



Agro Export Project

Technical Discussion Paper

Solutions for dealing with import surges and dumping July 2008

Background

As developing countries lower tariffs and bind them at lower (or even zero) levels during multilateral and regional (RTA) trade negotiations, they are increasingly exposed to market instability and potential damaging effects of rising imports. The impacts of import surges can be devastating and, as FAO research shows this phenomenon is widespread and of worrying magnitude.¹

Aprodev case studies demonstrate how production and market practices in the EU and other developed countries exacerbate this situation.

A rules-based trading system should provide developing countries with sufficient tools to integrate into world markets without jeopardizing their sensitive sectors. However, this briefing finds flexibilities, disciplines and safeguards at the multilateral and RTA levels are proving inadequate for them.

This briefing outlines what options are available under current rules for developing countries to deal with adverse effects of imports on sensitive sectors, their deficiencies - both substantive and procedural - and assesses possible proposals for change.

BOX 1: A summary of the Aprodev case study²

The influx of frozen chicken parts from the European Union (EU) into West and Central Africa has thrown a key economic sector of these two regions into economic crisis.

This meat does not meet private quality standards or suit consumer tastes in European markets. Therefore, although it is not subject to any subsidy, European poultry producers can export these meat parts at a very cheap price. In fact, this is a more economic option for them than paying for its disposal.

Cameroon, one of the countries affected, has temporarily raised tariffs to help its poultry farmers, but this measure goes against its regional commitments to work towards a common external tariff (CET).

Options and remedies at the WTO are ill-suited for Cameroon to use. EU-ACP Economic Partnership Agreement (EPA) negotiations add a layer of complication and risk to this situation, but also the possibility to resolve the problem.

This brief discusses in more detail the implications of WTO and EPA rules for finding a solution for Cameroon and its poultry farmers.

The WTO framework

There are several types of safeguard mechanisms and “escape clauses” available at the WTO to help developing countries combat any harmful effects of imports.

Most simply countries have the option to raise tariffs within the levels they have bound in their WTO goods schedule (and in principle, may even go beyond these, provided that they compensate affected members). It is for this reason that developing countries are keen to be able to nominate a number of products as “special products” that will be either exempt or subject to lesser commitments in the current WTO Doha Round of negotiations.

Special safeguards in the agricultural sector were negotiated for countries that underwent tariffication as a result of Uruguay Round agreements (the special agricultural safeguard or SSG), most developing countries do not qualify. However, a new safeguard mechanism (the SSM) is being negotiated in the current round for developing countries to use to pursue food security, rural sustainable development and livelihoods security objectives.

General exceptions measures under GATT article XX can be taken for non economic purposes to safeguard for example, public morals, health, laws and natural resources, subject to the requirement that such measures are non discriminatory and are not a disguised restriction on trade.

Provisions exist in WTO rules to allow countries to use import restrictions and other measures to deal with balance of payments problems (GATT article XII) and to protect infant industries (GATT Article XVIII). Finally countries can negotiate a waiver from their WTO commitments.

The most commonly used tools to safeguard against the impacts of rising imports and vulnerabilities that can result from liberalisation are: anti-dumping measures, countervailing measures and emergency protection (safeguards).

BOX 2 :

An in depth look at the key WTO trade defence instruments (TDIs): The Agreements on Anti-dumping (AD), Subsidies and Countervailing Measures (SCM) and Safeguards (SG)

Anti-dumping, countervailing measures and (emergency) safeguards are used in distinct situations:

- Anti-dumping measures can be unilaterally applied by a WTO member, following an appropriate investigation, if the product is being imported at too low a price – based on a comparison between the normal price (in the general export or domestic market) and the import price to the country in question.
- Countervailing measures can be applied only if the imported product is subject to a subsidy.
- Safeguard measures can be applied when increased imports threaten domestic industries, even if there is no subsidy or dumping, but affected WTO members must be compensated.

In each the case, the government must prove:

- that the conditions for its application have been met (i.e. that pricing is unfair or that a subsidy exists)
- that the imports are causing “material injury” to a domestic industry producing like goods, or threaten to do so⁹ or are causing the “material retardation” of such an industry¹⁰
- that it is the imports that are causing the problem to that industry, including examining other factors that might also be contributing.³

There are also strict procedural rules that the government must follow:

- A petition from the majority of the affected industry is generally required before an investigation can begin.⁴
- Time periods are set to carry out the investigation and conditions and time periods are set under which governments can apply provisional measures before the investigation is completed.
- A public notice of rules and the investigation must be made, and an opportunity given for interested parties to air their views. Rules for notifying relevant laws, preliminary and final measures to the WTO are also outlined.
- The levels of duties to be applied for anti-dumping and countervailing measures are worked out according to prescribed calculations and safeguards must be applied only to the extent necessary to remedy the situation and on an MFN basis.
- A maximum duration for measures is set (5 years for AD, 4 years for SG), and measures cannot then be repeated without a prescribed period having lapsed in between.

There are only limited special treatment provisions for developing countries in the application of these rules. These mostly relate to developed countries exercising restraint in applying such measures against developing country imports or giving developing countries greater leniency in levels of imports or subsidies applied

before measures can be taken.

Special provisions designed to help developing countries themselves to apply these safeguards are very limited – the safeguards agreement allows developing countries more leniency to reapply measures and that these can last an extra two years.

If countries fail to comply with either substantive or procedural requirements a case can be brought against them using the WTO dispute settlement mechanism.

The (EU) RTA framework⁵

Asymmetry in liberalisation:

RTAs will necessarily reduce a country's scope to raise tariffs to a trading partner, as they require elimination of tariffs on substantially all trade between parties over a limited time period.

The EU allows some limited flexibility to developing countries and regions to exempt up to around 20% of tariffs and to liberalise over a time frame of up to 25 years for a limited number of products⁶.

However in interim EPA texts the EU has also introduced a standstill clause that prevents the parties from raising tariffs from their current applied rates, which will prevent these countries using water in tariffs to help struggling sectors affected by EU imports.

Modification of tariff commitments:

Those CARIFORUM member states recognised as having “special development needs” such as Haiti are permitted to modify their levels of commitments, provided this does not result in the RTA being incompatible with WTO rules (GATT Article XXIV). However the usefulness of this provision is potentially undermined by the subsequent provision that urges CARIFORUM states to ensure that duties are levied only once on EC goods entering the regional market, raising the risk of “leakage” of EU goods into these specially recognised countries, via CARIFORUM neighbours. (Article 17)⁷.

Anti-dumping and countervailing measures:

The EPA foresees parties using multilateral rules and instruments in this area - individually or collectively.

However, before resort to these tools the parties “shall consider” constructive remedies, this is an improvement on the best endeavour nature of such a provision in WTO rules and, provided the EC is cooperative, might provide an alternative avenue for countries to explore that are suffering from impacts of rising imports.

A potential complication is the requirement that when more than one state imposes such a measure, there must be a single forum for judicial review (including appeals) - this could be problematic in regions such as CEMAC where such regional capabilities do not exist. The article also stipulates that regional and national measures cannot coexist (Article 23).

Multilateral safeguards:

The EC waives its right to use safeguards on CARIFORUM imports under Article XIX GATT, the Agreement on safeguards and Article 5 of the Agreement on Agriculture, for five years after the IEPA comes into force. This will be reviewed for possible extension a few months' prior to the expiry of that period.

Most worrying, this article of the CARIFORUM EPA only permits use of *existing* safeguards of Article 5. This would prevent CARIFORUM countries using any eventual SSM against EU imports, even if this special safeguard for developing countries is eventually agreed at the WTO. Ironically the EU is granted access to an improved, more automatic safeguard against too high rises in imports of sugar from the Caribbean.

Safeguard clause:

Bilateral safeguards measures are also provided for in the EPA these could take the form of one or more of suspending further tariff reduction, increasing tariffs up to bound WTO level, introducing tariff quotas.

These safeguards are unlikely to be easier to use as the substantive and procedural requirements resemble those of the WTO.

Some innovations are made is that the duration of these safeguards is limited to only two years, safeguards can be imposed when there are "disturbances" to an industry (which might require a different kind of proof than "injury" requirements at the WTO) and there is the possibility to introduce safeguards to protect an "infant industry".

Although not relevant to the Cameroon case, an infant industry safeguard is potentially useful in other developing country contexts, However, the EPA safeguard appears to introduce no new definition of an infant industry, and to apply only to existing industries. This is not an improvement on existing WTO safeguards. Additionally the safeguard is transitional (only 10 years) and does not even apply for the whole of the period during which the Caribbean will be liberalising its trade with the EU.

Monitoring:

The parties undertake to monitor implementation and "operation" of the RTA to ensure that their agreed objectives, including sustainable development and regional integration, are being realised and that the benefits "for men, women, young people and children" are maximised. They undertake only to "consult" promptly over any problem arising⁸.

It is not clear from the text how any findings from monitoring will lead to any review of commitments or implementation.

Review clause:

The EC and CARIFORUM can jointly decide to review tariff elimination under the EPA "in the event of serious difficulties in respect of imports of a given product...with a view to possibly modifying the time schedule for reduction or elimination." However, the overall transition period and final end result for reduction/elimination cannot be modified. If the parties cannot agree within thirty days on the new schedule, the CARIFORUM may "suspend" the timetable for up to a year.⁹

How are these tools measuring up?

Using "water" in tariffs:

In order to be able to use the simplest option of raising tariffs within bound rates to protect a sector affected by import surges, developing countries need to be able to limit and even exclude such sectors from tariff reduction commitments - multilaterally and in RTAs. Important in this regard are lower liberalisation commitments by developing countries under the Doha Round, and the right to nominate a number agricultural products as "special products" that are important for rural development, food security and livelihoods.

As the Aprovev study shows even with lesser commitments and flexibilities at the multilateral level, raising tariffs is not always practicable because of regional rules and arrangements.

Regional commitments to apply a common external tariff (CET) may effectively lock a country into applying a lower tariff or risk having to renegotiate regional agreements. Even when a customs union is not in place, raising a tariff beyond that applied by regional partners can complicate, if not undermine, regional integration initiatives - by creating a necessity for internal regional trade barriers in order to be effective.

Developing country regions therefore need to build into their regional deals sufficient flexibilities for individual countries to take measures against import surges from third countries. Region-wide rules and mechanisms for trade remedies may also become necessary, particularly if provisions such as that in the Caribbean EPA requiring a single forum are to feature in their RTAs.

This also means that developed country partners should not push for the developing country REC to be organised in particular way, for example as a customs union, for the purposes of the RTA, since this might limit the possibilities for regional sensitivities to be accommodated. It should also not introduce requirements relating to customs procedures – such as those contained in EPAs that border measures, such as tariffs, can only be applied on goods first entering the region.

There is also a need for greater flexibility in WTO rules governing liberalisation commitments in RTAs involving RECs from developed and developing countries.

Currently, there appears to be adequate provision at the country level to allow countries to protect their sensitive sectors, but not at the regional level.¹⁰ This is further complicated by rules for MFN treatment if subsequent trade deals are negotiated (making it harder to tailor commitments to trading patterns and interests).

Standstill clauses in RTAs prevent countries using water in tariffs vis-à-vis the imports from the RTA partner(s) in question and tariffs can no longer be raised above current applied levels under the provisions of such clauses.

General exceptions, waivers and other tools

The other potential WTO escape clauses are either not relevant in most cases of problematic imports in developing countries, or they are politically too costly for them to implement. In the case of the Aprove study, for example, the balance of payments exception is not applicable. Raising tariffs beyond their bound level would not be useful to Cameroon as it is regional commitments that are biting in this case. Waivers require the approval of the entire WTO membership.

The only possible clause that might be helpful is the general exception relating to safeguarding public health – based on the fact that problems of local infrastructure mean that food safety of imported frozen meats cannot be assured. Although this is a possible argument, it is also a potentially costly and risky one. The difficulties experienced by developing countries in using public health exceptions under the TRIPS agreement do not make an encouraging precedent (although this was complicated by the requirement for a change to the agreement itself, or at least the understanding of it). The Cameroon case might be complicated as the government could be seen as “punishing” EU exporters for a local deficiency in infrastructure.

BOX 3:

Will Special Products and the Special Safeguard Mechanism be the answer?

Proposals for Special Products and a Special Safeguard Mechanism under the Doha Round were intended to allow developing countries to safeguard rural livelihoods, food security and their sustainable rural development.

Ability to nominate “special products” would allow countries to exempt sensitive sectors from liberalisation commitments (or undertake lesser reduction).

The special safeguard mechanism would provide a mechanism that is automatically triggered – with no onerous proof requirements and more effective remedies to guard against adverse impacts of liberalisation. These tools appear to have the potential to resolve problems such as those experienced by the Cameroon poultry sector.

However, it would be essential for WTO members to agree mechanisms that suited the needs and capabilities of developing countries.

Prospects are not encouraging, according to a statement by the Chair of the G33, the coalition of developing countries that is main proponent of these elements, on recent proposals (February 2008):

“The proposed architectures of the SSM would eventually only provide a stringent, restrictive, burdensome, ineffective and non-operational mechanism for developing countries and LDCs.”

According to G33 analysis, in order to be effective the SSM must:

– have a price and volume trigger

- have no proof of injury requirement
- have no limitations on product scope
- have adequate remedies

In current draft modalities¹¹, problems still remain, for example there are still suggestions that use of SSM might be limited to three tariff lines per year, that any additional duties would apply to applied and not bound rates and that price-based SSM must be applied on a shipment by shipment basis. In the case of Special Products, the G33 is calling for a minimum of 12% of tariff lines to be nominated at the choosing of the government with an additional 8% that can be categorised if they conform to a list of agreed indicators.

Special products should be exempt from any tariff reduction commitments, provided countries meet an average reduction requirement. Current modalities suggest a possible maximum of 12% of lines to be nominated as Special Products, with some countries wanting no lines to be exempt from liberalisation and a proposal that all products should be subject to a minimum 12% tariff cut.

Even if appropriate mechanisms are agreed, this does not preclude the necessity of addressing deficiencies in other agreements at the WTO. The AD, SCM and SG remain valid tools and should be available in a practical and usable way to developing countries as much as developed country members.

It is also important as the SSM only relates to the agriculture sector and will not apply to pre-existing problems (as it relies on rolling data to be triggered).

Finally RTAs involving developing countries must not undermine their access to these tools – by requiring liberalisation on such as scale that “special products” can no longer be protected effectively or by undermining access to the SSM – as is the case in the current CARIFORUM EPA.

Problems with the main WTO TDIs: AD, SCM and SG

Developing countries can find it difficult to prove that the substantive requirements of the TDIs have been met.

Also, the substantive provisions themselves can prove inadequate to deal with the situations that they face.

In the case of the SCM, it can be difficult to show that a product benefits from a subsidy. These are increasingly indirect – as the EU in particular moves subsidies to the Green Box – but can nonetheless still support rising exports have a devastating impact on developing country markets¹⁵. Aprovev recommends introducing a broader concept of producer support (a concept defined by the OECD) when investigating possible countervailing measures for developing countries, to take into account that indirect benefits can affect export prices.

In the case of anti-dumping rules, as is demonstrated by the case of Cameroon it is not straightforward to demonstrate unfair pricing, when marketing practices and consumer taste can make it more economic to export than to pay to dispose of unwanted by-products.

Anti-dumping rules do allow countries to use a “constructed price” when a clear domestic price is not available for comparison. However, this would not capture the kind of situation where the producer cannot sell domestically, but would pay if he/she did not export. A separate rule covering the dumping of waste or by-products would seem to be needed to cover this type of situation.

In addition to problems with substantive requirements, procedural requirements can also work against developing countries using remedy tools effectively.

These problems are particularly serious, as failure to comply can result in measures being challenged under the WTO's Dispute Settlement procedure.

Guatemala and Argentina have both already faced proceedings¹², that highlight some of the problems countries may face, for example:

- Guatemala's determination that there was sufficient evidence of dumping and threat of injury to initiate the investigation was found to be deficient by the panel. It did not notify Mexico quickly enough of its proceedings or provide a full text of its application of AD measures
- It extended the period of investigation and failed to inform Mexico of inclusion of NGOs in its investigating team

- Argentina failed to determine an individual margin of dumping for each exporter included in the sample for the product under investigation
- It failed to make “due allowance for differences in physical characteristics affecting price comparability”

The main obstacle to developing countries using remedies effectively appears to be costs and capacity to meet requirements as is demonstrated by the experiences outlined below.

BOX 4: Developing country experiences of using trade remedies

At an UNCTAD expert meeting on use of trade remedies¹⁷ many developing countries outlined their difficulties in implementing remedies. These are excerpts taken from contributions by developing country officials at that meeting.

Experience of Philippines

Government agencies responsible for conducting AD investigations have faced difficulties in getting the domestic wholesale price in the country of origin of the allegedly dumped product. The non cooperation of some exporters as respondents to AD investigations has also had adverse effects.

Experience of Burundi

Burundi is facing difficulties in the application of AD measures by itself and by its trading partners. Burundi lacks institutional capacity and expertise to carry out AD investigations. Subsidies applied by its neighbouring countries have hindered its exports, but Burundi’s limited capacity has not allowed it to defend its interests effectively. Increased provision of technical assistance, as well as the simplification of rules and procedures, would be necessary for Burundi to benefit effectively from AD/CVD provisions of the WTO.

Experience of Peru

The major problems in the implementation of AD measures relate to the lack of financial resources to hire lawyers, the lack of time to carry out investigations, and problems concerning translation.

Experience of Uruguay

Since 1996, the National Manufacturing Office has launched two anti-dumping investigations, one into US imports of synthetic fibres, the other into sunflower oil from Argentina. In both cases, the injury and causal link were proven (no AD duties, however, were imposed in either case). The main problems identified by Uruguay concerning antidumping are that domestic producers affected are not always prepared to defend themselves from unfair trade practices caused by their lack of technical knowledge and their unwillingness to bear the costs (in the case of small and medium-sized firms due to the lack of financial resources). There is also the issue of being able to demonstrate injury.

Experience of Zimbabwe

Particular problems facing Zimbabwe include: lack of skills and expertise in responsible authorities (Tariff Commission, Attorney General’s Office, Department of Customs); the reluctance of the private sector to pursue cases; lack of institutional capacity; and lack of expertise in defending its interests in possible AD litigation by major partners.

Experience of Angola

However, recently there emerged awareness as to possible cases of dumped or subsidized imports. Angola has had difficulty in this regard, particularly in measuring commercial transactions, due to the weak institutional capacity of its customs administration; and in undertaking AD/CVD investigations owing to lack of financial and human resources and expertise. Capacity building is key, and technical assistance is requested

Experience of the United Republic of Tanzania

In the context of the significant increase in the country’s trade as a result of the trade liberalization effort, sectors such as sugar and textiles have been severely affected by dumped imports. While material injury is perceived to exist as a result of such dumped imports, Tanzania has difficulty in pursuing investigations and determining dumping and injury. As an LDC, it lacks capacity in terms of resources and expertise in initiating AD actions. The AAD should be made more flexible for the LDCs, and the special and differential treatment provisions should be more LDC-friendly. Technical assistance, in particular in defending LDCs’ interests in possible AD cases brought by their trading partners, should be provided by international agencies.

Experience of Kenya

Kenya has a legal basis for AD and CVD measures (sections 125 and 126 of the Customs and Excise Act), but has never applied them owing to the complexity of the rules, the high financial cost involved, and the technical difficulties in pursuing investigations effectively (i.e. collection of factual information in determining the normal export price). Both the Government and the private sector suffer from limited capacity. The expert from Kenya considered that the process of investigation should be simplified: the determination of injury is too complex and costly. The cost of defending its interests against foreign AD investigations is another issue of importance for Kenya. In this regard, financial and technical assistance is needed from donors and international agencies, most notably from UNCTAD.

Experience of Mauritius

Mauritius has no national experience in conducting AD actions and lacks the capacity to pursue investigations, while domestic industries are increasingly excluded from markets by cheaper imports.

Considerable financial, technical and human resources are needed to carry out AD and SCM investigations, especially.

According to an American lawyer presenting at the UNCTAD meeting, in the United States, an average AD case costs between \$500 000 and \$1,000,000 to defend.¹³

As well as delivering financial and technical assistance, for example to train lawyers and assist institutions responsible for data collection, the need to make rules more appropriate to developing countries capacities and economic realities is also raised by delegates.

As several of them observe, it is not only government officials and departments that are involved, their industries also lack skills and awareness and resources to make use of these rules. A related problem raised by India and Kenya in separate proposals to the WTO¹⁴ is that the small-scale nature of much production in developing countries makes it difficult to meet "standing" requirements.¹⁵ As Kenya explains:

"It is often difficult for the affected producers to establish such standing, as in many industrial sectors, where production is undertaken on small-scale basis, the number of producers is large. The producers are also not organized a associations. Establishment of standing is particularly difficult, in the case of agricultural products, where production is undertaken by hundreds or thousands, if not millions of small-scale farmers, who are poor and often illiterate."

The proposed solution is that this requirement is waived for developing countries.

In its proposal, Kenya also highlights problems that developing countries have in obtaining relevant information on imports and prices necessary for an investigation.

Whilst extending periods for investigation for developing countries might help in some situations and should certainly be considered as an amendment to rules, it will be necessary to make investigations and burdens of proof less onerous for developing countries. At the same meeting, an observation demonstrates that longer investigations cannot be the whole answer:

"Given the size of the market and the strength of the local industries, the time taken by a local industry to lodge a complaint and for an anti-dumping investigation to be initiated may result in the death of the industry."

Kenya proposes a surveillance device for selected products to enable governments to more easily collect information, once a potential problem has been identified:

"For collection of such evidence the governments could exercise surveillance of trends in imports and the prices of products that are alleged to be injured by dumped and or subsidised by the manufacturing industry or agricultural producers. Such surveillance could be exercised by... adopting systems for licensing of imports of such products... the importers shall be required to submit in their application for licences, information on quantities to be imported, the import price and the price at which the product is being sold in the domestic market of the

exporting country. ..Such licences should be issued automatically and shall not be used for restrictive purposes."

Another solution is to remove the burden of proof from developing countries. The proof of injury, for example could be removed where dumping or import surges have already been established, or conversely there could be a presumption of dumping of imports from developed countries into developing countries, again provided certain conditions are met.

The possibility for developing countries to call on external experts or institutions to make assessments in their place could also be considered.

Finally LDCs have called for exemption from the requirement for compensatory measures to be provided in their use of safeguards.

BOX 5: Considering developing country proposals to tighten AD and SCM rules

Most developing country proposals to rules negotiations have been to make AD and SCM rules more difficult to apply making substantive requirements stricter and procedural rules tighter, for example raising "standing requirements" or reducing time periods for investigations. At first glance, this might appear to be in contradiction to the recommendations of this briefing.

However, these proposals must be looked at against a backdrop of a disproportionate number of anti-dumping cases being taken against developing countries and the threat of ever-increasing AD cases against crucial industries after the expiry of the Multi-Fibre Agreement.

Neither are the two sets of proposals necessarily incompatible. Developing countries, who lack legal resources, can certainly benefit from more clarity in these rules – something that their proposals would also achieve.

In fact this strengthens rather than undermines the arguments for special treatment of developing countries in trade remedy rules. Without this, developing countries might face the unfortunate situation of regretting what they ask for.

This is reflected in the Zanzibar Declaration by Trade Ministers from Least Developed Countries (2001):

"As LDCs are neither able to defend their industries against dumped and subsidized imports nor to protect the legitimate interests of their exporters, simplified procedures for taking antidumping and anti-subsidy actions should be devised for the use of LDCs."

Summary of recommendations

Developing countries are clearly facing difficulties in making use of inappropriate and complex rules intended to provide remedies to problems that might arise from trade liberalisation.

These problems are more urgent for developing countries whose industries are more vulnerable and whose economies are less diversified.

These problems will only increase as multilateral and regional negotiations further reduce and even eliminate trade barriers between developed and developing countries.

Recommendations to Developing country Regional Economic Communities:

- Developing countries in their own regional arrangements must make provision for flexibilities so that their members can safeguard against difficulties arising from imports, without jeopardising regional integration efforts.

Recommendations to WTO members

- Excessive requirements for developing countries to liberalise must be avoided so that developing countries can use the simplest tool - raising tariffs to bound levels - can be useful to developing countries. This involves not only lesser multilateral commitments but also revisiting coverage and transition requirements in rules governing North-South RTAs.
- Special products and special safeguard mechanisms should be introduced into the

Agreement on Agriculture and in a way that they are effective and simple to use for developing countries.

- Special and differential treatment must be introduced into trade remedy rules including technical and financial assistance, less onerous proof requirements, more lenient procedural requirements and allowing the use of surveillance mechanisms by developing countries.
- Substantive provisions of the SCM and AD should be re-examined to more easily take into account less direct support that can benefit producers and affect exports to developing countries, as well as dumping of waste and by-products.

Recommendations to Developed countries negotiating RTAs with developing countries and regions

- Whilst waiting for improvements to be agreed at the multilateral level, suggested improvements to trade remedies could be introduced to bilateral safeguard provisions in RTAs so that liberalisation of bilateral trade does not cause harm.
- RTAs must not undermine access to prospective Special Products and Special Safeguard Mechanisms at the multilateral level through overly stringent liberalisation requirements or by outlawing access to the SSM for trade between the parties.
- Monitoring and review mechanisms should be made effective and ensure that developing countries can raise tariffs to an adequate level to deal with import surges, and not be subject to onerous joint procedures.
- Standstill commitments and commitments on customs procedures (for once only border measure application) should not be included in these agreements as they undermine flexibilities needed to use import duties to protect sensitive sectors.

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¹ See UN Food and Agriculture Organisation (FAO) Trade Policy Technical Note No. 9: A Special safeguard mechanism for developing countries

² For full study see: "Preventing dumping of surplus meat parts on vulnerable developing country markets", APRODEV, ACDIC, EED, ICCO, SOS FAIM, May 2008

³ in the case of ADA and SG

⁴ For AD & SCM

⁵ Based on analysis of EU-CARIFORUM Economic Partnership Agreement and EU-Cameroon Interim EPA, both 2008. Article references are taken from Caribbean text.

⁶ Based on analysis of ACP liberalisation commitments under interim Economic Partnership Agreements

⁷ In the Caribbean text this is not a binding provision

⁸ ARTICLE 5

⁹ ARTICLE 16:6

¹⁰ EU-ACP Economic Partnership Agreements: The Effects of Reciprocity, Christopher Stevens and Jane Kennan Institute of Development Studies, 2005

¹¹ Revised Draft Agriculture Modalities (19 May 2008), TN/AG/W/4/Rev.2

¹² Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico⁶³ (Guatemala-Cement II) and Argentina – Definitive Anti-Dumping Measures on Imports of Ceramic Floor Tiles from Italy (Argentina-Tiles from Italy) cited in Negotiating anti-dumping and setting priorities among outstanding implementation issues in the post-Doha scenario: A First examination in the light of recent practice and DSU jurisprudence UNCTAD/ITCD/TSB/Misc.72 May 2002

¹³ Remarks by Mr. William H. Barringer (Willkie Farr and Gallagher, Washington D.C.)

¹⁴ Submission by Kenya, Special and differential treatment and technical assistance in trade remedies, TN/RL/GEN/143, 27 June 2006; Second submission of India (anti-dumping agreement) TN/RL/W/26, 17 October 2002

¹⁵ This is the requirement that the majority of the affected industry must petition the government in writing before an investigation is started