

Effectiveness of Triggers and Remedy for Special Safeguard Mechanism: A Case for Kenya's Agricultural Sector

Fred Miencha, Nicholas Waiyaki and Hezron O.
Nyangito

Productive Sector Division
Kenya Institute for Public Policy
Research and Analysis

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© Kenya Institute for Public Policy Research and Analysis

Bishops Garden Towers, Bishops Road

PO Box 56445, Nairobi, Kenya

tel: +254 20 2719933/4; fax: +254 20 2719951

email: admin@kippra.or.ke

website: <http://www.kippra.org>

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Abstract

This paper provides an analysis of the effectiveness of the proposed reference price and volume triggers in the on going WTO negotiations on "Special Safeguard Mechanism" (SSM). The SSM is to be used by developing countries as per paragraph 1 (b1) of Article II of GATT 1994 or Article 4 of the Hong Kong Declaration. The paper provides evidence of import surges and production short falls in selected agricultural products in Kenya (wheat, rice, milk and sugar) in the period 1995 to 2005 and analyses the effectiveness of the proposed import volume and Cost, Insurance, Freight (CIF) price moving averages (MVA) as reference for invoking an SSM in case of serious injury to the domestic industry. The paper notes that the 3-year MVA for CIF import prices and import volume trigger references will not be able to trigger all cases of increased import volumes and depressed prices. While the 3-year MVA can trigger many cases of import surges, the 5-year MVA is very important when there are persistent depressions in prices, even when the 3-year MVA is unable to trigger. The size of the level of thresholds or de minimis is important as the triggers may be ineffective in cases of small deviations of current import prices and import volume trends from the reference moving averages. The 5-year moving average tends to rise above the 3-year moving average when prices are falling and can therefore provide a higher trigger. A 5-year moving average is more effective in safeguarding low prices when world market prices are persistently depressed. Some deviations from moving averages are quite small from the proposed de minimis, but may cause great impact to domestic production. In some products, there are cases where increase in imports does not depress domestic prices or domestic production. This implies that other factors also play a role in increase in imports. The paper recommends that Kenya should negotiate to have flexibility of using both the 3 and 5 year moving averages and apply both the price and volume triggers as it may deem appropriate.

Abbreviations and Acronyms

ACP-EU	-	African Caribbean Pacific and European Union
AoA	-	Agreement on Agriculture
ATSM	-	Agricultural Trade Simulation Model
C.I.F.	-	Cost, Insurance and Freight
CET	-	Common External Tariff
COMESA	-	Common Market for Eastern and Southern Africa
EPAs	-	Economic Partnership Agreements
EU	-	European Union
FAO	-	Food and Agricultural Organization
FAOSTAT	-	Food and Agricultural Organization Statistics
GATT	-	General Agreement on Trade and Tariffs
GSP	-	Generalized System of Preferences
ICTSD	-	International Centre for Sustainable Development
IFAD	-	International Fund for Agricultural Development
IMF	-	International Monetary Fund
LDCs	-	Least Developed Countries
MVA	-	Moving Averages
MFN	-	Most Favoured Nations
NTBs	-	Non-Tariff Barriers
SAPs	-	structural adjustment programmes
SSG	-	Special Safeguard
SSM	-	Special Safeguard Mechanism
UNCTAD	-	United Nations Centre for Trade and Development
USA	-	United States of America
WTO	-	World Trade Organization

Contents

<i>Abstract</i>	<i>iii</i>
<i>Abbreviations and Acronyms</i>	<i>iv</i>
1. Introduction	1
1.1 Rationale for a Special Safeguard Mechanism	3
1.2 Study Objectives	6
1.3 Methodology	7
2. Literature Review	8
2.1 Cases of Import Surges and Use of Safeguard Measures under Trade Agreements	10
2.1.1 Import surges	10
2.1.2 Special Safeguard Measures	12
2.1.3 Review of the Current Safeguard Measures under the WTO	12
3. Implications of the Proposed Formulae for Tariff Reduction	19
3.1 The Proposed Formulae	19
3.2 Trade Defence Mechanism Available for Kenya	24
4. Effectiveness of the Proposed SSM in the WTO	26
4.1 Level of Flexibility for Kenya Using the Proposed SSM	27
4.2 The Effectiveness of the Proposed WTO SSM to Kenya	28
5. Conclusions and Policy Recommendations	47
5.1 Conclusions	47
5.2 Recommendations	47
References	49

1. Introduction

Neo-classical economists have regarded trade liberalization as a win-win situation. They argue that both countries benefit from the efficiency and dynamic gains that come as a result of greater commercial integration. While there is little dispute that liberalization may in the long run bring about welfare gain in the society, there is concern that, in the short run, trade liberalization, unless well thought and sequenced, can cause serious injury to low productive domestic sectors of poor economies. Countries that reduce barriers to trade can experience unforeseen surges in imports that may result in serious injury to local production. Import surges are critical as they have a potential impact on food security and livelihood. Sudden increases in import volumes may hinder domestic food production in terms of undermining the domestic sectors of the economy.

International market trade for basic foods, in particular, has been increasing each year as the demand for liberalization increases. The increase in demand has been accelerated by the current global trade networking through World Trade Organization (WTO) negotiations and regional trade arrangements such as the Economic Partnership Agreement (EPAs) under the African Caribbean Pacific and European Union (ACP-EU) Cotonou Partnership Agreement, the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC). This growth in international market trading is expected to further accelerate in the coming years. The trend has both positive and negative implications to various sectors of the economy, especially in low-income food insecure countries such as Kenya. The greatest concern is that increased openness causes surges in food imports, which bring about injury to local markets through negative effects on prices, production and food security in rural areas where the majority of the population live. Many of the products affected are food crops in developing countries. Majority of the poor population in developing countries depend on these products (Ruffer, Tim and Vergano, 2002). In Kenya, more than 80 per cent of the people live in the rural areas where the main activity for livelihood is agriculture.

The removal of all quantitative restrictions under Structural Adjustment Programmes (SAPs) instituted by World Bank and IMF in the 1980s and commitments made in bilateral, regional, and multilateral trade arrangements have drastically reduced tariffs and

non-tariff barriers. Agricultural bound tariffs have been reduced to an average bound rate of 100 per cent while average applied tariff rate are currently at 24.4 per cent (ATSM, 2002). Having phased out all quantitative restrictions, the only main trade policy instrument available to the government for use in case of import and price fluctuations is tariffs. Tariffs are currently at low levels and again under negotiations for further reduction.

When incentives to local producers and protective measures are reduced without proper sequencing, there tend to be an influx of imports. Most of these imports, especially from developed countries, are heavily subsidized. This greatly affects the livelihood of many people in developing countries and diminishes the prospects of rural development (Valdes and Foster, 2005). Although it is expected that consumers will gain from cheaper imports, this is not always the case especially where a few monopolistic firms control large shares of the market. It should be borne in mind that rural consumers essentially earn their cash as farmers and farm labourers (Hilary, 2003). Kenya as a country that largely depends on agriculture will be worse off if imports cause the prices of domestic crops to fall and eventually cause a drop in local production.

The increasing interdependence of national economies in a globalized world and the emergence of rule-based trade regimes have meant that the scope of national policies is now framed by international disciplines, commitments and global market considerations. Each government has to evaluate the trade off between benefits of accepting international rules and commitments and the constraints posed by the loss of policy space. It is particularly important for Kenya bearing in mind the development goals and objectives, that appropriate balance between national policy space and international disciplines and commitments is mainstreamed in the overall national policy objectives. The government should therefore consider the likely impact of liberalization to various groups in the society. To do this, there is need for sufficient flexibility on the part of the government to adopt the right policies depending on the prevailing domestic conditions. It is also the responsibility of the government to ensure that policies pursued both at national and international level benefit its citizens, especially the poor. In this context, the ongoing WTO negotiations on the Special Safeguard Mechanism (SSM) are important to Kenya. There is need to engage developed countries in the negotiations in order to come up

with a more practical instrument to address challenges caused by import surges and drop in domestic prices.

There is no standard definition of the term “import surge”. The World Trade Organization (WTO) defines an *import surge* as a situation where a product is imported into a country in such quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products. In simple understanding, an import surge is a significant shift in imports from some established historical trend usually calculated in moving averages. Food and Agricultural Organization (FAO) goes further to give a quantitative definition of an import surge as a 20 per cent positive deviation from a five year moving average of import volumes for each commodity (FAO, 2003b), while a fall in prices has a 20 per cent negative deviation from import prices.

The proposals in the ongoing WTO negotiations on agricultural tariff reductions will determine the extent to which Kenya’s agricultural tariff lines will be cut and, therefore, the implication to the country’s agricultural trade policy. The country needs to negotiate for not only a moderate tariff reduction formulae, but for a mechanism to address instances of import surges and price falls. It is obvious that with further reduction of tariffs, Kenya will have limited flexibility to address world market turbulences.

Kenya with other developing countries has forwarded two proposals for Special and Differential Treatment to address cases of domestic injury due to import surges. These are:

- The need to designate agricultural products as ‘special products’ to receive lower or no cuts.
- The need for ‘Special Safeguard Mechanism’ to cushion poor countries from fluctuating import prices and increasing import volumes.

1.1 Rationale for a Special Safeguard Mechanism

Kenya with other WTO member countries are currently engaged in negotiations aimed at reducing agricultural tariff lines as per the Doha Agreement on Agriculture. The expectations from the negotiations is that member countries will have to reduce their agricultural tariff lines

from the current bound levels to pave way for agricultural market access globally. Many developing countries, including Kenya, are cautious that this arrangement is likely to endanger their domestic producers as there will be limited policy space to address any world market imbalances given the nature of their agricultural commodities.

Kenya, like many other developing countries, is an agricultural-based economy. Agriculture, by nature, is increasingly vulnerable to external market instability and import surges. The reduction in tariffs is likely to affect well established or nascent agricultural production activities as the country reduces the only trade policy tool after removal of past protectionist policies. These past protection policies were helpful in reducing the transmission of international price variability to domestic markets. High tariffs by themselves tend to reduce the practical importance of world price fluctuations for domestic producers (Valdes and Foster, 2005).

Current policy instruments available to many developing countries, especially in sub-Saharan Africa, to protect their economies from price fluctuation are restricted to tariffs and in rare cases safeguard measures. Kenya has not only increasingly reduced her import duties, but has also bound all her agricultural tariff lines at relatively low levels (100%). The rapid reduction in the tariff rate has been necessitated by the Structural Adjustment Programme (SAP) and commitments made by Kenya both in the WTO, regional and bilateral trade agreements. Kenya's current 'most favoured nations (MFN)' average applied and bound tariffs are 24 per cent and 100 per cent, respectively (WTO schedule of tariffs website, 2007), while in the regional trade agreements such as the East African Community (EAC), the country has adopted the EAC common external tariff of 25 per cent. Negotiations are also underway for similar arrangements in the COMESA region and a free trade area with the European Union through the Cotonou Partnership Agreement. The implication is that Kenya will have limited policy space to protect domestic producers in case of serious injuries such as import surges and drops in prices.

Given the nature of agricultural markets, which are cyclical and subjected to vagaries of nature such as weather vulnerability, world market fluctuations due to factors such as subsidization of production and exports, and monopolistic nature of both state and private firms (Tim Ruffer, 2002), Kenya has been vulnerable to external agricultural market instability and import surges. This has continued to discourage

domestic production. Among the sectors that have been greatly affected by import surges include sugar, wheat, rice, maize, vegetables, bovine meat, pig meat, poultry meat and milk (FAO, 2003). A study done by ICTSD shows that during the 1980-1990, the volume of processed milk rose steadily from 179,000 metric tonnes to 392,000 metric tonnes, i.e. by more than 100 per cent. However, from 1990 this trend reversed; the volume of processed milk fell drastically to as low as 126,000 tonnes in 1998 while imports of milk powder rose from 48 metric tonnes to 2,500 metric tonnes (in fresh milk equivalent 408,000 metric tonnes to 21 million litres). This influx of imported milk powder and other dairy products depressed the demand by milk processors of fresh local milk (ICTSD, 2004).

In the Agreement on Agriculture (AoA), recourse to Special Safeguard (SSG) was limited to only those countries that had undertaken tariffication. Kenya was not among those countries that tariffied non-tariff barriers and, therefore, did not have recourse into the use of SSG. In the ongoing WTO negotiations, the draft text of the Hong Kong Ministerial Decision of December 2005 states that “pursuant to paragraph 42 of Annex A of the General Council Decision of 1 August 2004, members agree that any developing country member shall have recourse to import price-triggered and import volume-triggered safeguard mechanism applicable to any agricultural product listed in annex 1 of the Agreement on Agriculture. The SSM shall provide developing country members the right to impose an additional duty with respect to the imports of any agricultural product, notwithstanding the relevant provisions of the GATT 1994 or of the Agreement on agriculture. Such mechanism, which shall have substantially more favourable terms and conditions than the existing provisions of Article 5 of the Agreement on Agriculture, shall be operational and effective, and shall address the special circumstances of developing countries invoking the mechanism, including their food security, livelihood security and rural development needs. The mechanism shall be based on, where appropriate, the existing provisions of Article 5 of the Agreement on Agriculture, and existing proposals by members, and shall be an integral part of the modalities and outcomes of the negotiations in agriculture.”

Given the role the agricultural sector plays in the Kenyan economy, more so in enhancing food security and improving rural livelihood and reducing poverty, and given the trend of import surges over the last

decade for Kenya's important agricultural sectors and the limited policy space as a result of reduction in tariffs, it is necessary that a safeguard mechanism is available for Kenya to cushion those sectors that are important and strategic for the country's food security and rural livelihood and development from collapse as a result of import surges and world market fluctuations.

1.2 Study Objectives

The concept of a Special Safeguard Mechanism (SSM) has emerged as a key compromise between improvement in market access through a tariff reduction formula and the need for special and differential treatment in the WTO negotiations among developing and developed countries. The framework for the establishment for negotiation modalities gave a leeway for the establishment of an SSM to take account of the rural development, food security and livelihood concerns of developing countries. Negotiations on modalities for a new SSM in the WTO have gained momentum and a number of countries have already submitted concrete proposals on the features of a SSM they consider favourable to their economies. At this stage, it is essential to have a knowledge-based understanding on what is likely to be the impact of these proposals to Kenya's agricultural sector tariffs lines and the effectiveness of the proposed SSM in the Hong Kong Ministerial conference held in December 2005 in addressing world market disturbances.

The overall objective of this study is to assess the effectiveness of the WTO proposed SSM to Kenya given the level of tariff reduction that Kenya will undertake as per the current proposals on tariff reduction. The study will therefore be guided by the following four questions:

- (i) To what extent has Kenya experienced import surges and drops in domestic market prices in the past?
- (ii) To what extent will the proposed formulae for tariff reductions in the WTO affect Kenya's agricultural tariff structures and limit the country's policy space?
- (iii) How effective is the proposed SSM in the Hong Kong ministerial draft in addressing Kenya's agricultural sector import surges and drop in domestic prices?

- (iv) What should an effective Special Safeguard Mechanism for Kenya entail?

1.3 Methodology

The study mainly uses secondary data. Secondary data was sought from various government documents such statistical abstracts, economic surveys, World Bank and World Trade Organization publications, and the Internet. The Agricultural Trade Simulation Model (ATSM) developed by UNCTAD was used to simulate the effects of various formulae for tariff reduction under the WTO. Much of the literature on the proposed tariff reduction formulae was borrowed from a study on “The implications of the proposed tariff reduction formulae to Kenya’s agricultural tariff structure”¹

¹ This is a forthcoming paper authored by F. Miencha.

2. Literature Review

If really free trade is beneficial and is preferred by many trade economists, one may ask why then protection? Despite unanimity among economists that free trade is beneficial, trade practices among many countries have not been honest. High-income countries such as the US, Japan and the EU guarantee high prices and subsidize their domestic products, thus shielding them from foreign competition. This has led to over-production of the affected commodities in these countries and the end result is dumping of the excess commodities into poor countries. This has led to increased imports to poor countries, which have suppressed domestic prices and distracted domestic production. Developed countries have designed policies that encourage firms to export. Such inward looking policies that influence the expansion of exports from originating countries cause injury in destination countries.

Tybout (2001) investigates the impact of surges at the plant level and firm level and concludes the following:

- (i) When imports are allowed to compete with domestic products, profits fall for the local producers
- (ii) Local import-competing producers cut back their production when imports hit the domestic markets
- (iii) Trade induces and increases competition, making lean efficient outputs to expand and monopolistic ones to contract
- (iv) Trade opens up markets and improves intra-plant efficiency
- (v) Firms that export are much more likely to be large and more productive. When firms enter the market, it should be a clear indication of higher productivity since the firm can afford to invest more and pay the costs of expansion
- (vi) Short-run effects can differ greatly from the long-run effects

Blonigen and Prusa (2001) argue that anti-dumping is used to protect import competing industries and it has been used to the extent that it is the most serious impediment to trade. Goldstein (1988), in her discussion of the politics of safeguard agreement, concludes that 'while there is no real advantage that accrues to recipients of this form of protection, there is some political advantage in having a forum where losers from trade liberalization can air their grievances'. Rotemberg

(2003) shows that safeguards are supportable if voters are altruistic, but if they are not, the net welfare cost would prevent them from even being implemented.

According to Durano (2004), import surges change income levels and cause unemployment in the productive sectors of the economy, while at the macro-level, the elimination of tariff revenue reduces public resources and the budget available for social expenditures.

Amundson (2005) considers a firm that moves to export market as more productive as it can afford to invest more and pay the costs of expansion, but then, in the short run, before it can expand, it has to maintain its rate of capital in presence of import surges and therefore the need for government intervention. Using a model encompassing the sunk costs and an investment and export mismatch timing, Amundson (2005) found that safeguards and other temporary policies have real effects other than transfers for the domestic industry. Amundson argues that safeguards reduce overall market share of imports, which leads to increased investment. The findings suggest that there is indeed a significant correlation between new imports and domestic demand, even though there seems to be general upward trend in overall imports.

Amundson (2005) further discusses the effects of three other policies: loan guarantees, subsidies of sunk exporting costs, and trade adjustment transfers and concludes that guarantees raise investment cost, which in turn enables firms to afford exporting costs and raises the probability of beginning to export.

For safeguards, Irwin (2003) argues that the decision to impose safeguards should take into account consumer costs, instead of producer benefits only. The current rules do not adhere to this. For instance, if the local sugar suppliers are not able to meet local demand as a result of ineffectiveness on their part, then can their failure be attributed to imports from more efficient suppliers? Although WTO specifies that injury from other causes cannot be attributed to other factors than imports, this does not always happen. This issue has been a bone of contention in Kenya's sugar industry. Despite the high tariffs imposed on sugar imports to Kenya and control of sugar imports through the quota system in the COMESA region, domestic producers have not been able to compete with imports, especially from the COMESA region.

A study done by Oxfam on rice in Haiti (April 2003) argues that due to pressure from the IMF, Haiti reduced her tariffs on rice from 355 to 3 per cent. The outcome of this was increase in imports by more than 150 per cent between 1994 and 2003. Currently most of the rice consumed in Haiti comes from the US. This has devastated farmers in Haiti where rice-growing areas have now some of the highest levels of malnutrition and poverty. The same report asserts that in 2002, the US, EU and Japan provided a total support of \$16 billion to their rice farmers alone, with the US providing the highest support. In 2003, the US gave a total support of \$1.3 billion to produce a crop whose production cost is \$1.8 billion, an equivalent of 72 per cent of the total cost of production. This has made the US to be the third largest exporter of rice despite its high cost of production.²

2.1 Cases of Import Surges and Use of Safeguard Measures under Trade Agreements

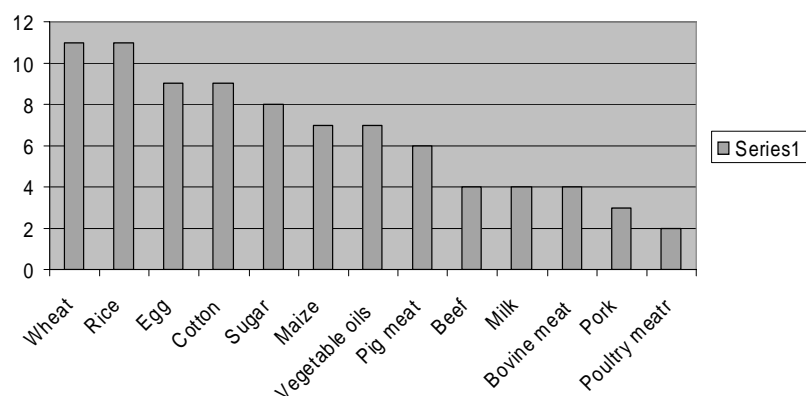
2.1.1 Import surges

There have been increasing reports of import surges of various products in Kenya since the mid 1990s. These import surges have had negative effects on domestic production and the economy as a whole. For instance, during the period 1980-1990, the volume of milk processed rose steadily from 179,000 tonnes to 392,000 tonnes, i.e. by more than 100 per cent (FAO, 2002). From 1990 onwards, the volume of processed milk fell drastically to a low of 126,000 tones of milk in 1998. At the same time, imports of milk powder rose from 48 tonnes to 2,500 tonnes (in litres). The influx of the imported milk powder as well as other dairy products depressed the demand by milk processors of fresh local milk.”³ Figure 1 provides a number of cases of import surges in Kenya on selected food products from 1984 to 2004 and the frequency at which they occurred.

A comparison of cases of import surges in selected 28 developing countries and products is provided in Table 1. Wheat, rice, vegetable oil and maize are the most affected in most of the developing countries. Comparing with import surges in Kenya, Kenya had the highest import surges in two of the eight products analyzed for the 28 developing

² US rice costs over twice as much as in Thailand and Vietnam.

³ *Ibid.*

Figure 1: Import surges in Kenya, 1984-2004

Source: FAOSTAT 2005

Table 1: Number of cases of import surges in 28 developing countries (1984-2000), selected foods

	Wheat	Rice	Maize	Vegetable oils	Bovine meat	Pig meat	Poultry meat	Milk
Average of all countries	6	5	5	6	6	7	7	4
Highest by any one country	11	10	10	11	12	11	14	7

Source: Adapted from FAO (March 2003) CCP 03/10

Table 2: Number of cases of production shortfalls for Kenya (1984-2000), selected foods

	Wheat	Rice	Maize	Vegetable oils	Bovine meat	Pig meat	Poultry meat	Milk
Kenya	7	0	4	1	0	0	1	0
Average of all countries	2	2	2	3	2	2	1	2
Highest by any one country	7	8	6	7	4	4	3	11

Source: Adapted from ICTSD, December 2005, Issue Paper No. 6

countries. The products with the highest import surges are wheat and rice. Compared with other developing countries, Kenya has been significantly affected by import surges, especially in wheat, rice, maize and vegetable oils.

Table 2 provides the number of cases of production shortfalls as a result of import surges between 1984 and 2000 in selected products in Kenya. Out of the eight (8) products that faced import surges in Kenya, 50 per cent of them were affected by domestic production shortfalls. Kenya experienced the highest production shortfall on wheat compared to the 28 selected countries.

2.1.2 Special Safeguard Measures

Special Safeguard Measures are contingency measures that refer to additional duties or import regulations that can be imposed temporarily when a WTO member country is faced with sudden surge in imports and unusual decline in import prices that hurt or threaten a domestic sector of a particular economy (FAO, 2002). Special safeguard measures are provided for under the Safeguard Agreement, but agriculture has a special provision (Article 5) on safeguards. Within the WTO legal framework, safeguard mechanism allows an importing country to temporarily suspend its WTO obligations in the event of import surges. Safeguard provisions were not important until the Uruguay Round. Prior to the Uruguay Round, most tariffs were unbound and there were various exemptions that made it easier to apply quantitative restrictions. It is the Agreement on agriculture (AoA) of the Uruguay Round that introduced and designed a Special Safeguard Measure for agricultural trade. This was limited to a few selected products and countries.

2.1.3 Review of the current safeguard measures used under the WTO

If it is established by a competent authority that there is increased imports either in absolute or in relation to domestic production that are likely to cause injury to domestic industry, a member country is allowed to restrict imports for a temporary period. The measures usually applied are increase in tariff rates or imposition of quantitative restrictions in a non-discriminatory manner. In quantitative

restrictions, supplying companies in different countries are given quotas depending on their history of share of imports. Either the government can initiate investigations or the affected industry can initiate the investigation through a petition. The temporary measure is meant to give the affected industry space to prepare itself for increased competition. Such restrictions are applied for a period of 8 years, but developing countries are given up to a period of 10 years. The measure is not automatic, as proof is mandatory before authority is given for its application. A country seeking to apply the safeguard measure is required to offer compensation to other member countries that are likely to be affected by the action. In the absence of compensation, affected member countries can retaliate normally in the form of suspension of concessions or other obligations. Many developing countries have not been able to apply the measure mainly due to the inadequacy of resources, institutions and legal capacity to ascertain the injuries. In most cases, it is the affected industries that are expected to raise the concern. This is not easy for small poor farmers who have to pool resources to be able to lobby. The time taken to prove injury is long and by the time an agreement is reached, it is too late and affected sectors may be injured beyond reprieve.

During the Uruguay Round, many developing countries did not tariffify their non-tariff barriers (NTBs) as they had few non-tariff measures. Instead, they offered 'ceiling binding'⁴ and were consequently not allowed to use the Special Safeguard (SSG). Kenya is among those countries that opted for ceiling binding and therefore had no recourse to the SSG. Tariffied products presently comprise less than 20 per cent of all agricultural products. This limited the use of the SSG to only 20 per cent of agricultural products. Products within tariff quotas are also not eligible. Due to these limitations, Only 38 countries, 22 developing and 16 developed, had recourse to the use of the special safeguard (Table 3). Volume and price triggers were used to address cases of import surges and drop in prices.

⁴ Ceiling binding: Certain level beyond which tariffs will not be levied in

Table 3: Countries with the right to use Special Safeguard

<p>39 WTO members currently have reserved the right to use a combined total of 6,156 special safeguards on agricultural products. The numbers in brackets show how many products are involved in each case, although the definition of what is a single product varies.</p>		
<p>Australia (10) Barbados (37) Botswana (161) Bulgaria (21) Canada (150) Colombia (56) Costa Rica (87) Czech Republic (236) Ecuador (7) El Salvador (84) EU (539) Guatemala (107) Hungary (117)</p>	<p>Iceland (462) Indonesia (13) Israel (41) Japan (121) Korea (111) Malaysia (72) Mexico (293) Morocco (374) Namibia (166) New Zealand (4) Nicaragua (21) Norway (581) Panama (6) Philippines (118)</p>	<p>Poland (144) Romania (175) Slovak Republic (114) South Africa (166) Swaziland (166) Switzerland - Liechtenstein (961) Chinese Taipei (84) Thailand (52) Tunisia (32) United States (189) Uruguay (2) Venezuela (76)</p>

Source: Adopted from WTO, 2005

Volume trigger

Under the SSG, the volume trigger is defined as:

- (i) The actual imports averaged over the previous three years
- (ii) The share of imports in domestic consumption over the same period
- (iii) The absolute volume change in consumption over the most recent year for which data are available
- (iv) Mathematically, this given as:

$$M_t = M_{AV. x + Y}$$

Where:

M= absolute volume of imports

M_t= trigger level of imports

X= base trigger level

M_{AV} = Average quantity of imports during the three preceding years for which data is available

Y= absolute volume change in domestic consumption of the product concerned in most recent year

An additional duty may be imposed in any year Where the average quantity of imports exceeds the sum of the base trigger level multiplied by the average quantity of imports during the three preceding years for which data is available and the absolute volume change in domestic consumption of the product concerned in the most recent year for which data is available compared to the preceding year. The value of X (the base)

The greater the trigger level, the higher the three-year average level of imports. The growth rate in domestic consumption is greater when the share of imports in domestic consumption is lower. The maximum extra duty may not exceed 30 per cent of the ordinary level of duty during the year in which the SSG is invoked. It is only invoked in the year it has been imposed and does not apply to imports within tariff rate quotas (Tim Ruffer and Paolo Vergano, 2002).

According to paragraph 4 of Article 5 of the Agreement on Agriculture (AoA), trigger level under the SSG is calculated on the share of imports in domestic consumption during the three preceding years (S) as shown in Box 1. According to this approach, additional duty is only applicable up to the end of the year in which it has been imposed

Box 1: SSG Volume trigger levels

If:

$S \leq 10\%$ then x = 125%

$10\% < S \leq 30\%$ then x = 110%

$S > 30\%$ then x = 105%

For example, if the share of imports in domestic consumption during the preceding three years is 7%, then x will be equal to 1.25. Thus, an additional duty can be imposed if current imports (M) exceed the trigger volume (M_t), i.e

$M > M_t$ where $M_t = 1.25M_{AV} + Y$

Source: FAO (2002)

and may be levied, but at a level not exceeding one third of the level of the ordinary customs duty in effect in the year in which it is imposed. The implication of this approach is that the greater the share of imports in domestic consumption in the past three years, the lower the trigger level.

To give a hypothetical example

Let, $M = 50,000$ metric tonnes

$M_{AV} = 45,000$ 1st scenario and $40,000$ 2nd scenario

$Y = 10,000$ metric tonnes

In the 1st scenario of higher share of imports in domestic consumption

$$M_t = (45,000 * 125 / 100) + 10,000 = 76,250.$$

In the 2nd scenario lower share of imports in domestic consumption

$$M_t = (40,000 * 125 / 100) + 10,000 = 60,000$$

The volume trigger level in the 1st scenario is 76,250 metric tonnes when the share of imports to domestic consumption is higher, while the volume trigger level in the 2nd scenario is 60,000 metric tonnes when the share of imports to domestic consumption is lower.

The trigger takes into account of a situation where there are likely to be increases in import levels due to increases in domestic demand by basing the trigger on a combination of the average level of imports over the past three years and the annual change in domestic consumption in the most recent year for which data can be available.

While the above approach may look reasonable, it should be observed that the percentage share of imports in domestic consumption may be small, but the effect to poor farmers may be large depending on the nature and elasticity of a particular product. It would be better if the volume trigger also considers the percentage or number of farmers affected.

Price trigger

Price-based SSG is levied on shipment-by-shipment basis. The trigger price expressed in domestic currency and notified to WTO is defined as

Box 2: Price trigger levels

If:

D = 10%	t = 0
10% < D 40%	t = 0.27 (P _t /P _m) - 0.5
40% < D 60%	t = 0.39 (P _t /P _m) - 0.7
60% < D 75%	t = 0.47 (P _t /P _m) - 0.7
D < 75	t = 0.52 (P _t /P _m) - 0.9

Where:

P_t = the trigger price (the average 1986-88 reference price)P_m = CIF import price of the shipment expressed in domestic currency

t = Additional duty imposed above bound tariff rate.

D = (P_t - P_m) / P. I. et. the percentage fall in import price below the trigger price)

Source: Adopted from FAO trade Policy Technical note No.7

the average unit value of the CIF price during the 1986-88 base periods. In this case, the permitted level of the additional duty depends on the degree to which the import price falls below the trigger level. Apparently, the additional duty does not completely offset the fall in the import price. Under the SSG, the price trigger is invoked on a shipment-by-shipment basis where the CIF import price falls more than 10 per cent below a 1986-88-reference SSG. The application of the price trigger under the WTO is shown in Box 2.

The additional duty under the price trigger does not seem to have a relationship with the proportion of percentage in fall of price of imports and therefore likely to have little impact in changes in import price.

According to Tim Ruffer and Paolo Vergano (2005), only ten members out of 39 notified the WTO as having taken action under the SSG from 1991-2001 in very small proportion of the product lines. The

Table 4: Number of actions under the SSG 1995-99

	Price-based actions	Volume-based actions
1995	42	5
1996	71	108
1997	96	55
1998	98	39
1999	180	31

Source: WTO secretariat (WTO 2002c)

application of both the volume-based and price-based trigger by WTO members between 1995 to 1999 is provided in Table 4. The price-based action has been used more than twice the volume-based action. Members have continued to use the SSG since its inception despite its purpose of being temporary in nature.

The existing safeguards provisions are difficult and time consuming to implement. From 1995 to 2001, only seven developing countries initiated or implemented emergency safeguards for a total of 16 agricultural products. This is a small number relative to the concern expressed. This might be partly because of the availability of other measures (particularly the ability to raise applied tariffs within the bound ceiling, although the existence of import surges suggests that governments did not resort to this option) or because the import surges did not lead to negative effects (which is one of the conditions to trigger the safeguard), or most likely because the complexity of the emergency safeguard process made it too difficult for countries to use.

Measures commonly used in invoking a safeguard measure are in the form of *ad valorem* duties or quantitative restrictions. Quantitative restrictions are cumbersome to administer and often discriminate between suppliers. In the current SSG, the additional duty is limited to one third of the ordinary customs duty in effect in the year in which the action is taken. This measure cannot adequately address import surges in the case of Kenya. Kenya's applied tariff rates are low; the average tariff applied for agricultural products is 23.4 per cent⁵ while the average bound rate is 100 per cent. Having bound its entire agricultural product at 100 per cent, fixing the maximum additional duty that can be invoked at one third of the bound tariff rate may be disadvantageous to Kenya because other countries have bound their tariffs at higher rates while others provide domestic support in products of interest to Kenya. The EU has subsidized most agricultural products.

Due to many developing countries' inability to use the current SSG and other implementation complexities related to its application, developing countries are proposing under the ongoing WTO negotiations the establishment of a new SSM to help them address import surges and price volatility. Many have called for the SSG provisions to be abolished and a new SSM to be established for all developing countries.

⁵ See market access map (ITC/DPMD/MAS).

3. Implications of the Proposed Formulae for Tariff Reduction

The main concern for Kenya is the extent to which the proposed WTO tariff reduction formulae will affect the country's agricultural bound tariffs, and therefore the need for an effective safeguard mechanism.

3.1 The Proposed Formulae

Various proposals on tariff reductions under the WTO negotiations on agricultural market access have been tabled before the negotiations. These proposals have been revised as the negotiations advance into establishment of modalities. The proposals range from linear formula to non-linear formulae. This study focuses only on proposals that have gained some convergence amongst many WTO members and the proposal adopted in the Hong Kong ministerial conference, which is currently at the centre of discussions in Geneva.

(a) Harbinson Proposal

Harbinson's draft mainly draws on the proposals submitted by other members and the summarized main features and series of formal and informal special Sessions of the Committee on Agriculture and related technical consultations. On market access, the Harbinson draft proposed two tariff reduction formulas: one for developed countries and another for developing countries (Table 5). In both cases, tariffs would be reduced by a simple average and subjected to a minimum cut tariff line depending on the tariff interval in which each individual tariff fell. Specific and mixed tariffs would have to be converted into *ad valorem* equivalents only for the purpose of determining appropriate

Table 5: Tariff reduction rates according to Harbinson's draft proposal

Developed countries		Developed countries	
Tariff interval	Tariff reduction rate	Tariff interval	Tariff reduction rate
T > 90%	Average: 60%	T > 120% 60% < T* 60	Average: 40%
	Minimum: 45%		Minimum: 30%

Source: WTO, 2006

tariff reduction rates. The base of the reductions would be the final round bound tariffs. Table 5 summarizes the Harbinson's proposal.

(b) Uruguay Round approach

This is a linear (straight) cut across the tariff lines by a specified percentage, which was used in the 1986-94 Uruguay Round negotiations in agriculture. In this approach, member countries are expected to cut their tariff lines by a specific percentage across all the tariff lines. In the case of the Uruguay Round, developed countries were required to cut their tariff lines across the board by an average of 36 percent over 6 years (6% per year) with a minimum of 15 per cent on each product for the period. This approach was designed principally to make steeper cuts on higher tariffs, bringing the final tariffs closer together (to harmonize the rates):

(c) The Swiss Formula

The Swiss formula is mathematically given as:

$$Z = AX/(A+X)$$

Where

X = initial tariff rate

A = coefficient and maximum tariff rate

Z = resulting lower tariff rate (end of period)

(d) G-20 proposal on market access

A group of 20 developing countries, among them Argentina, Brazil, China, Cuba, Egypt, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Philippines, South Africa, Thailand, Tanzania, Valenzuela and Zimbabwe presented new proposals on market access. The G-20 proposed two different scenarios, one for developed countries and another for developing countries. According to the proposal, developed countries will undertake a tariff cut of at least 54 per cent on average, while developing countries will be subjected to a maximum tariff cut of 36 per cent on average. The group maintains that overall proportionality of commitments between developed and developing

Table 6: Summary table of G-20 proposal

Developed Countries Thresholds	Developed Countries' Linear Cuts	Developing Countries' Thresholds	Developing Countries' Linear Cuts
0 - 20	45%	0 - 30	25%
>20 - 50	55%	>30 - 80	30%
>50 - 75	65%	>80 - 130	35%
>75	75%	>130	40%
<i>Cap: 100%</i>		<i>Cap: 150%</i>	

Source: WTO, 2006

countries should be achieved through lower tariff reductions and higher threshold for the bands. Developing countries should cut less than two-thirds of the cut to be undertaken by developed countries. A summary of the G20 proposed is provided in Table 6.

The G-20 proposed two different set of bands and two sets of tariff reduction rates for developed and developing countries. Developed countries would have four bands, with thresholds of 0-20 per cent, 20-50 per cent, and 50-75 per cent and above 75 per cent. Tariffs within the bands would be subjected to linear cuts of 45 per cent, 55 per cent, 65 per cent and 75 per cent, respectively. Developing countries would also have four bands with thresholds of 0-30 per cent, 30-80 per cent, and 80-130 per cent and above 130 per cent. Tariffs within the bands would be subjected to linear cuts of 25 per cent, 30 per cent, 35 per cent and 40 per cent, respectively. The G-20 proposed a linear cut within the bands as the middle ground in market access negotiations and expects members to converge to this proposal in order to bring down prohibitively high tariffs. The G-20 proposed a 100 per cent cap for developed countries and a 150 per cent cap for developing countries (Table 6).

A summary of the implications of the proposed formulae on Kenya's agricultural tariff lines is provided in Table 7. The Harbinson, Swiss and the G20 proposals will cut deeper Kenya's agricultural tariff lines, but will also leave some flexibility between the bound and the applied tariff lines. However, sensitive products that currently attract high duty

Table 7: Application of the other proposed formulae

Formulae	Average bound tariff %	Peak initial bound tariff %	Average reduction %	Cut peak initial bound tariff %	Final average bound tariff
UR	100	100	24	24	76
Swiss formulae	100	100	33.3	33.3	66.7
Harbinson 100	100	100	35	35	65
G 20	100	100	25	65	65

Authors' simulations 2006

Notes: For the Swiss formulae, co-efficient "A" is assumed to be 25. For Harbinson formula, a number of bands and reductions as proposed by Harbinson draft modalities.

in the Common External Tariff (CET) will have little room for additional duties in case of injury. Although, the Uruguay formula cuts by a relatively smaller percentage, some tariff lines will also be affected, especially sugar whose applied tariffs are currently at 100 per cent.

A summary of the effect of the proposed tiered formula in the Hong Kong Ministerial text of December 2005 is provided in Table 8. Column 1 of the table shows the level of ambition proposed for developing countries where Kenya belongs. Depending on the interpretation of the four tiers given to developing countries in column 1 of Table 8, Kenya may fall in either the second, third or fourth tier. The simulations have taken care of both tiers as shown in Table 8. In all cases analyzed, most of Kenya's applied tariffs will not be affected, except one or two, more so for sugar and rice. Kenya will still maintain "water" in tariff in all her tariff lines.⁶ Most of the lines will have "water" in tariff of 45 per cent and above, depending on the tier Kenya will fall. In the second, third and fourth tier, final tariffs will be 70, 75 and 80 per cent, respectively.⁷ "Water" in tariffs in second, third and fourth tiers will be about 46, 51 and 56 per cent, respectively. The likely consequence is that there will be little room to cushion sectors such as sugar, whose applied tariff is almost the same as bound tariff and will be affected by the proposed formulae. The sugar sub-sector is also frequently affected

⁶ "Water" in tariff is the difference between bound and applied tariffs.

⁷ Note that this study has taken the minimum tariffs only in each band.

Table 8: Application of the tiered formula on Kenya's agricultural tariff structure

Level of Ambition	Average Tariff Initial	Average Initial Applied	Average Tariff Bound After	Average Applied After	Difference Bound	"Water" in Tariff
Bound duty > (60-150) <, = (60-150) cut 30*-90	100	24.5	70	24.3	30	45.7
Bound duty > (40-100) <, = (80-150) cut 25*-85	100	24.5	75	24.4	25	50.6
Bound duty > (20-50) <, = (40-100) cut 20*-75	100	24.5	80	24.5	20	55.9

Source: Authors' simulations 2006

* Taken the minimum in each case as per Para 5 of the Draft Modalities for Agriculture.

by import surges. In the CET, there are a few tariff lines that have applied tariffs over 70 per cent. These lines will be affected by the formulae and there will be little space for their protection in case of world price and volume disturbances.

3.2 Trade Defence Mechanism available for Kenya

Given that Kenya did not tariff her non-tariff barriers and therefore had no recourse to the use of the current SSG, it is important to assess how the country's trade policy instruments addressed situations of import surges.

Kenya accords MFN treatment to all trading partners, whether members of WTO or not. Goods imported to Kenya may be subject to tariffs, and the import declaration fee and internal taxes, i.e. excise duties and the value-added tax, which apply equally to imports and domestic products. Kenya has no specific legislation on safeguard measures but they can be applied on a case-by-case basis. The country retained the right to use the transitional measures mechanism of Article 6.1 of the WTO Agreement on Textiles and Clothing.⁸ However, Kenya has not so far notified on the lists of products it was to integrate into GATT during Phase I and II. Furthermore, the country has no reserved right to invoke the Special Safeguard clause of Article 5 of the WTO AoA.

Kenya has also not applied anti-dumping and countervailing measures. Section 125 and 126 of the Customs and Excise Act provide the legal basis for anti-dumping and countervailing measures in Kenya.⁹ Under Section 125, a dumping duty may be imposed on dumped or subsidized goods if their importation causes or threatens to cause material injury to an established industry or is such as to retard materially the establishment of an industry in Kenya. Section 126 of the Act defines dumped goods as those with export prices lower than their fair market prices in the countries they originated or in countries from which they were exported to Kenya at a price below the "cost of importing", i.e. the cost of goods in the country from which they were exported inclusive of insurance, freight, duties, taxes and any other charges. Subsidies are defined as any government grant, loan, tax relief, etc given directly or indirectly on production or export; for example a

⁸ WTO, Kenya Review, 2000.

⁹ WTO document G/ADP/N/1/KEN/1, 22 May 1996.

special subsidy on the transport of a particular product or favourable treatment to producers or exporters in the course of administering any governmental control over the exchange of currencies where that treatment has the effect of reducing the price of goods offered for export.¹⁰

Industries that consider to be affected by dumping are required to contact the Ministry of Finance and supply evidence of the nature and source of dumped imports as well as substantiation that their industry is being damaged by the dumped imports. On the basis of this information, Treasury will take action where it is convinced that dumping has actually taken place and that the industry in question has actually suffered injury by imposing anti-dumping duties on the imports in question. Treasury decides upon the anti-dumping duties.

However, the situation is rarely, if ever, that simple. In most cases, it is necessary to undertake a series of complex analytical steps in order to determine the appropriate price in the market of the exporting country, known as the “normal value” and the appropriate price in the market of the importing country, known as the export price, so as to be able to undertake an appropriate comparison.

¹⁰ WTO, *Trade Policy Review, Kenya* (2000).

4. Effectiveness of the Proposed SSM in the WTO

The Hong Kong Ministerial Conference text (WTO/Min 2005 adopted on 18th December 2005) on the SSM states that: Notwithstanding the provisions of paragraph 1(b) of Article II of GATT 1994 or of Article 4 of this Agreement, any developing country member may take recourse to the imposition of an additional duty in accordance with the provisions of paragraphs 4 and 5 in connection with the importation of any agricultural product [which is designated in its Schedule with the symbol “SSM. A summary of the proposed SSM in the WTO is given below. In the volume trigger, an additional duty imposed under sub-paragraph 1(a) may only be levied at levels that do not exceed those specified in the following schedule:

- (i) Where the level of imports during a year does not exceed 105 per cent of the average import volume, no additional duty may be imposed;
- (ii) Where the level of imports during a year exceeds 105 per cent but does not exceed 110 per cent of the average import volume, the maximum additional duty that may be imposed shall not exceed 50 per cent of the bound tariff or 40 percentage points, whichever is higher;
- (iii) Where the level of imports during a year exceeds 110 per cent but does not exceed 130 per cent of the average import volume, the maximum additional duty that may be imposed shall not exceed 75 per cent of the bound tariffs or 50 percentage points, whichever is higher; and
- (iv) Where the level of imports during a year exceeds 130 per cent of the average import volume, the maximum additional duty that may be imposed shall not exceed 100 per cent of the bound tariff or 60 percentage points, whichever is higher].

The price trigger remedy will be invoked when the CIF import price, expressed in terms of the developing country member’s domestic currency, at which a shipment¹¹ of imports of that product enters the

¹¹ A shipment shall not be considered for purposes of this sub-paragraph or paragraph 5 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 that developing country member.

customs territory of that developing country member during any year (hereinafter referred to as the “import price”), falls below a trigger price equal to [70 per cent of] the average [monthly price]¹² [annual price] for that product [on a most-favoured-nation basis] [for the most recent three-year period preceding the year of importation for which data are available] [for the previous 36 month period] [or 70 per cent of the average price of imports of that product on a most-favoured-nation basis for the base period of [] to [], whichever is the greater] (hereinafter referred to as the “average [import] [monthly] price”).

4.1 Level of Flexibility for Kenya in Using the Proposed SSM

Given the proposals on the table on the formula for reducing tariffs, Tables 9 and 10 show that Kenya will still have some flexibility in utilizing the SSM, given that the difference between the applied and the maximum that can be applied is reasonably significant. The last columns show the degree of flexibility (difference between the maximum duty in case of use of SSM and the current applied rate on average.

What about the proposed price trigger?

The proposed price trigger stipulates the following:

Let

P_m = Current CIF import price of the shipment (expressed in domestic currency)

P_T = trigger price

$D = (P_m - P_T) / P_T$ (The percentage fall in the import price below the trigger price)

As per the proposal

¹² The trigger price used to invoke the provisions of this sub-paragraph shall, in general, be based on the average monthly CIF unit value of the product concerned, or otherwise shall be based on a price that appropriately reflects the quality of the product and its stage of processing. The trigger price shall, following its initial use, be publicly disclosed and available to the extent necessary to allow other members to assess the additional duty that may be levied.

(a) $D < 20$t =0	$40/100 * 120 = 48$
(b) $D > 20$ 30.....t =15	A price additional will be $60+48= 108$, less than the trigger price.
(c) $D > 30$ 40.....t =20	Take another case where
(d) $D > 40$ 50.....t =25	t = 150 Import price =120
(e) $D > 50$t = 30	This falls in category (b). You also reduce by 20%. The reduction in this scenario is 15%
Assume t = 120 and $P_m = 60$	
Reduction of 20%	$0.15 (30/150)-0.2= 0.3- 0.2 = 0.1$ $10/100 *120 =12$
This falls under category (e) as the reduction is 50%	
Then	New price = $120+ 12 =132$ New price is also less than the trigger price.
$T = 0.3 (P_T/P_m)-0.2$	
$0.3 * (120/60)-0.2$	
$(0.3 * 2) - 0.2 = 0.4$	

Source: Alberto and Foster (2005) and author's calculations

It is therefore evident that the price trigger will not offset all the shortfall but part of it. ≤

4.2 Effectiveness of the Proposed SSM to Kenya

An effective SSM should be able to fulfill its stated objective. An SSM should allow a country to raise tariffs beyond its bound tariffs for a limited duration of time to protect import-competing sectors against price depression and or import surges. To fulfill this objective, it is expected that remedies under the SSM should, once a trigger has been activated, be able to commensurate with the depth of the import surge or the level of the price depression of the commodity in question. The duration of the application of the safeguard should match the duration of the injury that remedy is trying to address. The Hong Kong ministerial conference proposed both volume and price triggers for use by developing countries. Threshold figures for both triggers were also proposed. The G33, a group of developing countries, Kenya included, have proposed some threshold figures. To establish if these proposals can be able to address cases of import surges in Kenya's agriculture sector, a few products that have experienced import surges and drop in

Table 9: Case where tariffs will be cut by 35% (maximum expected cut)

Initial average bound tariff	Average bound after the formula	Scenario	Additional duty or 40% points	Average maximum duty	Average applied tariff	Degree of flexibility (Maximum duty-Applied)
100	65	Imports 105-110	32.5 (40)*	105	24.4	80.6
100	65	Imports 110-130	47.8 (50)*	115	24.4	90.6
100	65	Imports 130 and above	65.0 (60)	130	24.4	105.6

Source: Author's calculations

* Taken as additional duty where required % reduction is less than 40% points.

Table 10: Case where tariffs will be cut by 25% (minimum expected cut)

Initial average bound tariff	Average bound after the formula	Scenario	Additional duty or 40% points	Average maximum duty	Average applied tariff	Degree of flexibility (Maximum duty-applied)
100	75	Imports 105-110	37.5 (40) *	115	24.4	90.6
100	75	Imports 110-130	49.2 (50) *	125	24.4	100.6
100	75	Imports 130 and above	75.0 (60)	150	24.4	125.6

Source: Author's calculations

* Taken as additional duty where required % reduction is less than 40% points.

domestic prices are selected and tested with the WTO proposal. To carry out the test in cases of imports volumes, we calculate three and five year moving averages of import volumes of the various products and assess the percentage variance of imports from the moving averages, then apply the proposed trigger to establish if the trigger can offset the import surge. For the price trigger, we calculate the percentage drop of prices of the various products and apply the proposed price trigger to see if it can offset the drop in price by 100 per cent commensurate the exact depth of the price depression.

(i) Maize production and prices (1991-2003)

The trend in domestic maize production in metric tonnes and prices in Kenya shillings for the period 1991-2003 is provided in Figure 2. Maize production shows a fluctuating trend over the years. Production declined considerably between 1992 and 1993 and between 1996 and 2000 while there were significant increases between 1993 and 1994 and in 2001. However, the overall outcome was a reduction of domestic production from about 2.4 million metric tonnes to about 2.3 million metric tonnes. Prices of maize rose significantly between 1992 and 1993, but thereafter started a decreasing fluctuating trend. There was also a sharp increase in prices between 1995 and 1997.

A comparison of maize production and imports is provided in Figure 3. The production and imports of maize almost follow the same fluctuating trend. When imports rise, production also rises and when imports fall, production also falls, except in the year 1997 when imports significantly rose from about 7,000 metric tonnes to 1,000,000 metric tonnes. In 1997, maize imports rose by more than 15,000 per cent, while in 2000 and 2002 maize imports rose by more than 450 per cent and 500 per cent, respectively. These were very abnormal cases of imports when maize imports significantly suppressed production. Over the period 1991-2003, maize production decreased from the highest figure of about 3 million metric tonnes in 1994 to about 2.3 million metric tonnes in 2003. Imports also significantly reduced from about 1 million metric tonnes in 1997 to about 100,000 metric tonnes in 2003. Surprisingly, maize import prices in 1997 and 2000 were relatively high compared to other years, an indication that high import prices may not be linked to the high imports during the period 1997 and 2003. Demand may be the cause given that there was no major shift in maize

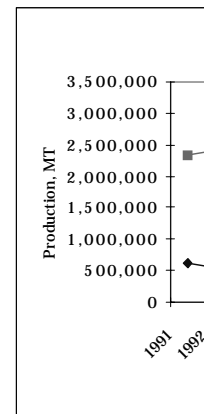
Figure 2: Trends in maize production and prices, 1991-2003

Source: FAOSTAT 2004

production from the previous years (Figure3); as a matter of fact, maize production was high in 1997 as compared to the previous year 1996.

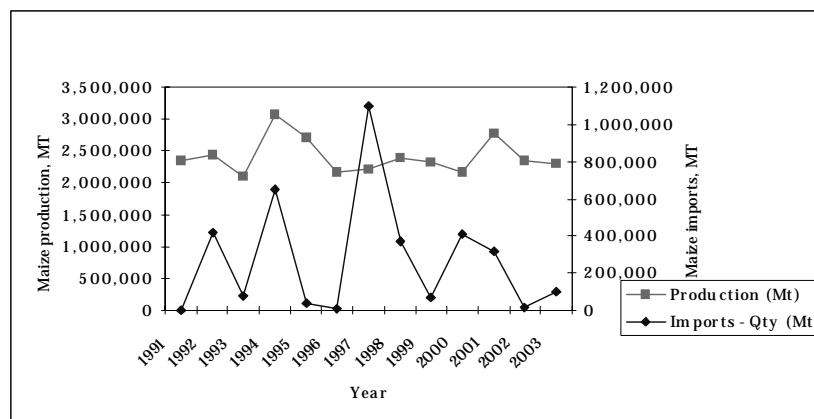
A three-year moving average of maize imports during the period 1992-2002, as by FAO definition of import surges, shows that import surge cases occurred in the years 1994, 1997, 2000 and 2001 (Table 11). A safeguard could therefore have been applied in the preceding years 1995, 1998, 2001 and 2000. Although all these years qualified for use of a safeguard measure, it is not possible that such a measure could have improved the situation given that imports had risen by significant percentages, with the highest reaching over 15,000 per cent.

Using a five-year moving average, Table 12 shows that only in one case (1997) Kenya was eligible to use a safeguard mechanism. It therefore implies that the more the years are spread in the moving averages, the less a country is likely to be eligible for a safeguard mechanism. In the case of price trigger, Kenya could only be eligible to apply once in 2002 (Table 13). This calls for a case for the use of both the volume and price trigger.¹³



¹³ Only cases with price fall of 20 per cent and above are eligible in the use of price trigger. In this case, it was only in 2002 that Kenya experienced maize price falls of more than 20 per cent.

Figure 3: Maize production and imports



Source: FAOSTAT 2004

(ii) Wheat production, imports, exports and prices (1991-2003)

Wheat production has remained low compared to imports over the period 1991-1993 (Figure 4). Although both wheat imports and production has been fluctuating over time, wheat imports have significantly increased over the years, reaching a high of 665,504 metric tonnes in year 2000 from low levels of 257,825 tonnes in 1991. Wheat production surpassed wheat imports only once (in 1995) and by a very small margin. Import prices of wheat have increased in a fluctuating trend over the years from low levels of about Ksh 2,870 per metric tonne in 1995 to about Ksh 19,088 in 2003. Wheat imports increased by about 143 per cent in 1993 and by about 82 per cent in 1996. However, there were no significant changes in production trends, although production silently increased in 1993 and reduced by a small margin in 1996.

Using a three year moving average over the period 1991-2002, wheat experienced about eight import surges (1993, 1994, 1996, 1997, 1998, 1999 and 2001) almost every year¹⁴ (Table 14). Going by the FAO definition, a safeguard measure could only be applied in 1993, 1996 and 2000 when imports deviated by more than 20 per cent from the three year moving average. With a five year moving average, the wheat

¹⁴ In this case import surge is taken as any percentage increase in imports above the moving averages.

Table 11: Three-year moving averages for maize imports 1992-2002

	1992-1994	1993-1995	1994-1996	1995-1997	1996-1998	1997-1999	1998-2000	1999-2001	2000-002
3 Year MVA	381,865	256,758	232,328	382,621	393,795	514,462	283,899	134,749,667	175,298,67
% increase	41.3	N/A	N/A	65.39	N/A	N/A	30.7	57.11	N/A

Source: Author calculations based on FAOSTAT (2004)

Table 12: Five Year moving averages for Maize imports (1991-1992)

	1991-1995	1992-1996	1993-1997	1993-1998	1994-1999	1995-2000	1996-2001	1997-2002	1998-2003
5 year MVA	237,119	238,470.8	375,627.8	433,369.8	318,029	391912.2	453436.6	236485.2	182759.4
% increase	N/A	N/A	65.87	N/A	N/A	4.28	N/A	N/A	N/A

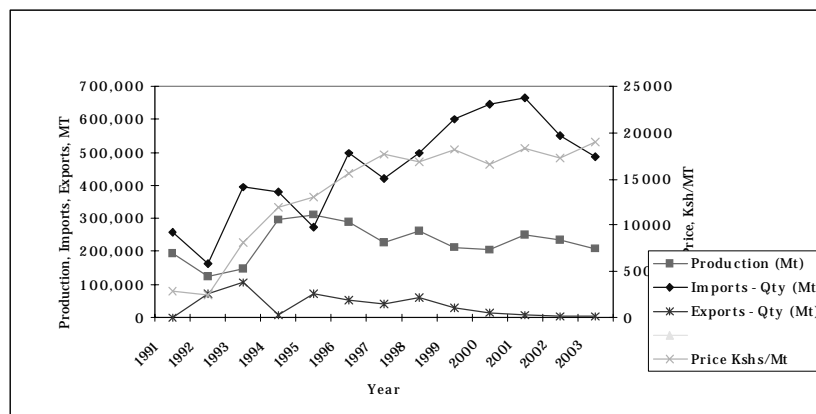
Source: Author calculations based on FAOSTAT (2004)

Table 13: Cases of drop in prices of maize (1992-2003)

Years	% Drop
1992	17
1995	16
1998	6
2001	6
2002	24

Source: Author calculations based on FAOSTAT (2004)

Figure 4: Wheat production. Imports, Exports and Prices 1991-2003



Source: FAOSTAT 2004

sub-sector experienced five cases of import surges in years 1996, 1997, 1998, 1999 and 2001 (Table 14). A safeguard mechanism could only be applied in 1996 and 1999 when imports deviated by more than 20 per cent from a three year moving average. The implication is that using a five-year moving average alone is not likely to capture all the years that imports deviate from a given threshold. In the case of drop in prices, although there are four cases of percentage fall in prices (1990, 1998, 2000 and 2002), none of the cases could be eligible for the application of a safeguard mechanism (Table 15). It is therefore appropriate to have different percentage thresholds of deviation for both the application of the price and import trigger.

(iii) Sugar production, imports and exports (1991-2003)

Trends in sugar production, imports, exports and prices between 1991 and 2003 are provided in Figure 5. Sugar production has fluctuated over the years, reaching a highest figure of about 4,660,000 metric tonnes in 1999 and the lowest level of about 3,600,000 metric tonnes in 2001. Prices of sugarcane dropped sharply from about Ksh 8,200 per metric tonne in 1993 in just one year to about Ksh 1,500 per metric tonne in 1994. Since then, sugar price fluctuations have not been significant. The fall in sugarcane prices seems to have been influenced by the domestic production of sugarcane, since the high prices in 1993 may be attributed to the increase in production in 1995-1998 periods

Table 14: Three and five year moving average for wheat imports

1991-1993	1992-1994	1993-1995	1994-1996	1995-1997	1996-1998	1997-1999	1999-2001	2000-2002	2001-2003
3 yr MVA 2,772.667	22,772.667	28,627.333	16,305.667	11,417.333	87,54,6667	47,78000		21,275.333	27,156,667
16,752.33									
% Increase 0.0282063	N/A	N/A	N/A	8.8509234	64.925214	N/A	29.4818252	N/A	N/A
-5 yr MVA	1991-1995	1992-1996	1993-1997	1994-1998	1995-1999	1996-2000	1997-2001	1998-2002	1999-2003
	18,731.2	19,924	14,071.4	14,347.6	15,512.8	1,9486.8	21,738	21,077.4	16,787.4
% increase in imports	N/A	N/A	N/A	42.517628	41.105543	N/A	27.948293	N/A	N/A

Source; Author's calculations

Table 15: Cases of drop in prices of wheat

Years	% Drop
1990	16.5
1998	4.5
2000	9
2002	6.3

Source: Author calculations 2006

when production started showing a downward trend.¹⁵ There was also a significant drop in sugar prices in 1992 from Ksh 5,000 per metric tonne in 1991 to Ksh 4,000 per metric tonne when imports also significantly increased from about 38,000 metric tonnes to about 150,000 metric tonnes. Although imports have been fluctuating over time, they have remained at low levels of between 50,000 metric tonnes and 270,000 metric tonnes. Sugar imports have also not surpassed sugarcane production, probably because importation of sugar from the COMESA region is controlled, but this has not restored the prices to their high levels of the early 1990s.

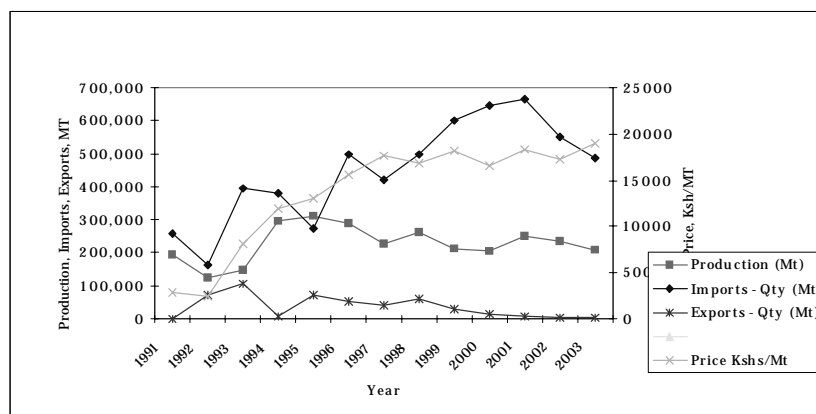
A three year moving average shows that the sugar sub-sector experienced four cases of import surges over the period 1991 to 2003, but could only qualify to apply a special safeguard in three cases while a five year moving average allows Kenya to apply special safeguard in only two cases in different years (Table 16). While with a three year moving average, a safeguard could be applicable in 1994, 1995 and 2001, with a five year moving average, safeguard could only be applied in 1996 and 1999. Therefore, for the effective use of safeguard measures, a country needs to be given flexibility to use a moving average appropriate to the prevailing circumstances. With a price trigger, only one case of import surge could qualify for invoking a trigger (Table 17).

(iv) Rice production, imports and prices (1991-2003)

Rice production has been fluctuating with small margins over time but has not changed much since 1991. The highest level of rice production was about 60,000 metric tonnes in 1995 and the lowest level was about 40,000 metric tonnes in 1992 (Figure 6). Rice imports have shown uncertain trends, decreasing in some periods, stabilizing in others while in most cases showing sharp increases. Imports have significantly increased in fluctuating trend, reaching a high level of about 192,000 metric tonnes in 2003 from low levels of about 27,000 metric tonnes in 1995. Prices of rice in Ksh per metric tonne rose significantly from about Ksh 1,200 per metric tonne in 1992 to about Ksh 28,000 per metric tonne in 2000, before sharply declining to about Ksh 16,000 in 2003 as imports continued to increase. There seems to be some relationship between rice imports and production levels, even though

¹⁵ Sugarcane takes about 18 months before it matures for harvest.

Figure 5: Sugar production, imports, exports and prices, 1991-2003



Source: FAOSTAT 2004

not significant. When imports were relatively high in 1991, production of rice went down in 1993 only to rise again in 1993 when imports fell. Also, the high levels of imports in 2003 might have caused the low levels of production in the following year (2001). However, in 2002 and 2003, the high imports and drastic fall in prices did not affect rice production. This scenario gives clear indications of cases where increase in rice imports affected the domestic price of rice.

Both the three-year and five year moving averages of rice imports over the period 1991-2003 are provided in Table 18. With a three year moving average, the sector experiences about seven cases of import surges, but qualifies for six cases for use of safeguard mechanism as per the FAO definition. In a five-year moving average, the sector experiences six cases of import surges and qualifies for all the six cases for the application of the safeguard measure. As in the other cases, once again the years for the application of the measure differ from the three year moving average in two of the cases. This implies that if both moving averages are used, more years with import surges will qualify for a safeguard measure. For the price triggers, two cases out of the four qualify for a safeguard measure. The price trigger also takes care of one more year not covered by the volume trigger (Table 19).

Table 16: Three and five year moving averages and import surges for sugar

	1991-1993	1992-1994	1993-1995	1994-1996	1995-1997	1996-1998	1997-1999	1999-2001	2000-2002	2001-2003
3 yr MV	1,520,237.7	163,039.67	130,166.33	131,198.67	58,104.667	109,674.67	107,957	129,133.67	135,932.3	153,677.3
% increase	N/A	40,227496	N/A	N/A	N/A	47,474322	N/A	43,658467	N/A	10,16279
	1991-1995	1992-1996	1993-1997	1994-1998	1995-1999	1996-2000	1997-2001	1998-2002	1999-2003	
5 yr MVA	116,242.4	121,989.6	102,144.2	101,733	98995.6	101,524.6	134,016.8	146,283.6	138,735.6	
% increase	N/A	N/A	N/A	51,277766	N/A	13,237961	41,5279365	N/A	18,89748	

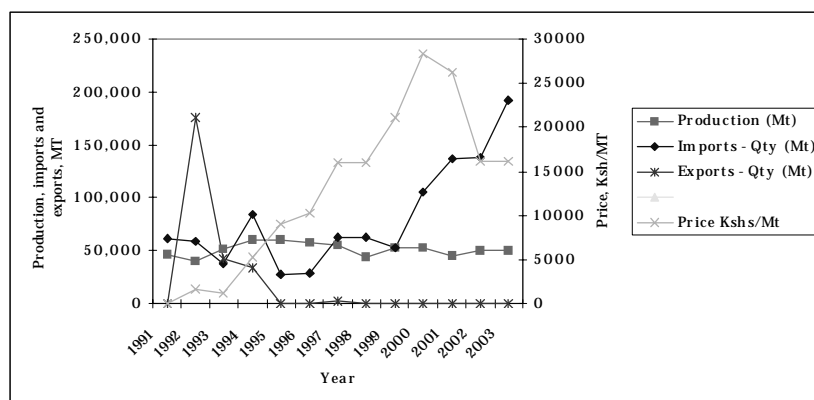
Source: Author calculations 2006

Table 17: Cases of Drop in Prices of Sugar

Years	% drop
1992	23.4
1994	81.2

Source: Authors' calculations 2006

Figure 6: Rice production, imports, exports and Prices, 1991-2003



Source: FAOSTAT 2004

(v) Milk production and imports (1991-2003)

The trends of milk production and imports measured in metric tonnes are provided in Figure 7. Milk production and imports have been showing a fluctuating trend in the period 1991-2003. While production has been showing an ascending fluctuating trend, imports have actually been showing a descending fluctuating trend since 1991. Milk production was lowest when imports were highest (1992, 1993 and 1994), implying that milk production might have been affected by imports. In 2000, when imports dropped from about 26,000 metric tonnes to about 14,000 metric tonnes, milk production drastically increased from about 2,500,000 metric tonnes to about 2,800,000 metric tonnes. Also in 2003, when imports were also low, about 3,500 metric tonnes, milk production remained high, about 2,800,000 metric tonnes. One can, therefore, conclude that, to some extent, probably milk imports negatively affected domestic milk production.

Milk prices likewise have been showing a fluctuating increasing trend over the years. Milk prices significantly increased between 1998 and 2000, only to significantly drop again between 2001 and 2003 when imports started significantly increasing (Figure 7).

The three-year and five year moving averages for milk imports during the period 1991 to 2003 are provided in Table 20. The milk sub-sector experienced four cases of import surges (1993, 1997, 1998, 2001) in the case of a three-year moving average. A safeguard measure could only be applied in 1998 and 2001. A five-year moving average shows

Table 18: Three and Five year Moving averages for Rice imports (1991-2003)

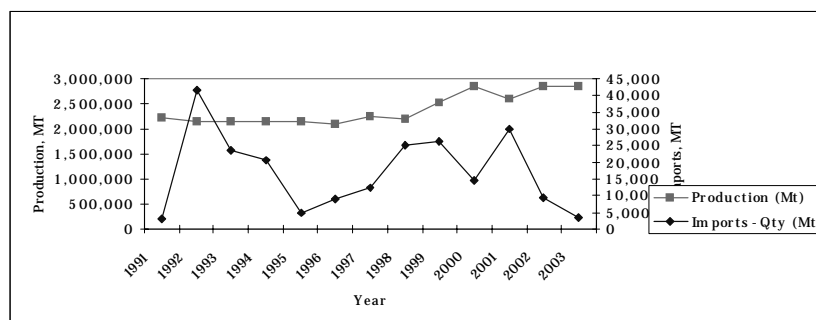
	1991-1993	1992-1994	1993-1995	1994-1996	1995-1997	1996-1998	1997-1999	1999-2001	2000-2002	2001-2003
3 yr MVA	52,690.67	60188.67	60,188.67	49,355.33	46,522	39,447.67	51,341	59,284.67	73,711	98,745.33
% Increase	N/A	28.05	N/A	N/A	25.49	37.16	2.47	56.88	46.54	48.48
5 yr MVA	1991-1995	1992-1996	1993-1997	1994-1998	1995-1999	1996-2000	1997-2001	1998-2002	1999-2003	
% Increase	53,765.6	47,294.6	47,862.4	47,294.6	57,722	55,339.8	62,475.8	84,213	99,301.8	
	N/A	N/A	24.25	23.76	N/A	62.68	62.67	38.92	48.19	

Table 19: Cases of Drop in Prices of Rice (1991-2003)

Years	% Drop
1993	26.6
1998	0.3
2001	7.3
2002	38.8

Source: Author calculations, 2006

Figure 7: Milk production and imports, 1991-2003



Source: FAOSTAT 2004

only three cases of import surges and all of them qualify for a special safeguard mechanism. This is quite contrary from the other cases where a three-year moving average was indicating more cases of import surges.

We have looked at a few selected cases in which Kenya could have been eligible to use a safeguard mechanism in the current SSG provided in the WTO provision as per the FAO definition of an import surge. A summary of the five cases analyzed is given in Table 21. To show the importance of the threshold margins in the moving averages, we have looked at both the three-year and five-year moving averages. Using a three-year moving average in the volume trigger allows more use of a safeguard mechanism than using a five-year moving average (Table 21). The analysis also found that the different moving averages do not necessarily give the same years in which the surges occurred.

This part looks at how effective the proposed SSM in the WTO is to Kenya. To assess this, we look at the number of cases of surges Kenya has had in particular products between the period 1991 and 2003 and how the deviation from the triggers can fit into the proposed threshold in the WTO. However, the analysis does not go further to establish the extent to which the SSM can address import surges and fall in prices in quantitative terms. Such an analysis needs more detailed data in several years and will be considered as a further improvement for this study. To establish how the proposed SSM will address import surges and falls in prices in Kenya, tables 22, 23 and 24 give a summary of cases of imports surges using both three- and five-year moving averages and the price triggers.

Table 20: Moving averages for Milk imports

	1991-1993	1992-1994	1993-1995	1994-1996	1995-1997	1996-1998	1997-1999	1999-2001	2000-2002	2001-2003
3 yr MVA	22772.67	22772.667	28,627.33	16,305.67	11,417.33	8,754.67	4778000	21,275.33	27,156.667	16,752.33
% Increase	0.03	N/A	N/A	N/A	8.850	64.93	N/A	29.48	N/A	N/A
	1991-1995	1992-1996	1993-1997	1994-1998	1995-1999	1996-2000	1997-2001	1998-2002	1999-2003	
5 yr MVA	18731.2	19,924	14,071.4	14,347.6	15,512.8	17486.8	21,738	21,077.4	16,787.4	
% Increase in imports	N/A	N/A	N/A	42.52	41.11	N/A	27.95	N/A	N/A	

Source: Authors calculations 2006

Table 21: Summary of the findings

Product	Three year MAV	Five Year MVA	Price trigger
Maize	4	2	1
Wheat	3	2	nil
Sugar	3	2	1
Rice	2	3	1
Milk	2	3	N/A
Total	14	3	3

Source: Author's calculations (2006)

According to the WTO proposal, the minimum level of import surges when a member country can apply an SSM is given as where levels of imports during a year exceed 105 per cent of the moving average volume. Taking this as our benchmark, Table 22 shows that of 23 cases of import surges, 20 of them will be eligible for a safeguard mechanism using a three-year moving average, while using a five-year moving average, out of the 18 cases of import surges, 17 will be eligible for an SSM.

In the case of price triggers, the proposed SSM requires a price drop of 70 per cent CIF import price in the domestic currency for a trigger to be applied. Going by this percentage, it implies that in the above analyzed cases, out of 14 cases where there were cases of price falls, only one could be eligible for a price trigger mechanism. This means that the proposed price trigger may not be appropriate to Kenya.

The main objective behind the requirement of a SSM by developing countries is to protect small farmers from the likely damaging effects of temporary fluctuations in price and import surges that impact negatively on staple food and other crops that are important in terms of food security, rural livelihood and rural development. The SSM should, therefore, be able to allow countries to raise their applied tariffs above the bound ceilings in cases where domestic producers face injury.

Many developing countries were unable to use the special safeguard under Agreement on Agriculture (AoA) in its current establishment due to fiscal constraints, which limited the use of available domestic policies leaving only tariffs as the only available measure.

Table 22: Import surges three year moving average

Product	Number of import surges	Surges more than 105%
Maize	4	4
Wheat	4	3
Sugar	4	4
Rice	7	6
Milk	4	3
total	23	20

Source: Author's calculations (2006)

Table 23: Import surges five year moving average

Product	Number of import surges	Surges more than 105%
Maize	2	1
Wheat	3	3
Sugar	4	4
Rice	6	6
Milk	3	3
Total	18	17

Source: Authors' calculations (2006)

Table 24: Cases of fall in prices of selected products

Product	Number of fall in prices	Drop in prices
Maize	5	nil
Wheat	3	nil
sugar	2	1
Rice	4	nil
Total	14	1

Source: Authors' calculations 2006

Agriculture is vulnerable to climatic conditions and temporary shocks, which are sometimes significant, long lasting and make poor farmers equally vulnerable. Agricultural markets by their nature are characterized by low elasticity of demand. This, coupled with high subsidization in developed countries, leads to temporary market fluctuations, which heavily affect poor farmers in developing countries.

The analysis from section 3 on the implication of various formulae on Kenya's tariff structures shows that Kenya will be left with limited policy space to safeguard the country's interests in various sectors of the economy and, therefore, the need for a safeguard mechanism.

Based on the analysis above, in establishing an SSM, various issues emerge in terms of their application and practicability. The main elements to take into consideration in designing the SSM include product coverage, triggers, safeguard measures and timescale. This paper has focused on the timescale.

5. Conclusions and Policy Recommendations

5.1 Conclusions

During the Uruguay Round, Kenya bound her agricultural tariff lines at relatively low levels across the board (100%). With the current proposals in the ongoing WTO negotiations on tariff reduction, the bound tariffs will be drastically reduced, at least by a minimum reduction of 24 per cent and a maximum of 35 per cent. This means that Kenya will be constrained when situations such as world price fluctuations and import surges prevail.

Kenya has experienced import surges in the past, and given that most of her agricultural sectors remain uncompetitive, there is every possibility that price fluctuations and import surges can occur in future. The trade policy instrument available to Kenya to address cases of world market disturbances is mainly tariffs, having removed all quantitative restrictions and import quotas. With further reduction of tariffs and the existence of supply-side constraints that hinder the country's competitive edge, there is risk of the country becoming a home of dumped cheaper goods.

In the proposed SSM, the price trigger will not offset the fall in price 100 per cent, but a fraction of it. There seems to be no technical justification as to why the fall in price should not be offset in totality (100%). In such a situation, it is not obvious that applying a price trigger will be able to fully address the problem of import surges.

Kenya does not have recourse to the use of the current WTO SSG and given that tariffs will be reduced further, the country's agricultural trade policy space will be eroded. This should be an opportunity to negotiate for a more effective measure of protecting the interest of poor Kenya farmers.

Neither the three-year moving average nor the five-year moving average is able to capture all cases of import surges in both import volumes and fall in prices.

5.2 Recommendations

- Kenya should negotiate to have flexibility to use any moving averages, three or five, and both triggers (volume and price) or a combination of both as it may deem appropriate.

- Kenya should negotiate for a remedy that can address the issue of import surges or fall in prices adequately. The remedy should be commensurate with the depth of injury. The greater the depth of the surge, the greater the duties to be imposed.
- Negotiations should consider, as much as possible, a lower threshold such as 105-110, 110-115, 115-120 and 120 and above taking care of products of high response to changes in supply.
- Kenya should negotiate a tariff reduction formula that will allow more flexibility for protecting vulnerable domestic sectors. Alternatively, the country could negotiate for full exemption from tariff reductions on food security products.
- Kenya could also negotiate for high percentage of products to be designated as special products and include all food security and important sectors in the list of special products.
- Kenya should take advantage of this round of negotiations and negotiate in spreading out the binding coverages and levels of agricultural tariff lines depending on the importance of each sector instead of maintaining a uniform binding of 100 per cent across all tariff lines.

Given that safeguard mechanisms are not permanent solutions, there is need to enhance the capacity of domestic sectors to be more competitive internationally.

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