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No.371 / August 2011

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**IIIS Discussion Paper No. 371**

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# The impact of WTO agricultural trade rules on food security and development: an examination of proposed additional flexibilities for developing countries

Alan Matthews[1]

## I. Introduction

Disciplines on agricultural trade measures and trade-distorting domestic subsidies to agriculture were included for the first time in the Uruguay Round Agreement on Agriculture (AoA) which came into force for WTO member countries in 1995. Since then, there has been a continuing debate over whether these disciplines are appropriate for developing countries seeking to promote their agricultural development and food security (De Schutter, 2009; Diaz Bonilla and Ron, 2010; Gonzalez, 2002). Criticisms range from arguments that the AoA rules are lop-sided and essentially favour developed countries which can continue to heavily support their agricultural sectors, that they constrain the ability of developing countries to pursue their agricultural development and food security policies, and even that they undermine the right to food of developing countries. There is a widespread perception that developing countries got a raw deal in the AoA. It is certainly the case that the extent of the additional market access offered by developed countries was less than hoped for (Ingco, 1995).

Based on their experience of the implementation of the WTO agreements developing countries prepared a list of implementation issues in 1999 aimed at removing the serious imbalances and inequities they perceived in these agreements. When the Doha Round of trade negotiations was launched in 2001, all countries agreed that a primary objective was to foster development in poorer developing countries (WTO, 2001). Paragraph 3 of the Doha Declaration "committed to addressing the marginalization of least-developed countries in international trade". Paragraph 12 noted the separate decision taken on some implementation issues and that "negotiations on outstanding implementation issues shall be an integral part of the Work Programme" in the coming years. Paragraph 13 stated that Special and Differential Treatment (SDT) measures "shall be an integral part of all elements in the negotiations on agriculture" and these measures should be "operationally effective and enable developing countries to take account of their development needs, including food security and rural development". As the negotiations continued, it became clear that different participants interpreted this mandate in different fashions. For some, mainly developing countries, this was an opportunity to carve out special and distinct trade rules that would apply to developing countries given their particular structural characteristics and development needs. Other countries insisted that developing countries should continue to adhere to the long-term objective of "strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets", while opening the possibility for longer time periods to adapt to new rules, providing technical

assistance, and permitting some exemptions and deferrals from WTO rules and other forms of preferential treatment. In this view, providing limited flexibility in some instances was a means to achieve greater ambition for the Round as a whole. This failure to agree on the ultimate objective of the negotiations helps explain why the agricultural negotiations, in particular, during the Doha Round have been so tortuous and, so far, fruitless.

For many developing countries, safeguarding domestic food production capacity has become an essential component of their food security strategies. They fear that lowering protection to their agricultural sectors would negatively affect their large rural populations, which still contain the largest concentrations of poverty, and which often have limited access to employment alternatives. They also fear sudden negative trade impacts on poor producers whose vulnerable livelihoods may be severely disrupted by market instability and sudden import surges. During the Doha Round negotiations, they sought exemptions from tariff reductions for products that are important, *inter alia*, for their food security as well as the right to protect themselves from destabilising import competition.

These concerns initially found expression in the demand for a 'Development Box' to provide additional flexibilities for developing countries in WTO rules (WTO, 2000). Special Products (SPs) and the Special Safeguard Mechanism (SSM) emerged in that context as specific development box mechanisms (Mably, 2009). In the run-up to the Cancun Ministerial Council meeting in 2003 a coalition of developing countries known as the G-33 came together with the objective to secure SP flexibility for products which play an important role in food security, livelihood security and rural development as well as the introduction of a SSM for developing countries.[2] The WTO General Council Decision of 1 August 2004 (the Framework Agreement) stated that developing country Members "must be able to pursue agricultural policies that are supportive of their development goals, poverty reduction strategies, food security and livelihood concerns" (WTO, 2004). It went on to specify that "developing country Members will have the flexibility to designate an appropriate number of products as Special Products, based on criteria of food security, livelihood security and rural development needs. These products will be eligible for more flexible treatment." The Framework Agreement further states that a "Special Safeguard Mechanism will be established for use by developing country Members." However, key aspects of these instruments – such as the selection and treatment of SPs, or the specific modalities for a new SSM, including product coverage, possible trigger mechanisms and remedies – were left for future negotiations.

Other voices urged caution in pursuing the Development Box proposals. In part, this reflects the inherent dilemma that increased flexibilities for those countries which emphasise their defensive interests in the negotiations mean fewer opportunities through increased market access for those countries, including other developing countries, which seek to promote their food security and rural development through agricultural export-led growth. But the caution also reflects the view that seeking to maintain protection may not, in fact, be an effective route to food security. As Eugenio Diaz-Bonilla noted some time ago: "Developing countries should make sure that the greater flexibility they seek within the 'development' or 'food

security' box will really help them meet their food security and economic goals. Some of the suggested changes could help, but others may well work against the poor and the hungry" (IFPRI, 2002, p. 1).

Low productivity in developing country agriculture is a serious problem and an important cause of poverty and hunger. Increasing agricultural productivity is an important goal for developing country policy. But whether more restrictive trade policies help to raise productivity and contribute to food security is contested. Raising food prices has the biggest negative impact on poor food consumers, many of whom are also small farmers who are net purchasers of food staples. The benefits accrue to commercial farmers in proportion to their output, and thus higher prices benefit most those larger farmers who have least need of it. Protection creates costs through stimulating inefficient production, without necessarily addressing the underlying problem of low productivity. Protection for food products leads to discrimination against other sectors which may also have potential for increased employment and poverty reduction. Development-focused policies involving measures such as improved infrastructure, education, technology and improved property rights can be much more effective than trade protection in raising productivity (Ivanic and Martin, 2006).

With this debate in mind, the purpose of this paper is to explore the value of the proposed SP designation and the SSM for development, food security and poverty alleviation. In each case, the rules set out in the latest draft modalities are described and their likely effectiveness is assessed. Suggestions on how to overcome the current impasse are set out in the concluding section.

## II. Trade background

The case for increased flexibilities for developing countries must be assessed against the background of changing patterns of agricultural trade, and in particular the growing importance of South-South trade. While developed countries still account for the great majority of world imports of agri-food products, developing countries are rapidly growing in importance as import markets (see Figure 1). Developed countries accounted for 70 per cent of global agri-food imports in 1995, while developing countries accounted for 27 per cent (the remaining 3 per cent were absorbed by transition economies).[3] By 2009, the share of developed countries had fallen to 61 per cent and that of developing countries had risen to 34 per cent. The value of global agri-food imports was $411 billion in 1995 and $893 billion in 2009. Between 1995 and 2009, the value of global agri-food imports increased by $482 billion, of which developing country importers accounted for 41 per cent of the increase. For the five-year period 2004-2009, the developing country share of the growth of imports was 44 per cent. And in the two year period 2007-09, the period affected by the global recession, the developing country share of the growth of agri-food imports was 74 per cent. Developing country import demand is driven by their growing populations, rising incomes, urbanisation and the rapid diversification of diets, and in some countries by failures in agricultural policy. It is clear that developing country markets are the future growth markets for agri-food exporters, and this also includes other developing countries.

At the same time as developing countries now provide the largest increment to global demand for food, developing country exporters are capturing a larger share of these developing country imports (see Figure 2). Between 1995 and 2009, the developing country share of global exports increased from 26 per cent to 34 per cent. But their share of exports to other developing countries rose from 39 per cent to 52 per cent over the same period.[4] The figures differ relatively little across developing country regions; in 2009, developing country agricultural exporters accounted for 42 per cent of exports to Africa, 48 per cent of exports to Latin America and 58 per cent of exports to Asia. Only in the case of the relatively small market in Oceania does the share fall to just 22 per cent. The share of South-South trade in total world trade of agri-food products, which was just 13 per cent in 1995, reached 20 per cent in 2009. These trends underline that the most important domain for WTO trade rules, which are often seen as mainly governing North-North and North-South trade flows, will be to facilitate South-South trade flows in future. Empirical studies confirm that significant exemption of developing countries from effective disciplines considerably reduces the potential gains from the Round to developing countries by reducing substantially the possibility to increase South-South trade flows (Anderson and Martin, 2005; Bouët, 2006).

## III. Special Products

### *a. Doha Round draft modalities*

The 2004 Framework Agreement proposed that "Developing country Members will have the flexibility to designate an appropriate number of products as Special Products, based on criteria of food security, livelihood security and rural development needs. These products will be eligible for more flexible treatment. The criteria and treatment of these products will be further specified during the negotiation phase and will recognize the fundamental importance of Special Products to developing countries" (WTO, 2004). The key issues in the negotiations on SPs concern the number of products to be eligible for this status, the identification of these products, and their treatment.

At the 2005 Hong Kong Ministerial meeting WTO Members agreed to grant developing countries the "flexibility to self-designate an appropriate number of tariff lines as Special Products guided by indicators based on the criteria of food security, livelihood security and rural development" (WTO, 2005a). Compared to the Framework Agreement the previous year, the main developments were the greater flexibility (self-designation by developing countries), limitation to an appropriate number, and the reference to indicators for the stated criteria.

The G-33 as the main demandeur for SPs initially sought the maximum flexibility in their designation and treatment. There should be no restriction on the number of SPs, SPs should be exempt from any tariff reduction obligations and no quid pro quo in the form of increased TRQs (as for sensitive products) should be required (WTO, 2005b, c, d). Its position subsequently evolved to seeking up to 20 per cent of tariff lines of developing countries to be

designated as SPs guided by a non-exhaustive list of indicators reflecting the three development criteria and based on at least one indicator at national, regional or household level. No agricultural product would be *a priori* excluded. 50 per cent of the tariff lines so designated would be exempt from any tariff reduction commitment. An additional 15 per cent of designated tariff lines would be exempted from tariff reductions if there are "special circumstances" (e.g., low bound tariffs, high ceiling bindings, high proportion of low income or resource-poor producers). A further 25 per cent of designated SPs would be subject only to a 5 per cent reduction in bound tariff rates while the remaining tariff lines would be subject to cuts no greater than 10 per cent (Mably, 2009).

Positions remained far apart during 2006. The United States issued a paper in May 2006 that proposed that SPs would be limited to 5 tariff lines and that SP designation would be restricted to products meeting certain criteria (for example, that SPs would have to be products produced domestically but not exported). Some developing countries, such as Thailand, Malaysia and Costa Rica, also proposed a limited and restrictive approach to SP product designation, focusing particularly on products that were important in South-South trade. In his 'reference paper' on the SP negotiations in April 2006 the Chairman of the Special Session of the Committee on Agriculture noted three distinct approaches to SPs in the negotiations (WTO, 2006a). SP proponents sought the possibility to designate products guided by an "illustrative, non-exhaustive, non-prescriptive, and non-cumulative list of indicators" without any limit on the overall percentage of tariff lines that could be selected. Another group of countries wanted agreement on a common set of indicators that could be used to 'filter' or 'screen' candidates for SP designation, possibly combined with a limit on the number of SP that could be selected. A third option would be to start with a limit on the number or proportion of tariff lines that might be self-designated, possibly combined with indicators for the criteria. Not surprisingly, in the first draft of the agricultural modalities in July 2006, the section dealing with SPs appeared entirely in multiple square brackets, simply describing the positions put forward at that date (WTO, 2006b). As the Chair himself admitted, it was not an elegant document.

In the February 2008 version of the draft modalities, the text had evolved to propose that "Developing country Members shall be entitled to self-designate Special Products guided by indicators based on the criteria of food security, livelihood security and rural development. There shall be a minimum entitlement of 8 per cent, and a maximum entitlement of [12] [20] per cent, of tariff lines available for self-designation as Special Products. Under this provision, there is an entitlement to [6] per cent of tariff lines which shall take a tariff cut of [8] [15] per cent. A further [6] per cent is available with a cut of [12] [25] per cent. [[A further] [8 per cent of] [no] tariff lines shall be eligible for no cut.]" (WTO, 2008a, footnotes omitted).

The December 2008 draft modalities proposed that "developing country Members shall be entitled to self-designate Special Products guided by indicators based on the criteria of food security, livelihood security and rural development. There shall be 12 per cent of tariff lines available for self-designation as Special Products. Up to 5 per cent of lines may have no cut.

The overall average cut shall, in any case, be 11 percent" (WTO, 2008b). While the square brackets around the numbers (indicating disagreement) had disappeared, a footnote to the text noted that a number of developing country Members continued to express reservations concerning the numbers specified in this paragraph, noting also that this may be affected by what is decided in other areas of the text. More favourable treatment would be offered to small vulnerable economies (SVEs) and to recently acceded members (RAMs).[5] The former group of countries would have an alternative option not to apply the tiered formula but simply to meet an overall average cut of 24 per cent through having in effect opted to designate as many tariff lines as they choose as Special Products. The tariff lines so chosen need not be subject to any minimum tariff cut and need not be guided by the indicators. In the latter case, the maximum tariff line entitlements to SPs would be 13 per cent and the overall average cut to be achieved for the designated tariff lines may be further reduced to 10 per cent. Importantly, this flexibility would not be taken into account in assessing whether using the market access formula would result in a developing country exceeding the maximum overall average cut on final bound tariffs of 36 per cent.

*b. Assessment of the Special Products proposal*

The December 2008 draft modalities can be assessed from two standpoints. From the G-33 perspective, the issue is whether the numbers in the draft modalities give them the flexibility they desire to avoid or limit reductions in bound tariffs in developing countries for products deemed important from a food security, livelihood security and rural development perspective. From a food security perspective, the issue is whether the Special Products designation will advance this objective or not.

An extensive literature drawing on studies commissioned by FAO and ICTSD attempted to identify how many products might qualify as SPs in different developing countries under the Framework Agreement criteria, and how many tariff lines these products would represent (FAO 2007a; Ford et al, 2006; Ford et al, 2007; ICTSD, 2007). These studies faced a number of challenges. The proposed criteria are very broad and extremely complex to define and measure. Appropriate indicators must be defined to measure these impacts and appropriate thresholds chosen. Both FAO and ICSTD proposed a wide set of relevant indicators, as did the G-33 (in part, drawing on the FAO/ICSTD work, see Mably 2009). Annex F of the December 2008 modalities also contains an illustrative list of indicators for the designation of SPs. These lists are very comprehensive, and some of the indicators proposed would allow developing countries to essentially designate any product.

But the selection of indicators is only an initial step. For example, if the proportion of calories per day contributed by a product to population nutrition is used as an indicator, what should be the cut-off point (10 per cent, 30 per cent?) above which a product would be eligible for SP status? Would a SP be required to meet just one of the criteria or all three? Would the evaluation be conducted at a national level or would products important at a regional or local level also be eligible to be designated? Are data available to allow countries to make a rigorous selection of this kind? The case studies commissioned by FAO and ICTSD adopted

a fairly flexible approach. In addition to a strict application of indicators, potential SPs were also identified through national stakeholder consultations allowing a role for political judgement and influence.

A series of 19 ICTSD country studies found that an appropriate number of SPs would probably range from six to twenty. The most commonly identified potential SPs were rice, corn, wheat, beans, milk, dairy products, bovine meat, goat meat, sheep meat, pork, chicken, potatoes, tomatoes, onions, vegetable oils and sugar (ICTSD 2007, 2008). On average, SPs represented around 10 per cent of agricultural tariff lines (although this varied widely from 3 to 20 per cent) in the ICTSD studies. In the nine country case studies conducted by the FAO, the average proportion of tariff lines selected for SP status was considerably higher at 17.8 per cent. These proportions ranged from 8.5 per cent to 18.6 per cent in the Caribbean countries, but from 16 per cent to 26.3 per cent in the African studies. From an exporter perspective, what matters is the proportion of tariff lines where trade is taking place, or the value of imports likely to be designated as SPs. In the ICTSD studies, the proportion of agricultural trade covered by the potential SPs varied from 6 to 64 per cent.

From a developing country perspective, it would not necessarily make sense to designate every potential SP without taking into account the current trade and trade policy situation to identify those products that require increased flexibility (FAO, 2007a). The FAO/ICTSD methodology thus provides an additional set of 'filters' which take into consideration the trade dimension of SPs in order to help countries prioritise their lists for the purpose of WTO negotiations. This includes the extent to which imports could displace local production (such as rice or wheat imports displacing traditional crops such as sorghum or cassava); the extent to which products face unfair competition from imports that are heavily subsidised; the extent to which tariffs and other measures currently protect the products in question and the likelihood of this being affected in the course of current trade negotiations; and the extent to which products may be able to withstand competition from low-cost imports. For example, under the market access draft modalities, developing countries can make use of sensitive product (SnP) designation, and many of the products likely to be selected as sensitive might also be justified by the criteria as Special Products.

In many developing countries bound tariffs are much higher than applied tariffs and this tariff overhang will persist even after applying the proposed Doha Round market access modalities. Bernabe (2008) examined the extent of tariff overhang for the 16 products on the ICTSD (2007) list for a sample of 30 developing country members of the G-33, excluding least developed countries. Her objective was to calculate what percentage of SPs and tariff lines should be exempted from tariff cuts if applied tariffs on SPs were not to be reduced following a Doha Round agreement. Using as a threshold criterion countries and commodities that have no or minimal tariff overhangs (not exceeding 10 percentage points), she concluded that the percentage of potential SPs that should be excluded from tariff cuts varies widely, from 6.25 per cent of tariff lines designated as potential SPs in the cases of Grenada and Guyana, to as much as 100 per cent in the cases of China and Cote d'Ivoire. When country-specific SP lists are used, these percentages increase, sometimes substantially. In terms of tariff lines, the

percentage of SPs requiring market access flexibility ranges from zero to 11 per cent of total HS (harmonised system) 6-digit tariff lines, based on data from countries that identified their SPs at this level. However, she cautions that the wide differences in the tariff structures of developing countries makes these figures less meaningful. Unfortunately, this study does not estimate the proportion of trade that would be affected by these flexibilities.

Several agriculture-exporting developing countries argued that the selection and treatment of SPs should not undermine the food and livelihood security or rural development of their numerous poor and vulnerable farmers, whose welfare depends on improved market access for a few export products. There are wide differences in the estimates of the value of trade that might be affected by SP status. The Chair of the agricultural negotiations caused consternation among SP proponents when he included in his May 2006 reference paper calculations by the WTO Secretariat that designating 20 per cent of tariff lines as SPs could allow two unnamed developing countries to shield as much as 98.4 and 94 per cent of the total value of their respective farm imports from Doha Round tariff cuts (WTO, 2006a; ICTSD, 2006).

Given that developing country imports are often concentrated in a few tariff lines, it is not unusual that providing SP exemptions on even a small percentage of tariff lines could impact on a very large portion of the agricultural trade that occurs. Gillon & Associates (2008), writing on behalf of US farm organisations, calculate that approximately 90 per cent of agricultural imports into developing countries (by value) are concentrated in only 10 per cent of tariff lines, and that the 5 per cent exemption from any tariff cuts proposed in the December 2008 draft modalities would cover between 80-85 per cent of their agricultural imports. For China the proportion is 86 per cent, and for India it is 87 per cent. These figures assume that developing countries would designate as SPs those products with the highest import values. SP proponents point out that the choice of SPs will be limited to products which meet the qualifying criteria in the draft modalities. The ICTSD studies found that the SPs selected accounted for less than one-quarter of the value of total agricultural imports, though with a lot of variation between countries (see above). Clearly, a lot depends on whether the qualifying criteria would, in practice, turn out to limit the discretion of developing countries to arbitrarily self-designate the products that might be eligible for SP status, and the extent to which developing countries would want to make use of the designation once the proposed ‘trade’ filter was taken into account. The extensive elasticity implicit in the wide range of indicators proposed adds to the uncertainty of exporters about the real degree of additional market access that they would obtain. The fact that SPs would be in addition to sensitive product designation (albeit the latter would require compensatory increases in tariff rate quota access) also needs to be borne in mind when evaluating the overall change in market access from a Doha Round agreement.

## IV. The Special Safeguard Mechanism (SSM)

### *a. Doha Round draft modalities*

The July 2004 Framework Agreement noted that "A Special Safeguard Mechanism will be established for use by developing country Members." Safeguards are designed to protect against the adverse consequences of domestic market disruption caused either by unduly low-priced imports or import surges. However, it appears there was never a broad agreement on the purpose of the SSM, which complicated and eventually poisoned discussion on the design of the instrument, to the point where divisions over the SSM were blamed for the breakdown in the Doha Round talks in 2008 (Wolfe, 2009). The principal difference underlying the debate about the SSM was whether it was intended to deal with market disruption resulting from Doha Round liberalisation, or whether it was intended to address market disruption more broadly. Differences over the design of the mechanism, including its product coverage, triggers, remedies and duration, all flowed from differences over its fundamental objective.

Proponents of the SSM argued that developing countries needed access to a SSM because of the vulnerability of their producers, and especially low-income and resource-poor producers, to a sharp drop in market prices caused either by unexpectedly low world market prices or a surge in imports, because of the growing exposure of countries to external market instability and to import surges as trade barriers are reduced, and due to the absence of alternative risk management and safety net instruments. They argued that they do not have and cannot afford the policies that support farmers in developed countries, and therefore need access to a general stabilisation mechanism.

The alternative view, put forward by the United States but also by developing country exporters (see the communication from Argentina, Paraguay and Uruguay, WTO 2006c), insisted that the SSM should be a trade policy instrument, an exceptional measure, to be used under exceptional circumstances resulting from the liberalisation process. It should not imply 'a unilateral modification of schedules without any due compensation'. In this view, the purpose of a new safeguard measure should be to support a more ambitious market opening by providing for the possibility of a temporary withdrawal of tariff reduction offers in strictly defined circumstances. Supporters of this narrower view of the SSM wanted to confine it to staple food products, to products necessary for food security, or to products that already had low tariffs in order to facilitate the overall liberalisation process.

The debate on the SSM revolved around three main issues: the eligible products, the conditions to be met to invoke the mechanism, and the remedies once the mechanism was invoked. The SSM under discussion is broadly based on the Special Agricultural Safeguard (SSG) under Article 5 AoA, which includes two triggers – one based on the price of imports and one on the volume of imports. There are a number of published accounts of the SSM negotiations to date (Montemayor, 2007; Wolfe, 2009; WTO, 2008c). Here we summarise the state of play as incorporated in the December 2008 draft modalities (WTO, 2008b), together with a separate document which the Chair circulated at the same time in which he put

forward his interpretation of where discussions had reached on the contentious issue whether remedies could breach existing pre-Doha tariff bindings (WTO, 2008d). Neither document was endorsed by the WTO membership and subsequent interventions made clear there was no agreement on either text (for G-33 views, see WTO (2010a, b,c, d) and also the paper circulated by Australia and Canada (ICTSD, 2010). The Agriculture Chair's report in April 2011 confirmed that, despite extensive technical and analytical discussions, no compromise text had yet been presented to the negotiating group (WTO, 2011).

The December 2008 draft modalities would allow countries to impose specified additional duties when the total volume of imports of an agricultural product exceeds a specified trigger level, or when import prices from a particular supplier fall below a trigger price. The price-based SSM uses a reference price based on a three-year moving average of import prices from all sources. When the price of an individual shipment falls below 85 per cent of the reference price, a duty can be used to remove 85 per cent of the shortfall. There is a market test or cross-check that developing countries should 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.

The volume-based SSM can be used when imports in a year exceed 'base imports' – a rolling average of imports in the preceding three year period. The additional duty that can be applied increases as imports exceed this base (the triggers and remedies are discussed in the following paragraphs). The volume-based safeguard can only be imposed for two years, and, if it is used twice in succession, cannot be used for another two years. If a safeguard duty is imposed, and imports are lower than in the period before imposition, the trigger level is not reduced - thus avoiding a potential outcome where use of the duty itself causes the trigger to decline. Countries are allowed to use just one of the price-based and volume-based measures per tariff line in any given year.

The December 2008 modalities set out the trigger points and remedies for the volume trigger as follows:

(a) where the volume of imports during any year exceeds 110 per cent but does not exceed 115 per cent of base imports, the maximum additional duty that may be imposed on applied tariffs shall not exceed 25 per cent of the current bound tariff or 25 percentage points, whichever is higher;
(b) where the volume of imports during any year exceeds 115 per cent but does not exceed 135 per cent of base imports, the maximum additional duty that may be imposed on applied tariffs shall not exceed 40 per cent of the current bound tariff or 40 percentage points, whichever is higher;
(c) where the volume of imports during any year exceeds 135 per cent of base imports, the maximum additional duty that may be imposed on applied tariffs shall not exceed 50 per cent of the current bound tariff or 50 percentage points, whichever is higher;

Unlike the February 2008 draft modalities, there is no limit on the number of tariff lines for which the normal SSM might be invoked in the December draft. The major flexibility of the SSM is that it would allow developing countries to raise applied tariffs (including the SSM remedy) above their post-Doha bound rate if the trigger conditions are met. Indeed, it may also give comfort to countries that continue to have a significant gap between bound and applied tariffs even after the Doha Round modalities were applied, and which might not otherwise be expected to need the SSM given their ability to raise applied tariffs up to the bound ceiling. The result of the *Chile-Price Bands* case showed that varying applied tariffs even within the bound ceiling could be found illegal if the way that they are applied is inconsistent with the footnote to Article 4 AoA (Gifford and Montemayor, 2008).

However, the major sticking point in the discussions on the SSM has been whether countries should be allowed to raise tariffs above their pre-Doha level and, if so, under what conditions. The draft modalities stated that the applied duty plus the safeguard remedy should not exceed the pre-Doha tariff binding, but in the case of the volume-based SSM they provided for exceptions for three country groups – least developed countries, SVEs, and for all other developing countries under particular conditions. For the least developed countries, the maximum remedy allowed for could be applied provided that the maximum increase over a pre-Doha bound tariff does not exceed 40 *ad valorem* percentage points or 40 per cent of the current bound tariff, whichever is higher. In the case of SVEs, the text (in square brackets, indicating no agreement) limited the maximum increase over a pre-Doha binding to 20 *ad valorem* percentage points or 20 per cent of the current bound tariff, whichever is the higher, but for a maximum of 10-15 (in square brackets) of tariff lines in a given period. For all other developing countries, the maximum pre-Doha tariff could be exceeded by up to 15 percentage points or 15 per cent of the initial tariff binding for 2-6 six-digit tariff lines.

The Chair's proposal in December 2008 for triggers in the case of remedies which would bring tariffs above the pre-Doha bound rate in the case of the volume-based SSM was significantly different (WTO, 2008d).[6]

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

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

SSM remedies above the pre-Doha bound tariff should not be applied to more than 2.5 per cent of tariff lines in any 12 month period.

Compared with the draft modalities, for developing countries not in the LDC or SVE categories, the allowed excess over the pre-Doha bound rate is calculated differently (for countries with higher bound tariffs, there is greater flexibility but for countries with low bound tariffs, the flexibility is slightly reduced), an additional trigger threshold is introduced, but the number of products for which the pre-Doha cap could be exceeded in any period is

increased (from 2-6 to 2.5 per cent of total tariff lines). Also this document did not make any reference to exceeding pre-Doha tariffs in the case of the price-based SSM.

*b. Frequency of import surges*

For the G-33, the key question regarding the SSM is its accessibility (the frequency with which it can be invoked to address import surges and price depressions) and the effectiveness of the remedies (whether they provide an effective means of stabilising domestic prices in the face of import surges and price depressions or not).

Early studies focused on simulations to calculate the minimum triggers necessary to allow safeguards to be invoked. A small cottage industry developed in assessing the threat posed by import surges, where the focus was placed on the volume-based trigger (Sharma, 2005). There is no single definition of what constitutes an import surge. The definition used by the FAO in their set of conceptual and empirical studies was a 30 per cent positive deviation from a three-year moving average of import data (de Nigris, 2005). The choice of 30 per cent is, of course, arbitrary, and alternative numbers give very different incidences of import surges. An alternative definition is that provided in AoA Article 5 dealing with the SSG. This is based not only on the total volume of imports but also on their share in total domestic consumption and on the growth in domestic consumption.

What is clear is that, as a statistical phenomenon, import surges are very frequent (ActionAid International, 2008; FAO, 2003; de Nigris, 2005, South Centre, 2009a). For example, defining an import surge as a 20 per cent positive deviation from a five-year moving average, FAO (2003) showed that import surges occurred on average in about one-third of the years for each product in each country over the period 1984-2000. The South Centre (2009a) examined import surges in 56 developing countries (using a more stringent definition of imports more than 110 per cent over the preceding three-year average) and concluded that these countries imported around 16 per cent of their agricultural products under an import surge (23 per cent in the case of LDCs). In their analysis, they concluded that 29 per cent of HS 6-digit tariff lines in each country in any year experienced an import surge, while 56 per cent of tariff lines in each country on average experienced an import surge in at least one year during the 2004-07 period.

The FAO analysis highlighted that import surges appeared to become more frequent in the period following the implementation of the trade liberalisation measures agreed in the AoA (de Nigris, 2005). The belief that the implementation of WTO commitments has been accompanied by increased import surges and displacement of domestic production in some developing countries has been part of the motivation for strengthened safeguard instruments in the Doha Round (ActionAid International, 2008). However, while the frequency of surges in the post-Uruguay Round period has increased, the FAO concluded that the resulting market liberalisation was only a contributory factor, and not their main cause. The gradual implementation of tariff reductions under multilateral trade commitments did not appear to have been a direct cause of sudden import surges. Rather, in the more open market

environment fostered by trade liberalization, the effects of other causal factors, including structural constraints on domestic production, have been accentuated (FAO, 2007b).

While the incidence of surges may have risen, and surges appear to be a fairly common phenomenon in developing countries, these figures tell us nothing about the impact of the surges. It is important to underline that there is nothing either inherently 'good' or 'bad' about an import surge. Rising imports are not necessarily a negative thing for developing countries, as they add to food availability and to the reduction of hunger. It is often presumed that an import surge of a particular commodity disrupts local markets and pushes down prices, negatively affecting the livelihoods of people relying on the production of that commodity (ActionAid International, 2008). De Nigris (2005) examined correlations between import surges (measured in per caput terms) and production per caput. He found many examples of negative correlations indicating an inverse relationship between imports and domestic production, suggesting that imports were needed to compensate for domestic shortfalls. He also found positive correlations for other products where imports increased at the same time as domestic production and which probably reflected increasing demand for these products generated by economic growth. In neither instance is it obvious that the import surge is associated with displacement of domestic production and injury to the domestic sector. The South Centre (2009b, p22) concludes that over 85 per cent of import surges are not accompanied by declines in import prices, suggesting that most import surges are driven by domestic shocks, such as declines in domestic production. Furthermore, not all import surges in a statistical sense are economically meaningful. Import surges may have a different impact on domestic agricultural and processing industries depending not only on their absolute levels but also on their share in total domestic production or consumption. The impact of an import surge, both on the general economy and on the specific commodity sector, will be influenced by its relative share of production and consumption.

Sharma (2005) criticised much of the evidence presented on the importance of import surges. Drawing on the framework set out in the WTO Safeguards Agreement, he argues that a good study should meet four requirements: statistical evidence that an import surge has occurred; a negative correlation with some performance indicator of the domestic sector (e.g. production, area planted, market share, employment); evidence of a causal link between imports and the negative performance; and non-attribution, i.e. properly identifying and accounting for the role of other factors that might affect domestic performance. He instances cases where an import surge occurs even while domestic prices have continued to rise. Such cases suggest that imports have been 'pulled in' through prior shortfalls in domestic production rather than higher imports causing domestic production to fall. Few of the studies he examined meet the analytic standards he describes.

While a certain scepticism may be justified about using the evidence on import surges to support the need for additional safeguards for developing countries, the link between trade liberalization and greater domestic price volatility is much more plausible but much less researched. Trade policy reforms enhance the transmission to domestic markets of international price movements and thus introduce a further source of domestic price

instability (Valdés and Foster, 2005), although there is very little evidence on the importance of this effect. The excessive focus on import surges and the volume SSM may have distracted attention from the necessary analysis of the price SSM, despite the fact that import prices have a more direct impact on domestic markets in the importing country than the volume of imports, and calculation of the necessary remedy is more straightforward.

*c. Impact of a potential SSM*

Three recent studies shed light on the likely use and impact of the SSM. Montemayor (2010) examined the accessibility and effectiveness of the SSM using the triggers set out in the December 2008 draft modalities (previous versions of this study using earlier versions of the modalities are Montemayor 2007 and 2008). His simulations cover 27 products from six developing countries. Accessibility is defined as the frequency with which the SSM can be invoked to address import surges and price depressions, given the rules set out in the modalities. Effectiveness is defined through a three-step procedure. First, the number of months (or 'shipments', where the average monthly price is assumed to be the shipment price) during which average import prices (converted to local currency) plus bound tariffs fell below corresponding domestic wholesale prices by more than ten per cent were counted. These are called 'problematic' months in which additional safeguard duties would be needed. He then assessed whether additional safeguard duties could be invoked during these problematic months under the proposed SSM rules. Finally, he calculated the additional SSM duty that would be permitted and calculated whether this would be sufficient to bring the duty-inclusive import price to within 90 per cent of the domestic price or higher. In such instances, the SSM was deemed to be effective. The strong normative assumption behind this approach is that the SSM is designed to offset all destabilising impulses from lower import prices beyond the ten per cent threshold.

He estimates that the volume SSM could be accessed in one-third of total months and the price SSM for 18 per cent of all months (this latter underestimates the likely use of the price-based SSM because it ignores differences in shipment prices across different suppliers within a month). Not surprisingly, he calculates that a SSM duty would be required in about half of the total months in which import prices inclusive of bound tariffs would be at least 10 per cent lower than domestic prices. The volume SSM would be available in about one-third and effective in one out of every four of these "problematic" months provided that the Chair's more flexible rules for breaching the pre-Doha tariff bindings were allowed. Its effectiveness drops to 2 per cent if pre-Doha starting tariffs could not be exceeded when imposing SSM duties. The price SSM would be less effective. It would be available in only one-quarter of the problematic months and would only be effective in remedying the price gap in 6 per cent of these months. The value of trade affected by these measures is not reported.

Finger (2010) provides a different twist on Montemayor's results. He believes that the proposed SSM formulas would provide a poor guide for policy because they would frequently prescribe action when it is not needed and frequently fail to prescribe action when it is appropriate. Using the results from Montemayor's (2008) simulation exercise, he shows

that in more than half of the periods of serious price undercutting, the SSM would not have triggered an additional duty, while more than half of the additional duties triggered would not be in periods of serious price undercutting (these are periods when the SSM would be accessible but the month is not problematic). The implicit assumption behind such calculations is that developing countries, if given the opportunity, will always apply a safeguard remedy. This is disputed by SSM proponents who argue that the limited use made of existing safeguards by those developing countries which in principle had access to them shows that recourse to safeguard duties is likely to be much more limited than these figures suggest (WTO, 2010a).[7]

The second study, De Gorter et al (2009), investigated the frequency of use of both the price-based and volume-based triggers as set out in the December 2008 draft modalities for four developing countries (India, China, Korea and Indonesia) based on trade data for 1998-2003. Unlike the Montemayor study, they proxied the shipment-by-shipment basis for the price-based trigger by using bilateral unit values. The price-based safeguard would have been triggered on between 25-33 per cent of all bilateral trade tariff lines. In total 8.6 per cent of trade by value would have been affected. The average remedy would have been equivalent to an additional tariff of around 13 per cent for India and Indonesia (15-17 per cent if the pre-Doha tariff cap were lifted on a limited number of tariff lines). The equivalent figures for China and Korea would have been an average remedy of an additional 2-6 per cent with a cap or 6-10 per cent without a cap. The volume-based safeguard would have been triggered on a far greater value of trade (more than four times as much or more than 40 per cent of total imports), and the additional tariff remedy would have averaged 11-19 per cent allowing for the exceptions to the cap.[8] These results suggest that the proposed safeguards would indeed be of considerable value to developing countries. Whether they would be effective in stabilising domestic markets is not an issue that this paper set out to answer.

An important finding of this study is that both the volume- and price-based triggers would hit developing country imports to these markets much more than developed countries. This is because the shipment-by-shipment price-based SSM would impose higher duties on exports of relatively lower-priced products, which typically originate in developing countries. Based on the same insight, Finger (2010) calculates that, in a given year, unit values from specific countries are sufficiently below aggregate monthly unit values to trigger restrictions on 59 per cent of agricultural tariff lines regardless of the trend in domestic prices.

The third study (Hertel et al., 2010) uses a stochastic model of the world wheat market to investigate the stabilising effect of the SSM on domestic prices. Their model again assumes that countries will always use safeguards when the rules allow it. With this extreme assumption, it is perhaps not surprising that they find that both the quantity-based and price-based safeguards would destabilise domestic producer prices (by restricting imports when domestic output is low and prices are high). In future work as the authors themselves note, it would be important to consider the actual impacts of safeguard duties on domestic outcomes, and not simply mechanically implement the duties provided for under the SSM proposal.

However, the difficulty is that the SSM proposal as drafted leaves huge uncertainty about when and how often it might be used, leaving exporters to imagine their worst fears.

Although the SSM is justified by the need to stabilise domestic markets for poor and vulnerable producers, it does nothing to assist producers of agricultural exports who are widely exposed to price shocks and have little ability to cope with them. Indeed, it could even make their position worse. If a significant number of developing countries make use of the SSM to protect against depressed world market prices, the volatility of world prices will be greater than would otherwise be the case, making exporters dependent on these world prices worse off (Hertel et al., 2010). This suggests that eligibility to use the SSM should be confined to the minimum number of developing countries. This is not only for the standard argument about SDT measures that significant exemptions from the normal WTO rules are only likely to be acceptable when the trade-distorting effects are not large. All countries are concerned about price instability, but by definition not all can insulate themselves simultaneously against this. The efficacy of a widely-applicable measure will be eroded if a large number of countries resort to it when international prices are low.

There is also the issue of the vulnerability of low-income consumers to periods of unexpectedly high prices brought about by short conditions on world markets. The importance of this issue has been underlined by the recent spikes in global food prices, which in a number of countries have led to riots and social unrest. A safeguard clause would not address this particular consumer issue although, to the extent that developing countries continue to have tariff protection, they may have the option to lower applied tariffs to offset the impact of unexpectedly high prices on world markets. These limitations do not mean that developing countries should forgo opportunities to stabilise markets for import-competing commodities, but it does suggest the merit of looking for more comprehensive measures that can address the consequences of instability regardless of source.

## V. Conclusions

WTO rules constraining the protection developing countries can provide to their agricultural sectors have been a controversial element of the emerging regime governing agricultural trade. Developing countries with largely defensive interests, grouped in the G-33, have sought the maximum flexibility to maintain tariff protection both for use as a development strategy, to promote their food security and for short-term market stabilisation. To this end, they have sought the introduction of SP designation as an additional way to limit tariff reductions in any Doha Round agreement, as well as seeking the introduction of a SSM which would allow additional duties in the event of particularly depressed world prices or a sudden import surge.

These proposals have been accepted in principle by all WTO members. However, the design of these instruments has been among the most difficult issues in the agricultural negotiations. Countries with defensive interests in the negotiations, such as the G-33, fear that a lack of sufficient flexibilities in the current and proposed WTO rules could lead to economic and

social disruption if tariffs on sensitive commodities are substantially reduced and if they are prevented from taking action to offset a sudden surge in imports or unusually low world market prices. Countries with offensive interests, including some developing countries, fear that too much flexibility would limit their market access gains, and thus their ability to use agricultural exports as a route to greater food security and rural development through raising the per capita incomes of their food-insecure farmers.

The negotiations have been complicated by very different views on the context in which they take place. For developed country exporters, these limits on market access by developing countries are used to justify holding back on more ambitious offers to reduce tariff peaks or trade-distorting domestic support. Developing countries, on the other hand, perceive the continued high protection for developed country farmers after the AoA as unfair and unreasonable, and argue that SPs and the SSM are merely levelling the playing field and not demands for which they should have to pay in negotiating terms. Indeed, many of the complications in agreeing modalities arise from the fact that the starting point is the historical and uneven pattern of tariff bindings, which are very different even for countries at the same level of development, rather than a more logical structure in which countries' overall tariff bindings reflect objective development criteria. The fact that countries differ over whether the negotiations are intended solely to pursue trade liberalization, or should also provide the opportunity to redress historically uneven entitlements to agricultural protection, explains to a large extent the intensity of disagreement over these issues.

The negotiations have also been complicated by very different views on what these instruments are intended to achieve. For some countries, mainly but not only developed countries, safeguards have a role in providing some flexibility as countries undertake a long-run commitment to liberalization. For the proponents of SPs and the SSM, they are mechanisms to legitimise protection as a permanent feature of the global trade regime. In much of the discourse on the impact of WTO trade rules on food security, there is a presumption that greater policy space is synonymous with greater food security. WTO rules are criticised because they limit the policy space of developing countries, although often without analysis of the link between policy space and food security. The fact that, increasingly, developing country imports are supplied by developing country exporters is just one pointer to the need for a more balanced discussion. Developing countries now supply more than one-half of all developing country food imports, and thus will be most affected by continued protection of developing country markets.

Of the two instruments reviewed in this paper, the draft modalities on SPs appear to be more settled, although this apparent agreement may be misleading and may simply reflect the negotiators' focus on the SSM and other issues since 2008. The December 2008 modalities propose that developing countries could self-designate up to 12 per cent of their tariff lines as SPs (13 per cent in the case of SVEs and RAMs), guided by indicators based on the criteria of food security, livelihood security and rural development. This proportion is closer to the G-33 proposal of 20 per cent than to the more restrictive alternatives on the table. Further, a proportion (5 per cent) would be exempt from tariff cuts, although the overall average cut

would have to be 11 per cent (10 per cent for SVEs and RAMs). The proposed indicators appear to be so broad that they are unlikely to constrain developing countries in their choice of tariff lines to designate as SPs. Taking into account that the majority of developing countries have substantial tariff overhang between bound and applied tariffs, and also taking into account the possibility to avoid formula tariff cuts through designating sensitive products, these SP modalities mean only a few developing countries would be required to reduce applied tariffs as a result of the Doha Round.

The situation with respect to the SSM is different. A 2010 G-33 paper noted that discussions on the SSM have highlighted the gulf that persists in perceptions on the rationale, structure and design of this instrument (WTO, 2010a). The proponents of the SSM want an effective, easy to operate instrument which addresses their development needs. They thus reject the current texts which impose conditions on its use, limiting when it can be invoked and the extent of the remedies. According to the South Centre, which has substantial influence with the G-33, "Developing country proposals have become so drastically watered down during horsetrading of negotiations that the mechanism would be practically useless to developing countries if the current draft negotiating texts (December 2008) are agreed upon" (South Centre, 2009c, p.1).

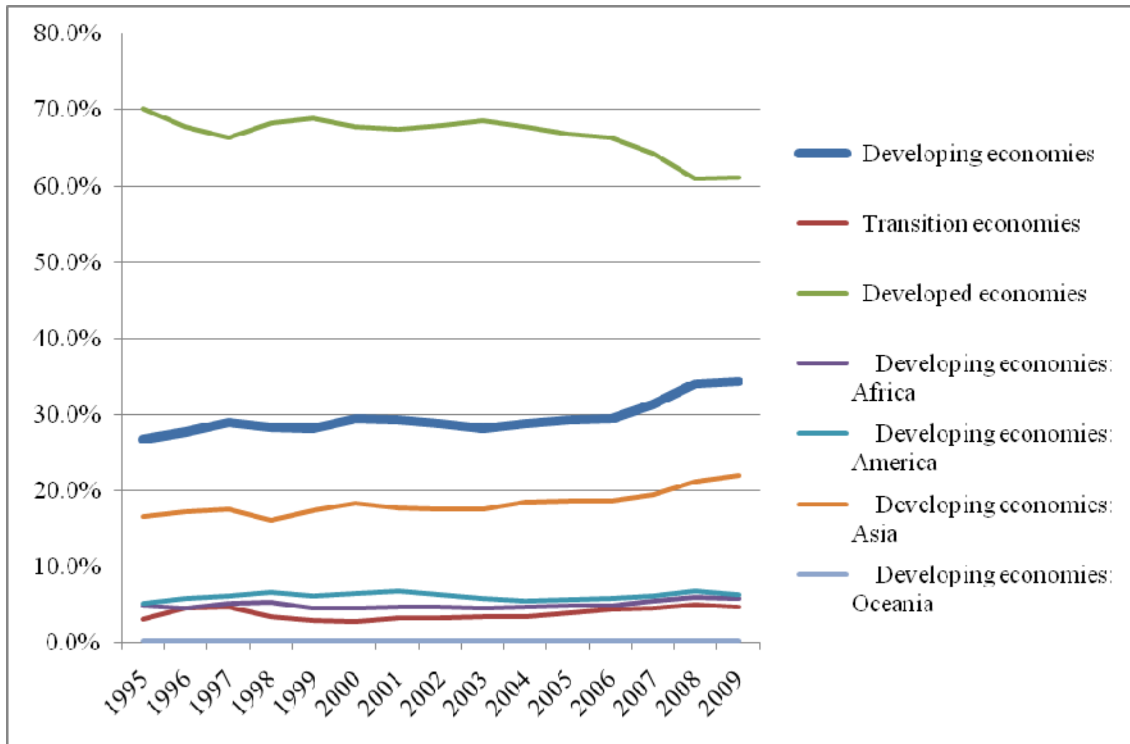
However, for a successful outcome, the SSM modalities must be acceptable both to agricultural exporters as well as to importers. The previous analysis indicated some possible room for compromise. Applying the existing draft modalities, and particularly the volume-based SSM, would seem potentially to expose a high proportion of trade with developing countries to the risk of supplementary safeguard duties. SSM proponents protest that, in practice, developing countries are unlikely to use more than a fraction of these opportunities. Indeed, it is clear that many so-called import surges contribute to food availability when domestic production suffers a setback. But an agreement cannot be based on such vague uncertainty. If, indeed, SSM proponents envisage using the mechanism on relatively few occasions, then there would seem to be scope to construct rules which clarify when these occasions would occur. Whether these rules would involve limits on the number of tariff lines for which the SSM could be invoked at any one time, more rigorous trigger conditions or a strengthened cross-check condition would be for negotiators to decide.

The SSM would allow developing countries to impose tariffs which breach their post-Doha tariff bindings. A second nettle which must be grasped is the circumstances in which pre-Doha Round bound tariffs can be exceeded. The reason why this is such an issue is because of the huge variability in bound tariffs between developing countries, depending in part on the choices they made at the conclusion of the Uruguay Round negotiations in 1994 or the timing of their subsequent accession. Countries which opted for ceiling bindings in 1994 often have high bound tariffs, while RAMs were required to offer much lower bound rates. The remedies available to the latter group if the pre-Doha bound tariff is retained as a cap are severely curtailed. When additional SSM duties are tied to bound tariffs as in the December 2008 modalities, countries with low pre-Doha bound tariffs would very frequently exceed these tariffs with the SSM. This would be automatically the case for all countries which

designated SPs with the zero tariff cut option. These products would not be eligible for the volume SSM remedy under the December 2008 draft modalities because there would be no difference between bound and pre-Doha starting tariffs in any year. However, the bigger problem is China. Some countries see removing the pre-Doha cap as allowing China to reverse the disciplines it accepted when becoming a WTO member. But not allowing China to exceed its bound tariff level would effectively eliminate its use of the SSM altogether. This issue needs to be addressed as part of a successful outcome, possibly by varying the number of tariff lines for which the pre-Doha ceilings could be breached according to the size of the bound MFN tariff.

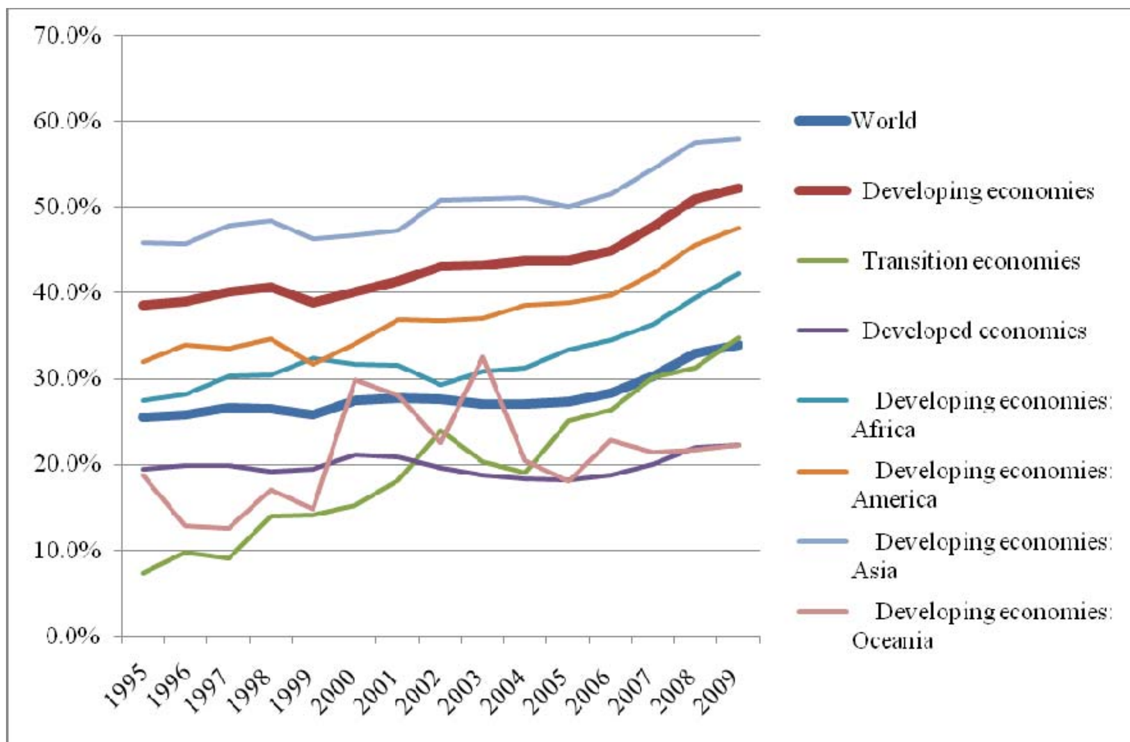
This paper takes the view that developing countries do not require a permanent exception to WTO market access rules in order to promote their food security, livelihood security and rural development goals. By far the more important issue to address in that context is the continued under-investment in agricultural production, infrastructure and institutions by both developing countries themselves and donors. WTO disciplines do not constrain such investments in any way, even if they could do more to restrain the provision of support and subsidies in rich countries which, by encouraging additional production and thus lowering world market prices, depress the incentives for agricultural investment in developing countries. If safeguards are justified as permitting temporary protection from import surges above and beyond that provided by their tariff schedules, then the compromise proposal of Hufbauer and Adler (2008) is worth considering. In their proposal, consistent with the spirit of progressive liberalization, trigger levels would initially be set at a low level and then gradually raised, while remedies would be set at a high level and then gradually lowered. What is distinctive in their proposal is that the phasing-out of the safeguard would take place at different rates for different country groupings. They distinguish between four country groupings on the basis of their 'need' for safeguard remedies (least developed countries, small and vulnerable economies, recently acceded members and other developing countries). Setting a sufficiently long period for phasing out might provide importing countries with the comfort they are seeking while reassuring exporters that liberalization would occur (in this context, if the Doha draft modalities came into force in 2013, the SSG would be available to those countries, mainly developed countries, that have access to it for 25 years). In any case, over the next two decades, it seems likely that developing countries will find agricultural shortfalls and rising food prices more painful than gluts and falling food prices.

- **Figure 1 – Shares in world agricultural imports**




Source: Own calculations based on UNCTADStat

**Figure 2 – Share of developing country exports in destination markets**




Source: Own calculations based on UNCTADStat

**Endnotes**

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[1] Alan Matthews is Emeritus Professor of European Agricultural Policy and Research Associate of the Institute for International Integration Studies at Trinity College Dublin. This paper has been prepared as a chapter for a forthcoming research handbook on agricultural trade edited by Joseph McMahon and Melaku Desta to be published by Routledge. I am grateful to the editors of this volume and to Jonathan Hepburn for helpful comments on earlier drafts but the views expressed and any remaining errors are my responsibility.

[2] The G-33 now has 46 members. The full membership can be found on the WTO website at http://www.wto.org/english/tratop_e/agric_e/negoti_groups_e.htm.

[3] There are different definitions of what is meant by agricultural trade. A relatively restricted definition is used in this section, referred to as Basic Food in UNCTADStat, and defined as SITC Sections 0, 22 and 4. Excluded from this definition are beverages and tobacco (SITC Section 1) as well as agricultural raw materials in SITC sections 2 less 22, 27 and 28. The overall trends described for basic food also hold for a wider definition of agri-food products.

[4] This is not a new observation. A WTO Secretariat note on agricultural trade performance by developing countries observed that South/South trade, as a share of developing countries' total agricultural export trade, increased from 32 to 46 per cent over the 1990-2003 period. (WTO, 2005f) Their analysis was confined to goods covered by the AoA.

[5] A list of the countries in these two groups is also given in the WTO internet page referenced in endnote 2.

[6] These proposals built on the Lamy package proposed on 25 July 2008 and the G-33 response on 27 July 2008. The Lamy package allowed for a volume-based remedy that exceeded pre-Doha bound rates when import volumes were 40 per cent above a three-year rolling average. Developing countries could then impose remedies that were 15 percentage points or 15 per cent of the current bound tariff, whichever was higher, on up to 2.5 per cent of tariff lines. The G-33 proposal would allow safeguard duties to exceed bound rates when import volumes were 10 per cent greater than the three-year rolling average. With this proviso, safeguard duties could be up to 30 percentage points or 30 per cent of the bound tariff, for up to 7 per cent of tariff lines. See WTO (2008c) for discussion of these proposals.

[7] Hertel et al. (2010) discuss some of the reasons why developing countries do not use agricultural safeguards to which they are otherwise entitled.

[8] The average remedies quoted in this paragraph are simple averages. The weighted average remedies would be slightly lower under the price-based trigger but considerably higher under the volume-based trigger. Hertel et al. (2010) in their simulation of the use of the SSM in the world wheat market also conclude that the quantity-based safeguard is an order of magnitude more damaging to world trade than the price-based safeguard.

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