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Committee on Agriculture
Special Session

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SPECIAL SAFEGUARD MECHANISM FOR DEVELOPING COUNTRY MEMBERS

SUBMISSION BY THE G-33¹

Ministerial Decision of 18 December 2015, Nairobi, Kenya

The following Joint Proposal, dated 18 November 2015, is being circulated at the request of the aforementioned supporting Members.

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement");

Desiring to amend the Agreement on Agriculture to provide for [additional special safeguard mechanisms for developing countries];

Acknowledging the need to safeguard developing country Members from the heightened volatilities and instabilities in agriculture since the global food crisis in 2008 due to increased vulnerabilities to natural calamities and the trade distortions induced by high subsidization and export measures that curtail the productive capacities of these Members, reverse their development gains, hinder competitiveness and realization of their full potential;

Noting that greater stability and sustainability in investment, production and trade in developing country Members benefits all including producers, traders, and consumers which drives global demand for goods and services and propels global growth and development;

Having regard also to paragraph 42 of Annex A of the "July Framework" adopted by the General Council² in August 2004 and paragraph 7 of the Hong Kong Ministerial Declaration in December 2005³, in particular the mandate to establish a special safeguard mechanism, herein after referred to as the "SSM", for developing country Members based on price and quantity triggers;

Recognizing the critical importance of instituting an accessible and effective trade remedy tool, i.e. the SSM, that is responsive to the needs and conditions of developing country Members in addressing volatilities and instabilities causing import surges and price depressions which, if not immediately and effectively addressed as they occur, undermine poverty reduction efforts, livelihood and food security, and rural development in developing country Members;

¹ Without prejudice to the position of Peru and Pakistan. Guatemala is consulting with its authorities at the capital, so it cannot support this document at this moment.

² WT/L/579.

³ WT/MIN(05)/DEC.

Reaffirming our commitment under paragraph 13 of the Doha Development Agenda⁴, which provides *inter alia* that special and differential treatment for developing country Members shall be an integral part of all elements of the negotiations to enable developing country Members to effectively take account of their development needs, including food security and rural development;

Decides as follows:

1. The Agreement on Agriculture shall be amended by inserting a new Article 5*bis* as provided in Attachment 1 to this Decision.
2. The Protocol of Amendment contained in Attachment 2 to this Decision is hereby adopted.
3. This decision, and the resulting amendment, will not form part of the negotiations referred to in paragraph 45 of the Doha Ministerial Declaration.
4. [The Protocol of Amendment shall remain open for acceptance [until 31 December 201_]].
5. The Protocol shall enter into force in accordance with Article X:3 of the WTO Agreement.
6. Pending entry into force of the Protocol and the amendment, developing country Members may use the special safeguard mechanisms as contained in Attachment 1 to this Decision and Members shall not challenge through the WTO Dispute Settlement Mechanism the compliance of a developing country Member with its obligations under Articles 4 and 5 of the Agreement on Agriculture with respect to any use by that Member of these special safeguard mechanisms.

⁴ WT/MIN(01)/DEC/1.

ATTACHMENT 1

ARTICLE 5bis

Special Safeguard Mechanism for Developing Country Members

1. A Member shall have recourse to volume-based and price-based special safeguard mechanism (the "SSM") as defined hereunder. The SSM shall have no *a priori* product limitations as to its availability, i.e. it can be invoked for all tariff lines that are 'self-designated' in the Schedule of the Member with the symbol "SSM" or listed under a yearly notification by the Member to the Committee on Agriculture.⁵ In no circumstances may any product be, however, subject to the simultaneous application of price – and volume-based safeguards. Nor shall there be application of either of these measures if the SSG under Article 5; a measure under GATT Article XIX; or a measure under the Agreement on Safeguards is in place.

2. As regards the volume-based SSM, it shall be applied on the basis of a moving 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 110% but does not exceed 115% of base imports, the maximum additional duty that may be imposed on applied tariffs shall not exceed 25% of the current bound tariff or 25 percentage points, whichever is higher;
- b. Where the volume of imports during any year exceeds 115% but does not exceed 135% of base imports, the maximum additional duty that may be imposed on applied tariffs shall not exceed 40% of the current bound tariff or 40 percentage points, whichever is higher;
- c. Where the volume of imports during any year exceeds 135% of base imports, the maximum additional duty that may be imposed on applied tariffs shall not exceed 50% of the current bound tariff or 50 percentage points, whichever is higher;
- d. The foregoing SSM triggers shall apply to all developing country Members, except for the Members hereunder to which the following triggers shall apply:
 - i. For least-developed country Members (the "LDCs"): for the trigger in paragraph 2.a above, where the volume of imports during any year exceeds 105% but does not exceed 110% of base imports; for the trigger under paragraph 2.b above, where the volume of imports during any year exceeds 110% but does not exceed 115% of base imports; and for the trigger under paragraph 2.c above, where the volume of imports during any year exceeds 115% of base imports;
 - ii. For Members⁶ referred to in footnote 6, the triggers shall be: for the trigger under paragraph 2.a. above, where the volume of imports during any year exceeds 110% but does not exceed 115% of base imports; for the trigger under paragraph 2.b above, where the volume of imports during any year exceeds 115% but does not exceed 120% of base imports; and for the paragraph 2.b above, where the volume of imports during any year exceeds 120% of base imports; and

⁵ The notification shall be made as far in advance as may be practicable in any event within 10 days of the first month of any given twelve-month period. This provision shall only apply to Members whose SSM entitlements are not in their schedules.

⁶ The Members that, in the period 1999 to 2004, had an average share of (a) world merchandise trade of no more than 0.16% or less, and (b) world trade in non-agricultural products of no more than 0.1% and (c) world trade in agricultural products of no more than 0.4%. For purposes of the SSM, other Members that are "10 most vulnerable" to climate change as determined in the United Nations are also covered by the provision.

- iii. For developing country Members⁷ other than those referred to in the preceding paragraphs: for the trigger under paragraph 2.a above, where the volume of imports during any year exceeds 110% but does not exceed 115% of base imports; for the trigger under paragraph 2.b above, where the volume of imports during any year exceeds 115% but does not exceed 130% of base imports; and for the trigger under paragraph 2.c above, where the volume of imports during any year exceeds 130% of base imports.
- e. Where, formally, the above triggers are met, but the absolute level of imports is manifestly negligible in relation to domestic production and consumption, the said remedies may not be applied.
3. Imports under any scheduled tariff rate quota commitment may be counted for the purpose of determining the volume of imports required for invoking the volume-based SSM, except where a volume increase is entirely attributable to a scheduled tariff rate quota increase under a further agreement, but no additional duty shall be imposed on imports within such tariff rate quota commitments.
4. As regards the price-based SSM, it shall be applicable where the c.i.f. import price (the "import price") of the shipment⁸ entering the customs territory of the developing country Member, expressed in terms of its domestic currency falls below a trigger price⁹ equal to 90% of the average monthly price (the "reference price"¹⁰) for that product for the most recent three-year period preceding the year of importation for which data are available. Where the developing country Member's domestic currency has at the time of importation depreciated by at least 10% over the preceding 12 months against the international currency or currencies against which it is normally valued, the import price shall be computed using the average exchange rate of the domestic currency against such international currency or currencies for the three-year period referred to above.
5. The price-based SSM remedy shall apply on a shipment-by-shipment basis. The additional duty shall not exceed the difference between the import price of the shipment concerned and the trigger price.
6. Developing country Members may not 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.
7. The calculation of volume and price triggers and the application of volume-based and price-based SSM shall be in accordance with the following:
- a. Subject to the conditions under paragraph 7.b hereunder, the Member shall apply the SSM on MFN-trade only if the said Member has excluded in the calculation of triggers, all imports under its preferential trading arrangements. Conversely, the SSM shall be applied to all trade if the said Member has included in the calculation of triggers, all imports from all origins; or
- b. The decision whether to include imports under and apply the measures to the preferential trading arrangements shall be guided by the agreement therein. In the absence of such an agreement in a preferential trading arrangement, the importing developing country Member shall have the options provided under paragraph 7.a above.

⁷ Developing country Members with average bound tariff of not greater than 40% in 2015.

⁸ A shipment shall not be considered for purposes of paragraph 4 herein unless the volume of the product included in that shipment is within the range of normal commercial shipments of that product entering into the customs territory of the importing developing country Member.

⁹ The trigger price shall be publicly disclosed and available to the extent necessary to allow other Members to assess the additional duty that may be levied.

¹⁰ The reference price used to invoke the provisions of this paragraph shall be the average monthly c.i.f. unit value of the product concerned.

8. Imports from Members referred to in paragraph 2.d.i and the listed Members, referred to in footnote 6, in annex ___ hereto shall be exempt from the application of the SSM, except where the volume increase or import surge is caused exclusively and entirely by imports from one or more of the listed Members.

9. Any shipments of the product in question which, before the imposition of the additional duty under the volume-based SSM, have been contracted for and were *en route*¹¹ after completion of custom clearance procedures in the exporting country member shall be exempted from any such additional duty, provided that where a volume-based SSM may be applicable in the next twelve-month period, the shipment of the product in question may be so counted in that period for the purposes of triggering the SSM.

10. The volume-based SSM may be maintained for a maximum duration of 12 months from the initial invocation of the measure, unless a seasonal product is involved, in which case the SSM shall apply for a maximum of six months or to cover the period of actual seasonality, whichever is longer. For the next immediate consecutive period, the three-year moving average shall be inclusive of that immediately preceding period of imports when the SSM was in place. The volume-based SSM shall be applied for no more than XX consecutive periods after which the SSM may not be reintroduced prior to the end of the next twelve-month period immediately succeeding the last application period.

11. The operation of the SSM shall be carried out in a transparent manner and the basis upon which on-going calculations of moving 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 Committee on Agriculture as far in advance as may be practicable or, where this is not possible, no later than 15 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.

12. The aforementioned provisions and the remedies provided in paragraphs 2.a, 2.b and 2.c above shall apply even if these result in exceeding the tariff bindings in 2015¹², subject to the following limitations:

- a. For developing country Members other than those referred to in paragraphs 2.d.i, 2.d.ii and 2.d.iii above, the maximum remedy may exceed the bound tariff in 2015 by XX% or XX ad valorem percentage points, whichever is higher, provided the maximum number of products for which this provision would be invoked shall not exceed XX products¹³ covered under paragraph 1 above in any given twelve-month period.
- b. For other Members¹⁴ referred to in footnote 14, additional remedy of XX ad valorem percentage points may be applied on top of the maximum level under paragraph 12.a, provided the remedy ceilings specified under paragraphs 2.a, 2.b and 2.c shall not be exceeded.

¹¹ A shipment shall be considered *en route* if such shipment, cleared from customs requirements of the exporting country Member, was executed before the entry into force of the SSM measure or if the SSM has been in place, the availability of the applicable volume trigger. In case there is no new applicable trigger or a new trigger was published or notified to the WTO prior to the shipment, this shall not be considered as *en route*.

¹² The final tariff bindings of developing country Members in the Uruguay Round or in their accession to the WTO.

¹³ For the purpose of this provision a "product" is identified as the HS 6-digit level.

¹⁴ Developing country Members with average bound tariff of not greater than 40% in 2015.

ANNEX___

Developing country Members in the Context of Article 5bis.8

The listed Member/s hereunder are subject to the provision of Article 5*bis*.8:

- 1.
- 2.

ATTACHMENT 2

PROTOCOL OF AMENDMENT

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the

World Trade Organization (the "WTO Agreement");

Decides as follows: ...

1. Article 5 of the Agreement on Agriculture shall, upon entry into force of this Protocol pursuant to paragraph 4, be amended by the insertion of Article 5*bis* as set out in the Annex to this Protocol.
2. Reservations may not be entered in respect of any of the provisions of this Protocol without the consent of the other Members.
3. This Protocol is hereby open for acceptance by Members [until _____].
4. This Protocol shall enter into force in accordance with paragraph 3 of Article X of the WTO Agreement.¹⁵
5. This Protocol shall be deposited with the Director-General of the World Trade Organization who shall promptly furnish to each Member a certified copy thereof and a notification of each acceptance thereof pursuant to paragraph 3.
6. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this (date) day of (month) (year), in a single copy in the English, French and Spanish languages, each text being authentic.

¹⁵ For the purposes of calculation of acceptances under Article X.3 of the WTO Agreement, an instrument of acceptance by the European Union for itself and in respect of its member States shall be counted as acceptance by a number of Members equal to the number of member States of the European Union which are Members to the WTO.