. He made other suggestions on the triggers. Divergences were as wide as ever on the question of exceeding the pre-Doha Round bindings. That aspect was especially important for China. When China joined the WTO in 2001, it had had to accept much lower bound rates than other developing countries, with almost no ‘water’ (jargon for the gap between bound and applied tariff rates). Participants thought that the issue would probably have to be resolved at a level more senior than that of Geneva-based negotiators.

Falconer reported again on draft modalities in February 2008 (WTO, 2008c). He once again offered draft legal language on the SSM, this time with only 57 square brackets. The G-33 was not happy (G-33, 2008), especially when Falconer proposed limiting the maximum remedy to the pre-Doha Round bound tariff, yet offered the possibility that Least Developed Countries (LDCs) and Small and Vulnerable Economies (SVEs) be allowed to exceed that limit in specified



circumstances. The G-33 objected that 'it reflects a new kind of differentiation of treatments among the developing countries, and poor farmers, which would not be factual and appropriate'. Were they concerned that any differentiation might also weaken G-33 solidarity? And once again APU also commented on the paper, but in the opposite direction (WTO, 2008g).

At the February 2008 informal meeting, Indonesia read out a long statement complaining that the SSM would be too stringent, restrictive, and non-operational. When the discussion continued the following morning, China read a prepared statement, repeating that the draft was too restrictive. This statement ignored the previous day's explanation from the Chairperson that the draft was only 'too restrictive' from the G-33's point of view if only one set of square brackets is picked. Falconer argued that the G-33's position was also in the text in almost all points. Later in the meeting, India said the draft was too restrictive in comparison to expectations. Much later, the Philippines chimed in about the text being too restrictive. At the close of the meeting, the Chairperson told participants, but not the press, that judging by the debate, they were 'heading for a bust up' when they got to the ministerial Green Room. He was right.

### *Destined to fail?*

By April 2008, Members' attention was shifting to the long anticipated 'horizontal' phase of the negotiations, with the prospect that ministers would be coming back to Geneva sooner rather than later (Wolfe, 2009). Nevertheless, the informal meetings of the agriculture committee that month did not discuss the SSM. With little to work with, Falconer's May text on draft modalities (WTO, 2008d) removed all but five square brackets and presented options on the triggers, but it represented no fundamental change on transparency or on the possibility of exceeding pre-Doha Round bound levels. The SSM section of that draft, and the G-33's written response, were not the subject of any extended discussion.

At the May meeting, the G-33 complained that some of their proposals were not included, while the exporters reiterated their opposition. The US stressed that it needed assurances that some increase in market access would be forthcoming, despite the more flexible options for developing countries. Falconer then tried an unsuccessful 'walk in the woods' with representatives of both sides (US, Australia, Brazil, Canada, Uruguay, Malaysia, Indonesia, India, China, Korea, Kenya, and Jamaica). Journalists were told that negotiations were difficult because the G-33 believed it was to its advantage to have SP and SSM tackled by trade ministers at the last possible moment, which had been their tactic before Hong Kong. After the final meeting before the issuance of the July 10 draft, Falconer was frustrated because everybody again repeated their familiar demands with no sign of having heard the concerns of others.

Changes in one paragraph of the SSM section could be a response to changes in another. The SSM section changes in relation to changes in others parts of the agriculture modalities, just as the overall level of ambition in agriculture is affected

by other parts of the Single Undertaking. In his third 2008 text of July 10, for example, Falconer:

- removed his proposed limit on the numbers of products for which the SSM could be invoked in a given year (paragraph 123),
- removed the options on the triggers (paragraph 124),
- added a provision that remedies could not exceed the pre-Doha Round bound limit (paragraph 133), and then
- created provisions under which LDCs (paragraph 134), SVEs (paragraph 135) and other developing countries (paragraph 136) would be able to breach the pre-Doha Round limits for all (LDC), some (SVE) or very few products (others) in a given year, with limits on the size of the breach,
- left the transparency paragraph (paragraph 123) unchanged, despite demands from the G-33 to weaken it and from APU to make it tighter.

The changes reflected some convergence that had emerged in his consultations towards making relatively few restrictions on safeguard duties that fall below pre-Doha bound rates, with much more stringent requirements that would limit Members' ability to impose safeguards that exceed these levels. He favoured incorporating language that would make the safeguard relatively easy to 'trigger' in the event of import surges or price depressions, as proposed by the G-33, but also including more restrictive conditions on the additional safeguard duties or 'remedies' that countries would be allowed to impose, as proposed by exporting countries. When the committee discussed the draft, the G-33 said the proposed compromise restrictions were too tight. Exporters said they were too lenient.

The SSM battle is largely over south–south trade with significant north–south overtones. The fact that the US often presented the 'exporters' position camouflaged the south–south aspect, allowing G-33 supporters to claim that opposition to the SSM was a US-led campaign against poor developing countries. This view was manifestly not shared by Uruguay, Paraguay, Argentina, Malaysia, Thailand, and others, who opposed the SSM as strongly as the Americans. It also confused senior people in the Secretariat who were confident that the impasse was a US/India issue, which could easily be settled bilaterally. In this analysis, Brazil was effectively neutral since India was in the G-20. Japan and the EC had been largely silent on the SSM. That left the US (with Australia supporting) against India (with China supporting). The evidence of the debates to that point, and subsequent events, showed this belief to be erroneous and overly optimistic.

### *What happened in July 2008*

The themes seen in months of sterile debate did not change when ministers began meeting in a Green Room in July 2008.<sup>18</sup> Kamal Nath on July 23 said that failure

<sup>18</sup> For a full description of the July process, see Wolfe (2009). On the types of WTO meetings and their varying degrees of formality, see Box 2 in Wolfe (2007). The July meeting was not technically a 'ministerial' since it was simply a group convened by the Director-General for consultations.

to strengthen the SSM provisions in the July 10 draft could lead to the failure of the Doha Round. In his remarks to the informal TNC, he said, 'If it means no deal, so be it.' When it was clear that the Green Room was proving sterile, Pascal Lamy proposed that he hold 'consultations with a smaller group'. That group of seven Members (Australia, Brazil, China, EC, India, Japan, US), was inevitably but confusingly called the G-7.<sup>19</sup> The initial G-7 discussion on July 23 was equally difficult. When a compromise proposal emerged from the G-7 on July 25 (Version 1 in the Annex), it strengthened the Chairperson's July 10 text by suggesting how the SSG should be phased out. It then suggested that the volume trigger for going above the pre-Doha Round bound rate would be a 40% rise in imports. The remedy was not changed.

China appeared to be part of the consensus on this compromise proposal, and American support for the text was ambiguous, but India clearly did not support it. The US hoped to use the weekend of July 26–27 to isolate India, but instead China supported India and the rest of the G-33 in gathering a large group of friends in support of a critique of both the July 10 text and the July 25 compromise. The document (G-33 *et al.*, 2008) was released on Sunday, July 27. It was signed by over 100 Members. 'We cannot go home with a provision which would ask us to wait for an import surge of 40% before we can take remedial action', an Indian representative was quoted as saying. 'By that time, the import surge would have wreaked havoc on the livelihoods of the most vulnerable farmers.'

Discussion the next day in the G-7 seems to have been acrimonious, and beside the point. As EC trade commissioner Peter Mandelson wrote in his July 28 blog, 'What should be relatively easy to resolve as a technical argument about the precise "trigger" levels for the safeguard clause rapidly escalates into a political argument about the protection of subsistence farmers from trade competition and the rights and wrongs of trade distorting farm subsidies in the US.' The Americans, who felt betrayed by China, launched a blistering attack on China and India in the TNC, and the ambassadors of Paraguay and Uruguay held a joint press conference on July 28 to warn that the July 25 SSM provision was unacceptable, because it would impede the normal flow of trade. The Paraguay Ambassador implied that he would likely reject a deal if it did not improve the SSM. Argentina, which should have been associated in the press conference as one of the APU signatories, was so overtaken by its defensive interests on trade in goods that it was silent in the Green Room and deferred to India in meetings of senior officials. Brazil, which clearly split from India on this issue, despite public assurances that 'any solution' would be acceptable, was desperately trying to keep people talking.

<sup>19</sup> It is confusing because this group of seven Members was not a club but a 'friends of the chair' consultation mechanism.

Whether or not the poorest Members ought to be able to use a SSM was not really at issue, because their trade impact is so small. The difficulty was that developing countries insist that the same mechanism be available for *all* products in *all* developing countries. Exporters worried that the biggest developing countries, who were vocal proponents of the SSM, would abuse the flexibility that is demanded in the name of the poorest.

Developed countries were offended by the principle of allowing tariffs to rise above the pre-Doha Round bound rates, but commercial concerns might have mattered more. The major players have developed quantitative models of the proposals, and they know exactly which products would be affected by all the variants of the triggers and remedies in each big market;<sup>20</sup> that is, the formula may be an abstract principle, but the bargaining over the level is also a form of ‘request and offer’ negotiation. Susan Schwab, the United States Trade Representative, said in her press conference after the breakdown that, ‘If you look at Chinese imports of soybeans over the last ten years, at 140 [a reference to a proposed trigger] China could have used this mechanism in eight out of ten years to raise their tariffs above bound rates. In the case of poultry, China could have used the mechanism six out of nine years to raise their tariffs above WTO rates. India could have used the mechanism in three out of six years to raise palm oil tariffs.’

Participants believe that, for India, the SSM has commercial as well as symbolic importance, but analysis is difficult without estimating how much ‘water’ particular Indian tariffs will retain after application of the formula and the flexibilities in the eventual modalities package. Analysis is easier in the case of China – take soybeans, a major concern for the Americans, and for the Chinese processors who do not want their input prices to rise. As a result of their tough accession negotiations, China’s bound and applied soybean tariff is 3% (that is, it has no ‘water’). Any SSM remedy would immediately take the tariff above the pre-Doha Round bound rate. The 15% remedy in version 1, therefore, could take the Chinese tariff from 3% to 18%, a disquieting prospect for American exporters of soybeans. US officials thought that China was trying to use the SSM to undo the terms of their accession negotiations, something that would be political poison in Washington. They also thought that they had a quiet bilateral understanding with China, the betrayal of which may have contributed to their public anger. Many other participants suspected that undoing some aspects of the accession was politically important in Beijing, where the WTO accession is sometimes compared to the unequal treaties of the nineteenth century.

At some point on July 27 or early July 28, 2008, the Director-General seems to have believed, for unclear reasons, that the problem was technical; he suggested that perhaps a numberless mechanism might work. The result is the text identified as Version 2 July 28 in the Annex below.

20 For one example, see the tables in WTO (2006d).

Version 2 contained three new ideas:

- no triggers,
- remedy would be imposed if increased imports were likely ‘to cause demonstrable harm to its food security, livelihood security and rural development needs’,
- a Permanent Group of Experts (PGE) to mediate disputes.

The notion of ‘demonstrable harm’ was an attempt to prevent the SSM being used gratuitously, while avoiding the rigour of the injury test in the Safeguards Agreement. It is a familiar phrase to physicians, but it is not used in the WTO or the trade literature, although people might learn to see it as analogous to the notion of ‘injury’ in other agreements. Even more surprising was the new transparency proposal that, ‘Upon notification, any Member may request a review of the necessity, level, and duration of the measure by a [PGE] to be established by the Committee on Agriculture. Decisions by the [PGE] shall be rendered within 60 days of the request and shall be binding and not subject to appeal.’ The proposed PGE was apparently modeled on the one in the Agreement on Subsidies and Countervailing Measures (ASCM), which has never actually mediated any problem. Indeed a dozen years after its creation, the SCM Committee had still not approved the PGE rules of procedure.

The proposal is even more odd in light of the uncertainty it could create for everyone. Exporters would not know the rules. Developing countries could not meet the transparency requirements. Both would risk things constantly being thrown out by the experts in the PGE through an unfamiliar process. Furthermore, that scenario assumes that Members could agree on who would be appointed to the PGE, or what its rules of procedure should be. The wording was apparently drafted in the Director-General’s office rather than by any delegation. These new ideas came to ministers without careful prior discussion, and with no evident analytic support.

The Americans were not interested in discussing proposals that would simply increase the uncertainty about the effects of the SSM, adding to the impression that new special and differential treatment provisions were creating a Black Box. It is surprising, however, that India thought that the text had merit, given the G-33’s consistent opposition to an injury test, especially for the volume trigger. (The G-33 say that domestic producers’ livelihoods would already be undermined by the time that governments would be able to act if they waited for proof of injury.) But perhaps Indian support was cynical. This mechanism would allow developing countries to act quickly, with apologies for mistaken application coming much later, if ever, after endless arguments before the PGE.

In a last ditch effort to avert collapse, on the evening of July 28 the G-7 asked a group of senior officials to try again. The result of their efforts, called Version 3 in the Annex, retained the PGE idea, and it returned to formulas with two triggers for circumstances in which a Member would exceed pre-Doha Round bound rates. In the case of a 40% surge in imports affecting a Member with a 60% current

binding on a given product with an 80 % pre-Doha bound rate, the remedy would be a new tariff of 110 %. That is considerably more than the 95 % that would have resulted from applying the July 10 paragraph 136 formula in the same circumstances. In recompense, Version 3 also adds a price crosscheck, and fewer tariff lines on which a Member could go above bound than the G-33 had hoped to see. It is not clear which Members accepted Version 3, but the US did not.<sup>21</sup>

## Conclusion

The SSM impasse endured for years before turning into a fiasco in July 2008. The developing country proponents are convinced that not getting the SSM would be a disaster. Agriculture exporters suspect that they will receive little new market access from developing countries in this round. But US politicians think that if they must take the domestic heat for cutting subsidies and improving access to their market, then at least a deal should not make things worse. The SSM is seen by most exporters as making things worse. If the SSM comes to be seen as undoing Chinese accession, then it cannot be sold in Washington. And if it is seen as nullifying any possible improvement in south–south trade, then it cannot be sold to developing country agriculture exporters, many of whom have a larger weight in world trade than India, even if they do not talk as loudly.

In his report on the July breakdown, Crawford Falconer observed a complete lack of convergence on the fundamental issue of what conditions might permit breaching the pre-Doha Round bound rate, let alone on how to do it (WTO, 2008b). He concluded that ‘These issues remained – as they have throughout the negotiations – substantive, and essentially political, divisions. SSM was always going to be one of the three or four potential deal-breaker items and so, alas, it proved to be.’

The July 2008 discussions, and the associated preparatory work, did produce a narrower range of options for a potential SSM. New analytic simulations of how the SSM might work are appearing, though the results are contradictory. One suggests that the welfare costs of the July package are so low that it should not be allowed to stand in the way of achieving Doha Round modalities (Grant and Meilke, 2008). Another finds that developing country exporters are much more vulnerable to the effects of the proposed SSM than developed countries (Gorter *et al.*, 2009). When the United States became the poster boy for the opponents, proponents could claim that the SSM was needed for protection against rich country subsidies, obscuring the south–south dimension of the debate.

<sup>21</sup> The Chairperson’s August statement did not mention either version 2 or 3. By December 2008, however, it seemed that the version 3 formulation of paragraph 136 was the one that had been discussed in the Chairperson’s fall consultations, still without much convergence (WTO, 2008f).

The lessons for the future that this study suggests are not novel, and do not support calls for WTO reform: when a chair as experienced as Crawford Falconer warns of a potential bust up, listen. Better research, more preparation, and more negotiations might have avoided the breakdown over the SSM. It was folly, in retrospect, to allow ministers to engage in a poorly prepared discussion of a sensitive issue, because inevitably they staked out incompatible positions. Members may subsequently find it difficult to back down. At this stage of a negotiation, ministers should normally be presented with choices among well-defined options. Instead they were confronted with various poorly understood mechanisms to implement a principle that had not been agreed. The result was a fiasco that ought to have been avoided.

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### **Annex: SSM proposals, July 2008**

This annex contains the SSM sections of the three ‘Lamy texts’ under discussion in July, which were never formally released, and the Chairperson’s August report on the July discussions. The versions here were posted on Inside US Trade. Version 1 emerged from the G-7 discussions, and appeared to have been accepted by all but India on July 25. Version 2 was a secretariat draft, probably emerging from the Director-General’s office late on July 27 or early July 28. India appeared to have accepted it, but whether others did is not clear. The Americans rejected it. Version 3 was prepared over night July 28/29 by a group of senior officials chaired by EC agriculture negotiator Jean-Luc Demarty. It is not clear if anybody accepted it. Similar ideas formed the basis for intensive consultations by Crawford Falconer in the fall of 2008 leading to a new paper in December (WTO, 2008f).

#### **For all prior versions of the SSM, see:**

Harbinson overview December 2002 (WTO, 2002)  
 Harbinson March 2003 (WTO, 2003c)  
 July Framework, paras. 38 and 42 (WTO, 2004a)  
 Hong Kong 2005, para. 7 and Annex A (WTO, 2005b)  
 Falconer 2006, Annex E (WTO, 2006a)  
 Falconer 25 May 2007, section A (WTO, 2007a)  
 Falconer 17 July 2007, paras. 98–110 (WTO, 2007b)  
 Falconer February 2008, paras. 126–138 (WTO, 2008c)  
 Falconer May 2008, paras. 121–133 (WTO, 2008d)  
 Falconer July 10, 2008 (WTO, 2008e)

#### **Version 1 G-7/Lamy July 25**

- SSM for above bound rate trigger is 140 % of base imports
- Remedy for above is applicable with a ceiling of 15 % of current bound tariff of 15 ad valorem points, whichever is the greater
- That remedy is not normally applicable if prices are not actually declining
- Maximum number of tariff lines for above bound 2.5 % in any year
- Developed countries SSG to be eliminated. Starting point maximum 1 % of lines. Maximum phase out seven years. No rate above UR bound rates during phase out

#### **Version 2 Lamy SSM Proposal July 28**

- A developing country Member may apply a special safeguard measure to the importation of any agricultural product, when such a product is being imported into its territory in such quantities or price, and under such conditions, so as to cause demonstrable harm to its food security, livelihood security and rural development needs. Natural growth of trade shall not per se constitute a basis for the introduction of such a measure.

- The measure shall only be applied to a product being imported on the basis of MFN trade only.
- The level and duration of the measure shall be proportionate to the harm in question, and shall not exceed what is necessary to facilitate adjustment. The duration of the measures shall not exceed one calendar year.
- A Member applying such a measure shall notify the Committee on Agriculture of the reasons for introducing such a measure immediately, but no later than 20 days of the introduction of the measure.
- Upon notification, any Member may request a review of the necessity, level, and duration of the measure by a Permanent Group of Experts to be established by the Committee on Agriculture.
- Decisions by the Permanent Group of Experts shall be rendered within 60 days of the request and shall be binding and not subject to appeal.
- LDCs and SVEs shall notify the measure within 40 days of its introduction and shall benefit from technical assistance in both notification and review processes.

#### Version 3 EC/G7 SSM Proposal July 29

136. For developing country Members other than LDCs and SVEs, when the application of the SSM breaches a pre-Doha Round bound tariff, the SSM shall be applied on the basis of a rolling average of imports in the preceding three-year period (hereafter 'base imports'). On this basis, the applicable triggers and remedies shall be set as follows:

- (a) where the volume of imports during any year exceeds [115–120] per cent but does not exceed [135–140] per cent of base imports, the maximum additional duty that may be imposed on applied tariffs shall not exceed 33 per cent of the current bound tariff or 8 percentage points, whichever is higher;
- (b) where the volume of imports during any year exceeds [135–140] per cent, the maximum additional duty that may be imposed on applied tariffs shall not exceed 50 per cent of the current bound tariff or 12 percentage points, whichever is higher;
- (c) in case of (a) and (b), the remedy is not [normally] applicable if domestic price is not actually declining;
- (d) where domestic price decreases by more than [7.5–15] %, the remedy foreseen in (b) is applicable to (a) above;
- (e) the maximum number of products for which provisions under (a) (b) and (c) could be invoked will not be more than [2.5] per cent of tariff lines in any year;
- (f) the maximum number of products for which provisions under (d) could be invoked will not be more than [1] per cent of tariff lines in any year.

A Member applying such a measure shall notify the Committee on Agriculture of the reasons for introducing such a measure immediately, but no later than 20 days of the introduction of the measure.

Upon notification, any Member may request a review of the necessity, level and duration of the measure by a Permanent Group of Exports to be established by the Committee on Agriculture.

Decisions by the Permanent Group of Exports shall be rendered within 60 days of the request and shall be binding and not subject to appeal.

LDCs and SVEs provisions to be developed.

## Glossary

**APU:** Argentina, Paraguay, and Uruguay are not a 'group', but they submitted SSM papers together.

**CAIRNS GROUP:** Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand, Uruguay

**G-10,** a group of major food importing WTO Members: Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Norway, Switzerland, Chinese Taipei

**G-20,** a group of developing countries with special interest in agriculture: Argentina, Bolivia, Brazil, Chile, China, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand, Uruguay, Venezuela, Zimbabwe

**G-33:** Antigua and 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, Rep. Korea, Madagascar, Mauritius, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Senegal, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia, Zimbabwe

**RECENTLY-ACCEDED MEMBERS:** Albania, Armenia, China, Croatia, Ecuador, FYR Macedonia, Jordan, Kyrgyz Rep., Moldova, Mongolia, Oman, Panama, Saudi Arabia, Chinese Taipei, Tonga, Viet North America

**SMALL AND VULNERABLE ECONOMIES:** See list in Annex I of the 6 December 2008 revised draft modalities, and footnote 11 (paragraph 65), and paragraph 157. Previously the countries circulating papers in this group's name were: Barbados, Bolivia, Cuba, Dominican Republic, El Salvador, Fiji, Guatemala, Honduras, Mauritius, Mongolia, Nicaragua, Papua New Guinea, Paraguay, and Trinidad and Tobago

**TROPICAL AND ALTERNATIVE PRODUCTS GROUP:** Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Honduras, Guatemala, Nicaragua, Panama, Peru, Venezuela