

Implementing the Special Products (SPs) Provision on the Basis of an Aggregate Deviation from the General Tariff Cut Formula¹

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The July Framework includes a provision on Special Products (SPs) on Special and Differential Treatment (SDT) basis for developing countries. The related provision reads as follows (para 41 of the July Framework):

“41. 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.”

The issues in brief

Negotiations on SPs over the past years leading to the July Framework dealt with possible criteria to be used in the designation of SPs and how these products would be treated once they have been designated as such.

As regards their designation, three main approaches have been suggested:

- based on indicators related to the stated objectives of SPs (i.e. food/livelihood security and rural development);
- based on multilaterally agreed criteria; and
- based on self-designation by the countries concerned.

Designation based on the stated objectives of SPs suffers from a major difficulty, namely that these objectives (food/livelihood security and rural development) are not easily quantifiable. While proxies are possible for some of these objectives³, there are data limitations for a consistent and comprehensive treatment of all countries. Moreover, any thresholds that may be used as regards these proxy indicators, for products to qualify as SPs, would have been contested as arbitrary considering the complexity of the stated objectives and the degree to which each indicator contributes to realizing these objectives. Inevitably, such an exercise would exclude some products which are special from the point of view of individual countries concerned.

As regards the second approach, based on multilaterally agreed criteria, some of the criteria that have been suggested include: products with reasonably low tariffs; the country concerned is a net importer of the designated product; and products for which the country concerned does not have a large share in the world market. This approach could be operationalized as the suggested criteria are simple and quantifiable, however, again there is no guarantee from the point of view of the countries concerned

¹ This Note is part of three notes on approaches to implement certain market access provisions of the July Framework. The other two notes are:

- *Implementing the Sensitive Products Provision on the Basis of an Additional Pro-rated TRQ Commitment for Non-Compliance with the General Tariff Cut Formula*
- *Implementing the Special Safeguard Mechanism (SSM) on the Basis of a Maximum Contingency Levy.*

² The views expressed in this paper are those of the author and do not necessarily reflect official policy of the Food and Agriculture Organization.

³ FAO attempted an exploratory exercise based on four indicators: share in total agricultural production (proxy indicator of rural development); share in total agricultural consumption and self sufficiency ratio (both proxy indicators of food security); and contribution in total agriculture employment (proxy of livelihood security).

that some products which are unique for specific domestic reasons (e.g. key livelihood crop in a region of the country) would emerge as special based on a strict application of across-the-board multilateral criteria.

It is for these reasons that the proponents of the provision for SPs favoured the self-designation principle, based on the broad concept of food/livelihood security and rural development, as understood by the countries themselves, taking into account the specific local contexts which make certain products special.

Irrespective of the approach for designating SPs, another issue of contention has been the total number of SPs. One suggestion that has been made in this regard is that the number of products benefiting from this provision should be small and uniform across all developing countries. While this may be adequate for some of the smaller countries with narrow production base, it has been considered as inadequate for bigger countries with a broad and diverse production base. Instead, the latter suggested as a basis of the number of SPs a fixed percentage of “domestically-produced products”.

The second major contentious issue with SPs has been their treatment, once they are designated. Would they be subject to a reduced tariff reduction or would they be exempted from cuts altogether? As regards the issue of offering a TRQ for SPs, the prevailing view has been all along that SPs would be exempted from TRQs, although this is not stated explicitly in the July Framework (it was in the Derber text in Cancun).

An approach based on a maximum aggregate deviation from formula cuts

The main idea in the approach proposed here is that of a maximum aggregate deviation from the general tariff cut formula for all products designated as SPs. This negotiated number (a total number of percentage points, call them Special Product Points or SPPs) would be the total allowance that a Member would have at its disposal to shield designated SPs from the cuts called for by the generally applicable tariff cut formula. Possible considerations in the negotiation of this maximum aggregate deviation are discussed below.

How the approach would work in practice

Assume that the total SPP allowance (the maximum aggregate deviation) that Member A has at its disposal is 200 points. Assume also that from the application of the general tariff cut formula (whatever that formula may be⁴), the implied tariff cut for product 1 is 20% (see Table 1). If Member A considers product 1 as an SP, it can make use of its SPP allowance to avoid (partially or fully) a tariff cut for that product. For example, it can make use of, say, 15 points and reduce the tariff of product 1 by only 5%, instead of the 20% called for. Similarly, for another product 2, which Member A also considers as SP, assume that the tariff cut called for by the application of the general formula is 15%. Member A can again make use of, say, 5 points to reduce the tariff of product 2 by 10%, instead of 15%. This way, as illustrated in Table 1, the total SPP points available can be used for protecting in various degrees those products considered as SPs by the Member concerned. The aggregate number of points by which designated SPs could deviate from the generally applicable formula cuts can not exceed Member A's maximum allowance (i.e. 200 points in the example of Table 1)

What needs to be negotiated

As discussed above the parameter to be negotiated in pursuing the approach proposed here to implement the Special Products provision, is the total number of SPPs, i.e. the maximum aggregate deviation from the general tariff cut formula for all products designated as SPs.

One issue in this regard is whether this aggregate maximum deviation allowance would vary from Member to Member. A uniform level for all Members may not be appropriate. One of the reasons is what some proponents of SPs have already argued, having to do with differences in the breadth of the production base between countries (some small countries produce only a few products compared with bigger countries with a much broader production base). Another reason is differences in the level of bound tariffs. Members that have already bound their tariffs at relatively low levels would have

⁴ The approach proposed here is independent of the formula used and is applicable to whatever tariff cut specification may be finally agreed.

greater need for designating some of these products as SPs, and thus protecting them from further tariff cuts, compared to Members that maintain high bound tariffs.

Table 1. Treatment of SPs under the Maximum Aggregate Deviation approach

Self-designated SPs	Tariff cut resulting from generally applicable formula (percentage points)	SPP points used	Actual tariff cut (percentage points)
Product 1	20	15	5
Product 2	15	5	10
Product 3	35	15	20
...
...
Product n	50	20	30
Total		200	

On the basis of these considerations, it is proposed here that products potentially eligible for SP treatment may include all the “domestically-produced products” for which bound tariffs are below a certain threshold level [x]% (a number to be negotiated). Each of these eligible products would be “entitled” to [y] SPP points (another parameter to be negotiated), so that the total SPP allowance (the aggregate maximum deviation from formula cuts) would be equal to the number of eligible products times the “entitlement” [y].

For example, assume that a Member has 100 “domestically-produced products” of which 40 have a bound tariff below the threshold level [x]. If each of these 40 eligible products is “entitled” to, say 10 SPPs (the [y] parameter to be negotiated), then the total SPP allowance for that Member would be 400 points (=40*10)⁵. For another Member with only 8 “domestically-produced products” of which 5 have bound tariffs below the threshold level [x], its total SPP allowance would be 50 points. Yet for another Member with 10 “domestically-produced products” all of which have a bound tariff above the assumed threshold level [x], its total SPP allowance would be nil, i.e. that Member would not have access to the SP provision at this stage⁶.

Implications

There are several desirable features of this approach: first, within the broad category of products potentially eligible for SP treatment (i.e. “domestically-produced products” for which bound tariffs are below a certain threshold level), the designation of the actual SPs is left entirely to the Member concerned, i.e. the self-designation principle applies; second, the relative importance of different SPs is also the choice of the Member concerned in the sense that the total allowance of SPPs can be distributed between different SPs based entirely on domestic considerations and processes; third, and as a consequence of the above, there is a clear trade-off between the number of products designated as SPs (among those potentially eligible) and the degree by which each of them would be shielded from the generally applicable tariff cut formula. A Member can self-designate a small number of SPs and shield their tariffs considerably or a larger number of SPs and shield their tariffs only modestly.

A final important implication is that the approach proposed here offers an opportunity for consideration of the trade-offs involved in the designation and treatment of SPs which would motivate national debates on the merits of such a provision in support of food/livelihood security and rural development. These processes at the national level are likely to address important issues that go at the heart of the rationale for SPs, such as: why certain products are special? how they contribute to

⁵ Clearly the numbers used here are simply for the purpose of demonstrating how the approach would work in practice and are not based on any analysis of what would be their implications for the countries concerned.

⁶ However, it is unlikely that such a Member with high bound tariffs would have a need for the SP provision.

food/livelihood security? does the protection afforded to each of them match its importance? what are the implications for other products?, etc. This is a much-valued exercise on its own with benefits that go beyond the need for designating SPs in the context of the WTO.