29 November 2004

# Implementing the Special Safeguard Mechanism (SSM) on the Basis of a Maximum Contingency Levy[1]

Panos Konandreas, FAO Geneva Office[2]

pkonandreas@unog.ch
+41-22-9173635 or +41-79-7405869

The July Framework includes a provision for the creation of a Special Safeguard Mechanism (SSM) for developing countries on Special and Differential Treatment (SDT) basis. The related provision reads as follows (para 42 of the July Framework):

> "42. A Special Safeguard Mechanism (SSM) will be established for use by developing country Members."

*The issues briefly*

Negotiations on the SSM over the past years leading to the July Framework dealt with possible modalities of operation of such a provision having to do basically with country/commodity coverage, trigger mechanisms, and remedy measures.

As regards country/commodity coverage, the proponents of the SSM argued for broad eligibility to include all products and all developing countries. Others suggested that certain criteria be applied, including the SSM being limited to products that are subjected to deeper cuts or to products with a final bound tariff below a threshold level.

As regards the trigger mechanism, some skepticism about price triggers was expressed, on grounds that these could be manipulated, however, the proponents have argued for the need of both price and volume triggers as is the case in the existing SSG.

Finally, as regards possible remedy measures, some have argued for setting a limit on the extra tariff to be applied (not to exceed the post-UR bound levels), however, such an approach was objected by countries with already low bound tariffs. Another issue was whether a tariff-only remedy would be adequate. Some proponents of the SSM argued for the need of quantitative restrictions in addition to tariffs.

*An approach based on a Maximum Contingency Levy (MCL)*

As is typically the case with all derogations from the generally applicable rules, there are divergent views between the proponents of the SSM who wish maximum flexibility and those that support a more contained instrument limiting the possibilities for abuse. The middle ground could perhaps be found in an approach that offers maximum flexibility as regards country and commodity eligibility in accessing the SSM but avoids an open-ended provision by placing an upper limit on the overall use that would be made of this instrument.

The main idea in the proposed approach is a maximum contingency levy (MCL) that could be applied, over and above other legitimate levies, when certain trigger conditions are met. This negotiated maximum contingency levy (expressed in value terms, i.e. national currency or the equivalent of $US or SDRs) would be the total allowance that a Member would have at its disposal on grounds of the

---

[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 Special Products (SPs) Provision on the Basis of an Aggregate Deviation from the General Tariff Cut Formula*
- *Implementing the Sensitive Products Provision on the Basis of an Additional Pro-rated TRQ Commitment for Non-Compliance with the General Tariff Cut Formula*

[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.

SSM provision. When the cumulative value of extra tariffs (on account of the SSM) reaches that maximum contingency levy, no extra tariffs would be possible on subsequent shipments during the marketing year in question.

*How the approach would work in practice*

Table 1 illustrates with a hypothetical example how the SSM based on a maximum contingency levy can work in practice. For the purposes of this illustration, assume a price and a volume trigger similar to those discussed during earlier technical work on the subject in conjunction with the March 2003 modalities draft[3].

The Member in question made 10 import consignments of a particular product in a marketing year, totaling 140,000 tons. For the previous 3 years it imported on average 100,000 tons/year at an average import value of US$15,000,000/year. The maximum contingency level (MCL) under the SSM is assumed to be 10% of that average value of imports, i.e. US$1,500,000 (this is a key parameter to be negotiated – see below). Finally, the import reference price for the product in question is assumed to be 100 US$/ton.

Consignment 2 (of 15,000 tons) is the first to trigger the SSM as its price at US$90/ton is below the reference price (US$100/ton). The SSM is triggered on a price basis and the Member can impose an extra tariff of US$10/ton (=100-90), which would amount to a contingency levy of US$150,000 (=10*15,000). The application of this levy is part of the total contingency levy (US$1,500,000) that the Member has at its disposal so that by applying it on this consignment its remaining contingency level becomes US$1,350,000 (=1,500,000-150,000) as shown in the last column of Table 1. Similarly, consignments 3 to 7 are also imported at a price below the reference price and the Member makes use of the SSM on a price basis. With the completion of consignment 7 its remaining contingency levy is reduced to $US25,000.

Consignment 8 is at a price equal to the reference price so that the price trigger is no longer applicable. Neither is the volume trigger as the cumulative volume up to that point is 115,000 tons (below the trigger level of 125,000 tons). However, consignment 9 (of 15,000 tons) brings the total volume of imports for that product above the trigger level of the SSM. Theoretically, the Member can impose an extra tariff up to US$30/ton (30% of the import price of US$100/ton), which would have amounted to US$150,000 (column 9 of Table 1). However, its remaining contingency levy is only US$25,000 and this is the levy that actually can be applied, corresponding to US$1.67/ton. Finally, although consignment 10 is theoretically eligible for SSM treatment again on volume basis, no extra levy is possible since the maximum contingency levy has been used up.

*What needs to be negotiated*

The sole parameter to be negotiated in pursuing the approach proposed here to implement the SSM provision, is the MCL, i.e. the maximum contingency levy that a Member would have at its disposal to apply when either price or volume triggers are met.

One approach that has been suggested above is to set that maximum contingency levy as a percentage of the average value of imports of the product in question during the three preceding years. A number

[3] That draft had included the following specification for price and volume triggers:

(a) **Price-triggered**: An additional duty not exceeding any positive difference between the c.i.f. import price of a shipment expressed in terms of the domestic currency of the importing developing country concerned, on the one hand, and, on the other hand, a corresponding import reference price representing the monthly average import price of the product concerned over a recent three year period excluding the three highest and three lowest monthly averages. In the absence of relevant average import price data for a particular product, the import reference price may be constructed on the basis of published representative export price quotations, provided that details of the prices and methodology employed are notified in advance to the Committee on Agriculture.

(b) **Volume-triggered**: An additional duty of not more than 30 per cent *ad valorem* to be imposable in any year on any quantity of imports in excess of 125 per cent of the average volume of imports in the immediately preceding three year period. This additional duty shall not be applied beyond the end of the year in which it has been imposed.

of 10% was used in the illustrative example, but this was only for demonstration and it was not based on any analysis of its implications for different products and country situations.

The approach proposed did not make any distinction between countries or products for them being eligible for coverage under the SSM. However, for all practical purposes, recourse to the SSM would not be needed for products for which bound tariffs are reasonably high. In those cases a Member would be able to raise its tariff up to its bound level and those legitimately applicable levies are likely to be adequate. Hence, an overriding condition for product eligibility to the SSM could be that only those products for which the bound tariffs are below […]% (a level to be negotiated) would be eligible.

*Implications*

There are some important in-built trade-offs in an SSM, based on a maximum contingency levy, which would condition its use. The basic trade-off is whether a Member would opt in making full use of the extra tariff allowed early in the marketing year or hold back somewhat for possible use later in the season. Warding off 100% of import-to-reference price differential could exhaust the maximum contingency levy early in the season and this would imply no protection for subsequent imports. As demonstrated in the illustrative example in Table 1, the maximum contingency levy is practically used up by consignment 9 and there was no possibility in applying any extra levy at all for consignment 10. Alternatively, had the Member opted for warding off part of the import-to-reference price differential for imports early in the marketing year (say by applying 2/3 of the allowed levy up to consignment 5), then it would have been able to apply all of its entitled levy for the rest of the year (consignments 6 to 10). This may be desirable as it is towards the end of the marketing year that it would become evident that too much has been imported and the need for the SSM (volume trigger) is greater at that time to effectively ward-off some of these unwanted imports.

Another desirable consequence of Members holding back from applying all of their allowable contingency levy early in the marketing year, is that the world market would not be destabilized further. Consequently, the price may not drop further later in the season by as much as it may have been the case if domestic markets were insulated from absorbing some of the world market decline early in the marketing year.

*Implications for the SSG*

The same approach proposed above could be applied to the existing SSG provision of the AoA, should that provision be retained in the new AoA[4]. To the extent that the majority of developing countries (even the ones that presently have access to the SSG) opt for the new SSM, then the SSG would practically remain a developed country provision. In that case there could be rationale for streamlining the modalities of the two safeguard instruments (i.e. make them operate basically under the same rules) but with some differentiation for the SSM on SDT basis along the lines used for other provisions (i.e. the parameters of the SSM could be by 1/3 more generous than those of the SSG).

[4] This issue is left unresolved in the July Framework text. Para 38 of that text simply states that: "The question of the special agricultural safeguard (SSG) remains under negotiation."