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Can Protective Trade Policy Instruments like Special Products (SP) and Special Safeguard Mechanisms (SSM) contribute to a more Sustainable and Fairer Multilateral System of Trade in Agriculture?

A Dialogue Project in Two Parts

By Jayson Cainglet and Robert Stemmler
With a Preface by Heike Löschmann

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By Jayson Cainglet and Robert Stemmler

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Preface

Wishing to contribute to the discussion of trade policy instruments on the occasion of the 6th WTO Ministerial Conference in Hong Kong in December 2005, the Heinrich Boell Foundation is presenting this Global Issue Paper in a rather unconventional format. This paper combines two different perspectives on Special Products (SP) and Special Safeguard Mechanisms (SSM), one from the North and one from the South.

Robert Stemmler, a graduate of political science from Sciences Po Paris, France, and Free University Berlin, Germany, and Jayson Cainglet, an activist involved with farmers' groups in the Philippines and the broad agriculture and trade policy concerns of the global south, both discuss the question if and how protective trade policy instruments like SP and SSM can contribute to a more sustainable and fairer multilateral system of trade in agriculture.

The authors engaged into a fruitful dialogue and exchanged their partly contradicting views during the drafting process, yet their positions could not be reconciled into the same paper. The resulting two papers illustrate very well that trade policy instruments remain a highly contentious issue between representatives of the North and the South.

Both agree that Special Products and Special Safeguard Mechanisms are necessary defensive trade policy instruments in the current state of world trade. An Agreement on Agriculture which does not guarantee the protection of vulnerable groups and which is not compatible with national sustainable development policy goals cannot be regarded as legitimate or just. Additionally, the authors pinpoint a flaw in the proposals: SP indicators reflecting gender-sensitive and environmental concerns are missing in spite of the fact that they are both pre-requisites for sustainable development.

The necessity of Special and Differential Treatment (SDT) is not a question for both authors. However, their approaches to SDT differ. For Jayson Cainglet, it is a logical consequence of the disastrous effects of agricultural trade liberalization that developing countries should define their own appropriate scope of SP and SSM for their specific development needs. For Robert Stemmler, a discourse based on justifiable reasons as to the extent of exemptions from trade rules accorded to developing countries is necessary. For such a reliable justification to be realised, all parties have to agree on a reference system that takes into account SDT's aims at justice in global trade and reflects a serious concern for the needs of the vulnerable sectors. This view implies that developing countries also have to justify why and to what extent they want to use protective trade policy instruments.

Thus, four controversial questions arose:

1. The motivations and interests of the stakeholders: Are developing countries unified behind the Group of 33 (G33) proposal?
2. Scope of SP and SSM: Should there be a maximum flexibility or should the extent be restricted?
3. Is there a risk and/or is it a valid concern that SP and SSM impede South-South trade?

4. Who profits from current safeguard measures: Are transition economies (some of whom are G33 members) also profiting from Special Safe Guards (SSG) maximum flexibility?

At the end of the drafting process, it became obvious that the positions of both authors had become enriched by each other. A combined publication of both papers not only gives an insight into the different perspectives but also provides valuable complementary information on our positioning. Jayson Cainglet's paper focuses on the G33's perspective regarding sustainability matters, explaining its potentials but also its deficiencies. It helps cast light on the situation of those affected and their legitimate claims for fairer trade policies. Robert Stemmler's critical overview is more concerned with mapping the stakeholders' positions and intends to contribute to a better understanding of why consensus is so difficult to reach. He opts for a more neutral way to facilitate dialogue on SP and SSM but at the same time recognises that Jayson Cainglet makes strong points which the agricultural trade liberalisation proponents have not sufficiently addressed. Both papers reinforce our stance that global alternatives to make the multilateral trade system more just are urgently needed.

Finally, it is intended that this Global Issue Paper will deliver a productive input for the constructive debates the Heinrich Boell Foundation envisions for Hong Kong and beyond.

Dr. Heike Löschmann
Director Southeast Asia Regional Office

1st Contribution

Can Protective Trade Policy Instruments like Special Products (SP) and Special Safeguard Mechanisms (SSM) contribute to a more Sustainable and Fairer Multilateral System of Trade in Agriculture?

By Jayson Cainglet

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Executive summary

This year not only marks the 6th Ministerial Meeting of the World Trade Organization [WTO] in December in Hong Kong. More importantly, it marks the 10th year of existence of the WTO as an institution for multilateral trade. Far from a celebratory mood however, the grim reality of the disastrous impact of trade liberalization among the small producers and the agriculture sector of the developing world is taking center stage.

Just like in the previous nine years, agriculture remains the central issue of the WTO and the current round of trade negotiations. The players in the other areas of negotiation – services and industrial goods [GATS and NAMA], are keenly observing the developments at the agriculture front since unless there is a resolution of the outstanding concerns in agriculture, no movement is expected in the other sectors. For many developing and least developed countries [LDCs], the core of the discussions in the agriculture negotiations must be on Special and Differential Treatment [SDT].

This paper gives an overview of the current state of the WTO agriculture negotiations in the run-up to the 6th WTO Ministerial Meeting, focusing mainly on the proposals of developing countries and LDCs for an effective SDT through the designation of Special Products [SP] and implementation of Special Safeguard Mechanisms [SSM]. The paper looks into the justifications put forward by the G33 on why there is a need for SP and SSM. The author then examines the responses of the major WTO players on the proposals and the varying positions undertaken by the various stakeholders.

Subsequently, the paper argues for the need to find a common understanding and general appreciation of what is currently at stake in the negotiations and puts the demand for SP and SSM in perspective. The paper affirms the need for further discussion among the broad stakeholders in order to facilitate, if possible, a common front on SP and SSM. Finally, the author believes that SDT-inspired protective trade policy instruments like the proposal on SP and SSM in its current form does have the potential to contribute to a more sustainable and fairer system of global trade in agriculture.

Introduction

The debate on Special and Differential Treatment (SDT) dates back to the first negotiations of the GATT [General Agreement on Tariffs and Trade], the precursor of the WTO, in the late 1940s. It has been the position of developing countries that special rules should be applied to them, given the huge difference in the level of development and thus their inability to compete with the goods coming from developed countries. SDT is supposed to level the playing field and to allow the developing world to catch up with their industrialized counterparts. All this time however, the concepts of special treatment and the rules to govern such treatment have neither been elaborated nor detailed. Or if any, it has not benefited its intended beneficiaries. As a result, more than a hundred SDT-related legal cases between countries have ensued over the years.

Until now, an effective and operational SDT remains a lip service at the WTO with developing countries and LDCs having to face the same treatment and binding rules as their more industrialized counterparts, if not worse. The experience of these countries in the last ten years provides enough arguments to prove that unless SDT is effectively granted, the lopsided nature of the agricultural trade will remain and its impact on food security, livelihoods and rural development needs of the developing world will be even more disastrous.

The discussion on universally accepted SDT concepts is being further complicated by those who want to highlight the increasing differences of development levels and sector-specific protection interests of the developing world and thereby obfuscate what is supposedly a clear demarcation line between the interests of the developed world on one side and the developing countries and LDCs on the other. Certainly, big agro-exporters like Brazil, India, and to a certain extent China, are substantially different from other small developing countries that have little capacities to compete. While LDCs are entitled to all SDT provisions and are exempt from reduction commitments, there is hardly any protection of their domestic markets from the deluge of imports or incentives on their part to export on the international market.

For now, the question remains whether or not a concretization of SDT can be achieved during this current round of WTO negotiations.

To their credit, the G33* were able to use the principles of SDT in advancing the designation of SP and the putting up of effective SSM under the 2004 July 2004 framework of the WTO General Council.

* G33 countries consist of : Antigua and Barbuda, Barbados, Belize, Benin, Botswana, China, Congo, Cote d'Ivoire, Cuba, Dominican Republic, Grenada, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Republic of Korea, Madagascar, Mauritius, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, The Philippines, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and Grenadines, Senegal, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia, Zimbabwe.

The G33 [composed of 44 member- countries as of October 2005] defines itself as an alliance of a large number of developing countries and LDCs which have joined efforts to guarantee that the food security,

1. Focusing on the SP and SSM Debate

Agriculture remains the key issue in the current trade negotiations. The success or failure of the current round of WTO negotiations depends on the outcome of the agriculture talks. For both developed and developing countries, resolutions of their outstanding concerns in agriculture continue to be top priority.

The existing conflict of interest and contradiction between the US and EU [and even within the EU] at the agricultural front are real and indicate the extent to which agriculture remains the key issue of everyone else that deals with trade. But of course, this contradiction [mainly as competitors for the same market] can take a backseat when their common interests are at stake or threatened by other forces.

The urgent resolution of reducing trade distorting domestic support and subsidies by developed countries goes hand in hand with the demand for maximum flexibility on the designation of SP and the eligibility of all products for SSM access as the top priority concerns of many developing countries and LDCs in the run-up to the 6th Ministerial meeting in Hong Kong this December.

Though legitimate concerns were raised about the manner by which the July 2004 WTO General Council Meeting was conducted, many developing countries believed that positive gains were nevertheless achieved through the introduction of provisions on SP and SSM which they had put forward even prior to the Cancun Ministerial.

Paragraph 41 of the July 2004 framework says:

“Developing countries will have the flexibility to designate an appropriate number of products as Special products, based on criteria of food security, livelihood security and rural development needs. These products will be eligible for more flexible treatment. The criteria and treatment of these products will be further specified during the negotiation phase and will recognize the fundamental importance of Special Products to developing countries.”

Paragraph 42 expressly recognises:

“A Special Safeguard Mechanism will be established for use by developing countries.”

Without going yet into the merits and shortcomings of these provisions, a stipulation on SP potentially guarantees the much needed flexibility for developing countries in the pursuit of its development objectives. The operationalization of SDT, for the first time, is being put to the test by developing countries and LDCs as a way to level the playing field of international trade. As for SSM, developing countries will potentially now have the mechanism to address the susceptibility of their local markets to the chronic problems of import surges.

livelihood security and rural development concerns of the developing countries are put at the centre of the discussions on agriculture at the WTO.

1.1 Why are some products special?

The demand for SP is neither an arbitrary nor sudden protectionist tendency of developing countries and LDCs. The demand is a direct result of the current agriculture agreement's disastrous impact on their small producers and domestic economies. Already since Seattle [3rd WTO Ministerial], many developing country negotiators have voiced their sentiments that their agricultural sectors, which are strategic to food and livelihood security as well as rural development, are being undermined. Thus these countries' development initiators are frustrated by the gross unfairness of the current system of international trading.

Given the backward and small-scale nature of the agriculture sector in the developing world, a number of agriculture products are "special" because they are the only principal source of livelihoods to the majority of the population. The protection of these products, made more vulnerable by the Agreement on Agriculture [AoA] and trade liberalization in general, are crucial for ensuring the economic survival not only of the vast majority of small agricultural producers but of the entire domestic economy.

However, reflecting on the diversity of the agricultural systems and policies across developing countries and LDCs, there is a need for maximum flexibility to be provided in the designation and treatment of SP.

In a proposal on SP indicators it submitted to the WTO Committee on Agriculture Special Session on 12 October 2005, the G33 said that

"the limited purpose of setting out the indicators on SPs is to contextualize the concepts of food security, livelihood security and rural development to the circumstances of each developing country Member... the selection of a product or its close substitute as SPs must be informed by the policy framework and objectives as defined by each developing country Member. Thus, the exercise on indicators being undertaken by G33 is not meant to (a) be prescriptive (b) be exhaustive, (c) aim to develop a common set of indicators applicable to all developing countries, nor (d) to redefine these concepts in the WTO."

The G33 has also said that the criteria under the July 2004 framework have been settled because they do not want other countries, particularly the US, to come out with indicators in relation to trade. The general criteria and set of indicators should guide each developing country in identifying their special products [self-declared] and not be negotiated at the multilateral level [WTO] which would be very difficult in the first place since each developing country has a different agricultural context. The sheer diversity of agricultural operations would make any multilateral negotiation on SP impossible. The G33 argues that SP must stand on its own merits and as long as it subscribes to the general criteria, it must be recognized. At the same time, SP must not be linked with other market access provisions.

In the eyes of the G33, another indicator cutting across the three criteria of food security, livelihood security and rural development is that any product receiving product-specific amber or blue box subsidies and/or export subsidies provided by other countries, should automatically be eligible for SPs.

Amber box subsidies refer to price support and production-linked support measures that should have been reduced or eliminated with the conclusion of the Uruguay Round in 1994. Blue box subsidies include direct payments to agricultural producers as long as such payments are part of programs aimed at limiting agricultural production.

Some trade experts and development NGOs have in fact been working on drafting the general indicators that should guide countries in designating SP since the provision came out of the 2004 July Framework. Some of the proposed general indicators are macro-based indicators that would show the percentage of the rural population that relies on a specific product for livelihood and survival; percentage share in total production, etc.. General indicators would also include products by subsistence producers and other vulnerable socio-economic groups, sector-based indicators and geographical indicators. Other crucial indicators are identifying products that boost economic activity, thereby contributing to development, and products that are important to poverty alleviation. It is crucial for countries to define these products based on their situations, development needs and current limitations.

In short, designating these products is not a task we start in a vacuum, we have all known for the longest time what these products are. We have an idea of the agricultural crops for economic and trade growth and those produce for social and cultural development. What must be done is to work out the indicators that will justify the designation of the product. At the same time, there is also a general approximation of the level of protection and flexibility required for each of these products.

On the other hand, civil society organizations are urging G33 member countries to ensure the active participation of all stakeholders that will further legitimize the process of identifying products and firming-up concrete mechanisms for SSM which must be based on the stakeholders' actual experiences of import surges and price fluctuation.

Moreover, trade and gender networks are pushing for a differentiated gender analysis that is necessary to assess quantitatively and qualitatively the contribution of female and male providers of food and livelihood security for their families who depend on the production of a specific crop. Protection of this crop would be essential to guarantee household food security.

As such, the integration of gender analyses should be understood as a crosscutting indicator as well, running through all the possible indicators to consider. It has been demonstrated that women have the lowest incomes at the global level and less access to economic and productive resources. They are the most marginalized group, particularly within vulnerable geographical regions or socio-economic groups. The impacts of such policies (negative and positive) are not neutral on the sectors they affect. It is undeniable that the consequences of trade liberalization on women will not only be detrimental to their development as a group, but also to their families and

communities because of their historical reproductive and multiplier role in society. [Hernandez, 2005].

Attached as Annex 1 to this paper is the detailed proposal of the G33 on SP indicators submitted 12 October 2005.

1.2 Deficiencies of existing safeguard mechanisms for developing countries

Article 5 of the current agriculture agreement provided Special Safeguards [SSG] to counter sudden import surges or price fluctuations. However, SSG was conceived as an incentive for the tariffication of agriculture products. Consequently only countries who recognized early on the need to transform quantitative restrictions into tariffs (ad valorem equivalents) earned the right to mark SSG in their tariff schedules, enabling them to use SSG privileges as flexible protection measure against imports surges on specific commodities. Given the complexities of the negotiations and lack of technical capacities, many developing countries failed to recognise the strategic value of the SSG during the Uruguay Round negotiations.

As a result, very few countries have reserved the right to use SSG on agricultural products, with a clear majority coming from the developed world. An UNCTAD study in 1995 revealed that close to 80% of the tariffed items of the OECD countries were eligible for SSG. The European Union has 539 agricultural products under SSG, the US has 189, Switzerland 961, Canada 150 and Iceland 462, just to name some of the developed countries that have extensively used SSG.

For some of the developing countries who were able to use the SSG, proving the causal link between an import surge and/or price fluctuation and the (potential) injury/damage to the specific sectors has been tedious. Considering the technicalities and other formal requirements, developing countries hardly have the financial and administrative resources to pursue a case at the WTO. There were instances, however, when a developing country actually won a case in the Dispute Settlement Body of the WTO, but implementing the decision proved harder than the case itself.

With the ceasing of the application of SSG to developed countries, the G33 has put forward a proposal for Special Safeguard Mechanisms [SSM] as an operationally effective SDT against import dumping and price depression. The G33 says that as a safeguard mechanism, SSM must be able to respond to the needs and the particular circumstances of individual developing countries and LDCs, taking into account their institutional capacities and resources and thus must be simple, effective and easy to implement.

The G33 is pushing for SSM on all agriculture products based on the vulnerable domestic agriculture and fragile local markets that have been left unprotected by trade liberalization. If the volume of imports dramatically increases, SSM guarantee countries the flexibility to raise tariffs or if prices fluctuate, the necessary mechanism for a price safeguard. Wary of the links being made between safeguards and subsidies, the G33 is saying that it is a question of the level of efficiency or market development of some developing countries. The bottom line is that SSM are needed as protective

measures to increase tariffs or restrict the volume of imports when the need arises or as it applies to the country's own peculiarities.

Specific to the LDCs, they are entitled to all SDT provisions that will come out of the negotiations, implying that they can use SSM even when they are exempt from further reduction commitments, a far cry from the Uruguay Round, when countries that did not tariffy lost their right to use SSG.

Like other NGOs engaging trade negotiators in discussions, the Rice Watch Action Network [R1] has already made several recommendations to the Philippine negotiators and member countries of the G33 for dealing with SSM. In the view of R1, an NGO network in the Philippines, SSM should cover all agricultural products of developing countries, employ volume and price triggers based on the average import data from the three preceding years and impose additional duty or a quantitative measure as a remedy measure. Recognizing the trade-distorting character of subsidies, R1 believes SSM should serve to neutralize its inequitable effect on trade by allowing importing countries of subsidized goods to impose additional duties to approximate the level of subsidies applied by the exporting country. "As such, the presence of subsidies alone, as confirmed by immediate country notifications to the WTO, should already trigger SSM remedies."

Attached as Annex 2 to this paper is the G33 proposal on the elements of SSM.

1.3. State of the current negotiations on SP and SSM and the agriculture negotiations

In a statement issued a few days before the October 2005 WTO General Council Meeting in Geneva, the G33 reiterated its position that for the SP and SSM provision to become effective in addressing food and livelihood security as well as rural development, the following points must be achieved:

- a) SP is a stand alone provision and not merely recognized as an additional flexibility or linked to any part of market access reduction formula;*
- [b] No tariff reduction commitments on all SP;*
- [c] No new TRQ commitment on all SP;*
- [d] Products designated as SP must have access to SSM;*
- [e] Indicators based on food security, livelihood security, and rural development needs, not to be negotiated but as a way of transparency, will be produced to assist developing countries to designate their own special products;*
- [f] SP shall be available to all agricultural products;*
- [g] SSM shall be automatically triggered;*
- [h] SSM shall be available to all agricultural products;*
- [i] SSM should be available to address situations of import surges or swings in international prices. Therefore price and volume-triggered safeguards shall be contemplated;*
- [j] Both additional duties and quantitative restrictions shall be envisaged as measures to provide relief from import surges and decline in prices;*
- [k] The mechanism shall respond to the institutional capabilities and resources of developing countries; hence it should be simple, effective and easy to implement.*

Recognizing the need to unify all developing countries and LDCs in the run-up to the 6th WTO Ministerial, the G33 has called for closer cooperation and internal

coordination among developing countries and LDCs with the common view of promoting their interests in the agricultural negotiations.

1.3.1 Other developing country groupings

Other developing country groupings like the G20, the Africa group, the African, Caribbean and Pacific countries (ACP) and LDCs are quite supportive of SP. On SSM, the G20 remains silent. For their part, the Africa group/ACP/LDCs are very supportive of SSM and have been insistent that SSM should respond to their particular circumstances. The G90 [reference to the Africa group, ACP and LDC countries that sometimes issue a common statement and proposition at the WTO but are not categorized as a bloc since there is no systematic coordination between them] does recognize the leading role of the G33 with regard to SP and SSM.

The G20 is very important as a bloc since it sits in all negotiations [both formal and informal] and has in fact assumed a more prominent role in the current negotiations. In Cancun, it played a pivotal role in trying to reach a “consensus” among the developing countries. Since Cancun, there has been a lot of pessimism if not outright dissatisfaction with the G20, now that both India and Brazil [as leaders of G20] are active participants in the Group of Five [together with the US, EU and Australia] and also of the new QUAD [with the US and the EU]. The Group of Five and the QUAD are exclusive and informal groups that have assumed for themselves the “burden” of moving forward the WTO negotiations. The progress of SP and SSM is to a large extent related to how far India and Brazil will move towards the market access agenda in tandem with the US and the EU, or if they so choose, to stand in solidarity with the efforts of developing countries and LDCs for effective SDT.

1.3.2 Responses from the major players

As expected, the US is totally opposed to SP and as much as possible wants to limit SP flexibilities. The bottom line for the US is market access for its exports and demanding substantial market access even for SP. At the same time, the US is linking any reduction of domestic support to its being able to access markets. Unhampered and indiscriminate dumping of agriculture produce, which is what SSM want to address, will continue and even accelerate under the new US proposal. The 10 October 2005 US proposal fails to even go as far as the 2004 July Framework in acknowledging the need for effective special and differential measures for developing countries. The US proposal simply rejects the basic premise for SP and SSM while it is pushing for an unlimited Green Box that includes decoupled payments, de minimis exemptions worth almost \$10 billion, a Blue Box worth almost \$5 billion and Amber Box spending up to \$7.5 billion. [Murphy, 2005]

The EU on the other hand links SP with their demand for sensitive products, insists on the negotiation of indicators and is opposed to SP being exempted from tariff reductions. As a supporter of sensitive products, they demand eligibility of any product as sensitive and insist on the combination of tariff reduction and TRQ expansion for sensitive products. In the very recent EU Communiqué to the WTO [Making Hong Kong a Success, 28 October 2005], no mentioning whatsoever was

made of SP and SSM while asking developing countries to make large concessions on the services and industrial goods negotiations.

The G10 [led by Switzerland and Norway], as the main demander for sensitive products, insists that all products are eligible for sensitive products and demands a combination of tariff reductions and quota expansion for sensitive products. Sensitive products also came out of the 2004 July Framework because developed countries led by the G10 requested it. The G10 however generally supports SSM and the continuation of the SSG but is silent on SP. While both developing and developed countries can designate sensitive products, this is mainly a concern of developed countries because they are the ones that cannot undertake substantial tariff reductions and so they ask for flexibility. But developing countries, though they must have a better treatment on sensitive products as a matter of principle of SDT, are not so much interested since sensitive products will have to provide market access through tariff reduction and quota expansion. That is why the G33 is insisting on SP being exempted from tariff reductions since the very essence of SDT is defeated by putting a price for your legitimate claim of flexibility.

G10 countries like Norway and Switzerland generally have small but highly protected agricultural sectors and are not as much trade distorting exporters as their big brothers.

2. Trade Policy Instruments as National Development Objectives and the Case for SP and SSM

The proposal for SP and SSM was not the first attempt of developing countries to counter the negative impact of trade liberalization in their domestic economies while at the same time putting forward their national development objectives at the negotiations using the principles of SDT. As early as the run-up to the 3rd WTO Ministerial in Seattle, developing countries have proposed the introduction of various “boxes” [i.e. food security box, development box, etc] to address the increasingly disastrous result of the agriculture agreement.

The most comprehensive to date was the proposal of a group of developing countries to introduce the “Development Box.” Similar to the present demands of the G33, propositions were made for the introduction of new rules on market access and internal support in order to address the concerns on food security, employment protection and development in rural areas. Part of the discussions was a proposal for the introduction of a Green Box category termed “Food security, poverty alleviation, rural development.” Another demand was the imposition of additional tariffs on imports of agricultural products which benefit from export subsidies and trade-distorting subsidies. [Wiggerthale, 2004]

The “Development Box” proposal also includes the right to invoke a special safeguard mechanism for all agricultural products in order to address market disruptions caused by sharp price drops and import surges.

Prior to Doha, there were also a number of discussions on an emerging proposal from some developing countries for a “positive list” approach wherein countries would list down agricultural products it deemed strategic for food security and rural development concerns and thus must be protected from the provisions of the AoA.

However, it was only after the 2004 July Framework agreement that provisions on SDT as proposed by developing countries were finally introduced.

For the G33, the AoA has contributed to the stifling of national development objectives since the agreement has affected their abilities to support their basic development goals such as food and livelihood security and rural development. The selection and designation of SP is therefore made with the keen understanding of a country’s national development objectives and the concomitant fundamental and strategic role of agriculture in the economy of that particular country.

Market access was one of the main reasons why countries opted to join the WTO. For most developing countries, especially the member countries of the G33, that presumed benefit has never materialized since trade distortions as well as other types of barriers have either prevented the exploitation of market access benefits or shut developing countries out of the competition altogether.

3. The Broad Stakeholders’ Take on SP and SSM

A number of social movements, peasant networks, and trade and development NGOs that have been campaigning to get agriculture out of the WTO are supportive of the G33 demand for SP and SSM. They believe SP and SSM can provide small farmers and others that have been hit hard by trade liberalization with a reprieve from the onslaught of trade liberalization. For these groups, SP and SSM are small steps in addressing the inequities of the present agriculture agreement and its damaging effects on small stakeholders and the domestic agricultures of the developing world. But they remain critical as well in pushing the G33 to adopt domestic and internal trade policy measures that will allow it to increase market protection for its local producers beyond the existing bound rate schedules, since the G33 proposal for SP providing for exemption from tariff reduction and TRQ expansion is not enough.

For other civil society organizations demanding meaningful reforms of the AoA, the demands for SP and SSM are crucial elements for any successful conclusion of the current agriculture negotiations. Groups like Oxfam and other national and regional networks are also using the space provided by the G33 to engage their respective governments further in the process of selecting products eligible for SP, in defining the treatment of these products and in firming up concrete safeguard mechanisms. For these groups, consistent engagements with governments are crucial in ensuring that trade policies contribute to the betterment of the conditions of small farmers [Statement of the Civil Society Conference on the G33, Bogor Indonesia, 6-7 October 2005].

On the other hand, various food sovereignty networks, peasant groups, trade activists and social movements have remained firm on their position that the AoA is an inherently flawed agreement that caters to the interest of the big developed countries, and as such, no amount of tokenistic provisions or concessions can change the power balance and the nature of the agriculture agreement. For them, 10 years WTO is enough not to maintain false illusions of a more “development” friendly outcome of the negotiations. They rather demand governments to unilaterally impose quantitative restrictions, higher tariffs and other import controls to protect small farmers. Specific to SP, the contention is that products designated as SP are still to be tariffed and thus still fall within the ambit of the rigged rules of the WTO.

Other food sovereignty networks like APNFS [Asia Pacific Network on Food Sovereignty], other national and international coalitions of peasants, small producers, and family farms like Via Campesina, as well as artisanal fishers networks opine that granting SP and SSM also does not end the juggling of the boxes of subsidy exemptions. More so, SSM may even end up as a legitimizing provision on dumping since countries now only have to turn to SSM to guarantee themselves against dumping. According to them, developing countries should not wait for import surges or price fluctuations before they move to protect local agriculture. What must be done immediately is to impose quantitative restrictions and other import control measures such as increasing tariffs to safeguard the interests of developing countries’ farming sectors.

Instead of demanding concessions in a highly lopsided agreement that favours the big and powerful, these groups would rather have governments assert their countries’ food sovereignty - i.e. the right of a country to define its own agriculture and food policies and programs which will protect and secure the livelihoods of its producers, ensure the country’s food self-sufficiency and enable it to achieve its development goals in domestic agriculture and national economy.

In the view of other trade advocacy groups and gender networks like IGTN [International Gender and Trade Network], the discussions and processes with regard to SP and SSM should take into account women’s contribution to global food security, because female farmers are commonly underestimated and ignored in development strategies and trade negotiations processes.

Women in general have experienced few concrete benefits and in several cases have even been adversely affected in their living and development conditions as results of the implementation of trade liberalization processes. If and when poverty reduction happens, it will not be reduced equally for men and women or for that matter improve the conditions of men and women evenly. Accordingly, the design and implementation of trade policies at national and multilateral levels are gender-blind in their orientation, but not gender-neutral in their effects [Hernandez, 2005].

4. Observations and Concluding Remarks

The introduction of the provisions on SP and SSM under the 2004 July Framework is a recognition not only of the unbalanced nature of the current agriculture agreement but more so an understanding that failure to rectify these inequalities under the ongoing negotiations would contribute to developing countries and LDCs' being unable to meet their development goals, thereby seriously questioning the future of agriculture trade and the relevance of the WTO as a forum for multilateral trade.

As this paper is being written, the G33 is expressing its great concern that SDT issues have not been given the attention it deserves. It has reiterated the great importance on the centrality of SDT in the text that will be presented at the Hong Kong Ministerial Meeting, warning that it would be difficult to agree on any text that does not give the same weight to SP and SSM issues as to others in the market access pillar. To the G33 for any meaningful reform to be viable, SDT for developing countries and LDCs must be the central element of the negotiations.

Having learned the hard lessons of leaving out details for later, developing country blocs are pushing for their concerns to be taken up and decisions to be based on the indicators they have proposed in designating SP and the elements that will warrant SSM.

More than SDT, the G33, G20 and other developing country blocs are likewise demanding fundamental reforms of the global trade in agriculture, albeit within the parameters set out by the 2004 July Framework and the over-all mandate of the Doha Ministerial Declaration. Within this parameter, they are demanding a clear timeframe of phasing out all forms of export subsidies; substantial reduction of the trade-distorting support – especially further restrictions of the expanded blue box [counter cyclical payments] program of the US - and substantial improvements in market access for products of particular interest to developing countries.

A range of other issues - from the outright rebuttal of the call by the US to renew the Peace Clause, to the demands for further capping of de minimis support; review and clarification of the green box criteria [i.e. eligibility criteria; timeframe for receiving support under specific programs; updating of bases of calculating support; need to limit the overall support; proposing new criteria that is more adequate to the conditions of agriculture and capacities in developing countries], proportionality in the overall outcome of tariff reduction formulas, preference erosions - are concerns that developing country blocs must speak with one voice.

The fact that developing country blocs are advancing the centrality of SDT in the negotiations, however limited or little its impact may be, is by itself a positive development. It is a welcome improvement not just for groups demanding reforms of the current agriculture agreement or networks engaging governments to ensure a better trade deal but also to the food sovereignty movement since the demand “to take agriculture out of the WTO” would ultimately be a political and unilateral action that has to be taken by governments, with or without the consent of the WTO.

Certainly, the demand of the G33 for SDT as well as the designation of SP and the introduction of SSM are not the most ideal propositions, nor its outcome the most satisfactory. But tremendous pressure and bullying tactics being exerted on developing countries and LDCs by the major players at the WTO is the political reality at the moment.

Beyond the WTO, governments at the national levels have to contend with structural adjustment programs of the IMF-WB and other imposed economic conditionalities [like the so-called economic partnership agreements, PRSPs, etc], the global *politico-military* situation of a single super power in the midst of a “*modern-day crusade of being with us or against us*” and the plethora of bilateral and regional trade agreements at the other negotiating table that seeks WTO plus commitments.

Over and above this stands the culpability of national governments whose policies and programs over the years have been a major factor in the deterioration and worsening of economic and social conditions for their respective countries. It must be said clearly as well that a number of G33 member countries should not hide under the cloak of the SP and SSM proposals from their responsibilities for having implemented domestic policies that made their countries dependent on food imports, destroyed the livelihoods of thousand of small producers, and impeded the development and progress of the rural sector in the name of trade liberalization. And so in most cases, it is quite difficult and tricky to engage governments and expect them to demand far-reaching trade policy proposals when they are as guilty as the WTO in undermining the food and agriculture sectors of their respective countries.

Given these political realities at the international and domestic front, the current demand for an effective operationalization of SDT through SP and SSM however is a welcome reprieve. Supporting the demands for SP and SSM should complement the demand for domestic policy reforms of our food and agriculture sectors.

For groups demanding reforms at the WTO, support of the G33 demands and actively engaging negotiators in discussions will either prove them right or wrong in the assumption that meaningful improvements of the agriculture agreement and a fairer global trade system under the WTO are possible at this point.

For peasant movements and networks demanding food sovereignty, supporting the G33 demand and other positive positions of the developing country groupings would neither negate nor water down the campaign to “take agriculture out of the WTO.” In fact, there is nothing to lose in supporting the demands for effective SDT at this point since a negotiation outcome that substantially undermines the current proposal on SP and emasculates the proposed elements for SSM will further underscore the validity of the food sovereignty movements’ position that not even a compensatory mechanism to correct the current imbalance of the agriculture agreement is possible. Thus the only way out of the situation is for governments to unilaterally get agriculture out of the WTO or the more radical proposition of dismantling the WTO altogether.

Constructively supporting positive proposals like the SDT provisions on SP and SSM should complement the strategic goals of asserting food sovereignty, economic

empowerment and the promotion of an alternative framework against the narrow *“trade at all cost, one size fits all”* agenda of the WTO.

The bottom line for us all must be how the results of these SDT proposals can concretely contribute to ensuring food security or, where possible, food self-sufficiency, as well as to protecting and improving the livelihoods of small producers and boosting the development of the agriculture sector of the developing world. If all these elements can be achieved, then the proposals for SP and SSM in their present form – both as a defensive trade policy instrument and as a national development objective, can at least contribute to balancing the current uneven nature of agricultural trade towards one that is more sustainable and fair. Viewed from another perspective, the proposals on SP and SSM can complement the advocacies of most civil society organizations and peasant movements that call for an international trading system that prioritizes local production for local markets and domestic needs before exports and the vagaries of the international market.

A number of expected issues and surprises related to SDT are bound to surface between now and the Hong Kong Ministerial. There is reason for pessimism given the recent proposals of the major players and their history of bullying and aggressive tactics during past Ministerial Meetings. Informal gatherings and meetings among the Group of Five [or FIPs –Five Interested Parties] are still taking place between now and Hong Kong. But as long as developing country blocs like the G33 remain firm and the various stakeholders continue the pressure on their respective negotiators and trade officials, positive things may yet be achieved in Hong Kong.

It is important is to keep open the process of debates and to continue the dialogues beyond Hong Kong as we collectively try to find the right answers to the following points:

- 1] the real merit of SDT in relation to the power structure of the WTO;
- 2] how far can the WTO allow the introduction of SDT measures, and vice versa how far can SDT actually prosper in an environment like the WTO;
- 3] the significance of the SP and SSM proposals in relation to what will ultimately be agreed upon (full modalities) in the other areas of market access and in the two other pillars - domestic support and export subsidies;
- 4] if and when SP and SSM become operational, what is the gauge of effectiveness?;
- 5] the WTO’s viability as an institution for multilateral trade rules in a post-Hong Kong Ministerial scenario; and finally
- 6] elements and principles of our alternative model and framework of a sustainable and fairer multilateral system of global trade in agriculture.

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2nd Contribution

Can Protective Trade Policy Instruments like Special Products (SP) and Special Safeguard Mechanisms (SSM) contribute to a more Sustainable and Fairer Multilateral System of Trade in Agriculture?

By Robert Stemmler

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Executive summary

The paper gives an overview of the current state of SP and SSM negotiations at the WTO. After a brief summary of the G33 proposals on SP and SSM, the paper explores diverging reference systems that are contributing to the conflicting views on SP and SSM. It is argued that negotiation on issue details like the design of quantitative and qualitative indicators to precise conditions for the availability of SP and SSM are important. Thus, without a common understanding of what SDT should aim at, a satisfying consensus on SP and SSM seems out of reach. In the paper, it is affirmed that appreciations from actors of the broader stakeholder contexts do bring fresh air into the WTO framework and might facilitate an agreement. Reflecting the actual stakeholder positions, the paper widens the scope and points out three ideal answers to the question whether or not SDT inspired defensive trade policy instruments like SP and SSM have the potential to contribute to a fairer world trade order.

It is finally argued that without a satisfying answer from offensive liberal agricultural trade proponents on how to deal with vulnerable population affected by market adjustment and why developing countries should not de facto practice the rights they have on the paper, SP and SSM are a legitimate claim. Nonetheless, a reliable justification for the scope of SP and SSM also remains a legitimate pre-requisite.

Given that these conditions are fulfilled, I believe that SP and SSM indeed have the potential to contribute to a fairer multilateral system, because developing countries which are lacking resources to use the “de jure” existing defensive trade policy instruments would “de facto” obtain the capacity to effectively practice what on paper is their right.

Introduction

The debate on Special Differential Treatment (SDT) in the General Agreement on Tariffs and Trade (GATT) context dates back to the first negotiations in the 1940^s. Since then, the basic idea that special rules should be applied to developing countries in order to enable them in the long run to comply with international trade rules and to compete with their industrialised counterparts has been debated. At the same time, legally binding concepts on what special treatment means have constantly been opted out of the Ministerial Meetings of the WTO and were left for case to case appreciation. As a result, more than 100 SDT sources can be counted (Fritz:2005), certainly of some juridical value but vaguely formulated and consequently predestined for interpretation battles between diplomats in the WTO special committees. More than 100 SDT sources in a perspective of strategic resources permits more than 100 times to push for concessions in other negotiation issues. Hence, SDT concessions of industrialised countries regularly are conditioned to concessions of developing countries.

The discussion on universally conceded SDT concepts has been further complicated by an increasing heterogeneity of development levels and export as well as sector specific protection interests of the developing world. The term developing country today includes real competitors to the industrialised countries, the newly industrialised countries like China, Brazil and the Asian Tigers, but also a variety of countries without sufficient technological sophistication to equally compete and the Least Developed Countries (LDC). Only unconditioned treatment of the latter is scarcely subject of disputes because LDC's are loosing successively competitive advantages and are being further disconnected from world markets.

Preferences of more and more developing countries tend to follow the path of legality claims. Corresponding to Page (2005,15f.), the conclusion of legally binding SDT norms in sector specific agreements turns into a development objective per se in the sense that many developing countries hope to attain more policy space due to formalised SDT rules in trade agreements.

Given this trend, sector specific policies and trade policy instruments become, in the context of the traditional SDT controversy, increasingly significant as negotiation tactics and policy goals. The legality trend exceptionally affects negotiations on the Agreement on Agriculture (AoA) because of the key role agriculture plays for most of the developing countries' national development policies.

As such, much of the present conflict of agricultural trade policy negotiations has been projected into the commission on agriculture's controversy on Special Products (SP) and Special Safeguard Mechanism (SSM). SP would allow developing countries to exempt strategic crops from further tariff cuts. With SSM, developing countries should get a flexible safeguard instrument to easily counter price and import fluctuation of volatile commodity markets. Due to the current conflict, the paper inquires *whether and in how far trade policy instruments like SP and SSM might contribute to a fairer multilateral order.*

In the present paper, deficiencies of existing defensive trade policy instruments for developing countries are discussed and the state of SP and SSM negotiations is presented (1st chapter). It is followed by a political analysis of the underlying conflict structure of the SP/SSM controversy (2nd chapter). Its aim is to contribute to a better understanding of the current deadlock in the SP/SSM debate in spite of the basic understanding, that in order to counter menacing effects of volatile commodity markets, a special and differential set of instruments have to be accorded to developing countries. The paper also looks beyond the WTO sphere of the SP/SSM debate (3rd chapter). Constructive and complementary contributions of the broader stakeholder context are taken into account. The paper closes the debate with a concluding overview on whether and in how far SP and SSM might contribute to a fairer and more sustainable multilateral trade system.

1. Focusing on the SP and SSM debate

Agriculture remains a very sensitive sector for trade negotiations, partly because of the systemic volume and price volatility of commodity markets as a result of changing weather conditions, natural disasters, etc. Another explaining factor is that in many developing countries, agriculture represents a key role in national development policies as many vulnerable groups (small and subsistence farmers, women and fragile communities) depend on the agricultural sector. SP and SSM are conceptualised as defensive trade policy instruments introduced in the negotiations on agriculture by developing countries for the exclusive benefit of developing countries. In the 2004 July framework, SP and SSM were given an official mandate for negotiations.

Paragraph 41 of the framework disposes:

‘Developing countries will have the flexibility to designate an appropriate number of products as Special Products, based on criteria of food security, livelihood security and rural development needs.’

Paragraph 42 expressly recognises:

‘A Special Safeguard Mechanism will be established for use by developing countries.’

1.1 Deficiencies of existing safeguard mechanisms for developing countries

The WTO framework disposes of several safeguard provisions, in Art XIX GATT, the Agreement on Safeguards and Countervailing Duties of the Uruguay Round and the trade on agriculture specific Special Safeguard (SSG).

Facing either the threat of sudden, strong import surges which cause or threaten to cause serious injury to an industry or the depression of commodity prices inside its territory, a state is enabled by WTO law to take safeguard measures in order to protect its national industry. Safeguard measures can be characterised as defensive, short term trade policy instruments. The formalisation of safeguard measures has attained a high level of sophistication in WTO law and its use is combined with a negative incentive because affected countries have equivalently to be compensated for the incurred

financial loss. However, the Agreement on Safeguards and the precisions agreed in the Uruguay Round require a very detailed empirical assessment of the causal link between the import surge and/or price fluctuation and the (potential) damage caused to the national industry as well as a quantification of the affected trade flows. For many developing countries, these formal requirements turn it into disadvantaging hurdles for law suits for the simple fact that they lack financial and administrative resources to elaborate the required documents.¹

Because of the extraordinary sensitivity of trade in agriculture, the Uruguay Round has elaborated an additional safeguard measure exclusively for agriculture: the Special Safeguard (SSG), incorporated in article 5 of the AoA. The SSG is somewhat special in a paradoxical way. It is the most flexible safeguard instrument because the SSG is automatically triggered – without scientific proof. Contrary to the belief that it was conceived as an SDT measure, this was not the case. The SSG was developed as incentive to engage in tariffication in the Uruguay Round. Consequently only those countries who decided to transform quantitative restrictions into tariffs (ad valorem equivalents) earned the right to mark SSG in their tariff schedules enabling them to use SSG privileges as flexible protection measure against import surges. Many developing countries failed to recognise the strategic value of the SSG and instead fulfilled its commitment of liberalization through tariff-quota reductions.

Empirical evidence shows a double phenomenon. Only a minority of the states has secured the right to employ SSG. But of those who did, a clear majority comes from the developed world and transition economies. According to FAO data of SSG use (Hathaway: n.y.), with the exception of Swaziland, Namibia, El Salvador and Costa Rica, only the transition economies and the developed countries operated tariffication of agricultural tariff lines exceeding 10% of total tariff lines. For example, 31% of EU, 60% of Hungarian, 66% of Polish and 59% of Swiss and 39% of South African tariff lines are covered by SSG, raising their reactivity against price and volume fluctuations in contrast to most developing countries which lack these flexible safeguard measures. Thus, despite the productive approach of transforming intransparent quantitative restrictions into more transparent tariffs, the more potential countries have once more kept asymmetrical control over agricultural trade flows and gained negotiation mass for later negotiations on SSG abolishment.²

The G33 proposal on SSM can be seen as a trial to bring into balance their strategic resources with industrialised countries. Corresponding to G33 SSM would effectively protect their internal markets against price and volume fluctuations.

¹ This point often remains valid despite of increasing capacities on the side of developing countries and many technical assistance, advisory support and capacity building projects for the benefit of those developing countries that still lack the resources.

² Tariffication means the transformation of non tariff barriers like quotas into tariffs. This approach increases transparency because the tariff level reflects the real degree of protection of a tariff line.

1.2 Why should some products obtain a special treatment?

The idea of SP is rooted in the whole logic for SDT. SP proponents state that some commodities are particularly essential for the development context and process of developing countries because a huge percentage of small farmers in many countries rely on some specific crops as their source of livelihoods. Hence, these products should be exempted from further tariff reduction commitments. Farmers from developing countries often are not competitive on a global level because they do not have a competitive cost structure compared to foreign producers or because foreign producers are subsidised. Thus, the adjustment costs of trade liberalisation for affected population and the state are extremely high. There are but a few sources of substitute income available for the from negative adjustment effects affected workforce and state budgets are insufficient to compensate them. The flexibility to designate special products is thus claimed by the G33.³ They point out that key products for developing countries should be exempt from further commitments as trade liberalization policies would destroy the income basis of a significant percentage of the vulnerable population. The protection of these vulnerable groups must prevail even if this policy measure fails to realise global efficiency gains, as adversaries of protectionist SDT measures would object (Kerr: 2005). SP should be attributed in order to assure food security, livelihood security and rural development objectives as well as to counter unfair trade measures like export subsidies.

1.3. State of the current negotiations on SP and SSM

There are three main points on the SP and SSM debate. Starting from the key claim that current imbalances in the defensive trade policy instruments for the developing countries are insufficient to protect vulnerable groups against import surges and price fluctuations, the available set of defensive trade policy instruments of developing countries should be enlarged with SP and SSM. Corresponding to G33 these should secondly entail the most possible flexibility in order to meet the diverging, complex and specific development context of each developing country. They should designate products which are exempted from tariff reduction and of any commitment on tariff-quota reduction under the Doha Round negotiation. Thirdly, a freely quantifiable set of tariff lines should be eligible for an automatic volume and price trigger to respond to sudden price and volume fluctuations. G33 justifies the need for both SP and SSM with the existence of asymmetric defense opportunities of developing countries compared to industrialised countries.

The G33 recently concretized the set of indicators for SP as a middle or long term trade policy instrument on agricultural goods (cf. Hormeku:2005).

Four general indicators are mentioned to measure **situations in which SP should be a legitimate buffer against market volatility**: *food security, livelihood security, rural development and a cross-cutting indicator* designed for products that receive market distorting support by other countries.

³ SP and SSM proposals of G33 and objections of other groups are stated later. In addition to that, Jayson Cainglet's more exhaustive sections on G33 proposals are recommendable.

The first three indicators aim at supporting development goals. A special and differential treatment is seen as irreplaceable way to realise development policies and to protect vulnerable groups against external shocks caused by trade effects. The fourth, namely the cross-cutting issue is regarded as a legitimate answer on unfair trade policies of industrialised countries for products which are still highly subsidised.

Main engagement to substantially limit the scope of SP is undertaken by the US, the EU, some export-oriented developing countries who are part of the G20 and the semi-inactive Cairns group:

Export-oriented developing countries stress the argument that exemption of liberalisation could dampen South-South trade. On the one hand, raising South-South trade at this point remains a wishful trade objective that will make the developing world more independent from the political influence of industrialised countries. On the other hand, one also has to be aware of the fact that if the SP objective is to be seriously considered, livelihood security, food security and fragile rural development might also be undermined by South-South trade if huge quantities of agricultural goods are for example coming from a big agro exporting developing country like Brazil.

Some export-oriented developing countries argue that SP should be limited to non-commercial products. Another claim also intends to significantly reduce the scope of SP. If the aim of SP was to ensure livelihood security, food security and rural development, SP should be limited on products grown by subsistence farmers and have a limited scope to a fixed percentage of tariff lines. Additionally, compensation of income losses should be required, as G20 puts it.

SSM is a short term trade policy instrument immediately usable for short term trade inflow corrections. In the view of G33, flexible use of SSM should not be conditioned to complicated and costly administrative requirements that developing countries often lack. Especially in cases of an increasing influx of subsidised goods originating from industrialised countries, this perception of unfair trade measure makes more valid the claim for SSM in favour of dispositions able to effectively protect the affected groups. However, SSM should be flexibly ready to use without complicated proof mechanisms in all situations where livelihood security, food security and rural development needs are at stake.

In response to the current SSM proposal, there also is a lot of resistance against the unlimited scope of SSM - to all tariff lines. An example for a limited scope of a Special Safeguard Measure is Argentina's SDCM proposal on retaliatory tariffs on subsidised imports from industrialised countries. A main problem of the unlimited scope of SSM is in its negotiation mandate. It is argued that due to a restricted mandate under the market access pillar, there was no agreed basis on how to discuss SSM in relation to subsidies (Stevens:2004,19). An SSM proponent would not share this view but it expresses well the appreciation of the US, EU, and other export-oriented developing countries which propose a limited SSM scope.

A hot issue relevant for both SP and SSM is the question of cumulative use of these defensive trade policy instruments. G33 is saying that SP and SSM are two different things. The US on the contrary affirms that this would be an unacceptable issue of duplication. In the eyes of EU, the whole debate was partly mistaken because a high extent of SP and SSM use will be redundant if the Uruguay formula of tariff reduction was applied⁴.

Though, the EU like the US are trying to limit the mandate on SP and SSM through the discussion of the negotiation procedures.

Summary chapter 1

All parties recognise two points. First of all, SP and SSM are a legitimate issue of the Doha Round negotiation on agriculture. Second, the current defensive trade policy instruments in effect for developing countries are not sufficient to ensure livelihood security, food security and rural development. However, the positions diverge on the circumstances these can be used under. There is also no common position on the urgency of the problem nor agree on the scope of tariff lines which should be subject to SP and SSM. Furthermore the combined use of SP and SSM is refuted by many countries.

In the next chapter I try to explore the current deadlock on SP and SSM in a more detailed way.

2. Contextualising SP and SSM within the current negotiations on trade in agriculture

The deadlock in the actual negotiation on SP and SSM can better be understood if one takes into consideration the interrelated issues of the agricultural trade negotiations (2.1) and the underlying reference systems which are additionally complicating the negotiations (2.2).

2.1 Exploring the different issues

In the current negotiations, SP and SSM are two proposed SDT measures whose progress is based on the discussions on the key areas of the negotiations. In the negotiations process, the country representatives make assumptions on what result they expect and try to introduce as much beneficial propositions as they can. The resolution of at least the following five key concerns in the agricultural negotiations remain crucial in the progress of SP and SSM:

- (i) Tariff reduction formula. The tariff formula is the most crucial issue in the current agricultural trade talks. Basic divergence is the treatment of tariff peaks. Should deeper cuts on higher tariff lines be undertaken (Swiss

⁴ The Uruguay formula allows a differentiated level of tariff cuts for different tariff lines. Consequently it is possible to keep the protection of some sensitive tariff lines on a high level. This formula is heavily contested in the Doha Round by the US, Cairns and most developing countries because it permits the EU and Japan to keep prohibitive tariffs on especially sensitive products like sugar in Europe and rice in Japan.

formula) or should be concluded on an average level of cuts giving the countries the chance to keep prohibitive tariffs on most sensitive products (Uruguay formula)?⁵ The procedure and level of agreed bound tariff cuts will have a direct impact on the protective means of all countries against price and market volatility.⁶

- (ii) Export subsidy reduction: There is a basic understanding on the need to abolish export subsidies which allow agricultural exporters, especially the EU, to dump its surplus products into developing countries' market. This practise is destroying small local farmers' sources of income because the subsidised goods are sold under production costs. Consequently export subsidies impede development. The protection of small farmers against this unfair practice is one of the strongest arguments for SP and SSM. It holds stronger but also might be weakened depending on the intensity of subsidy cuts agreed in the Doha Round.
- (iii) Domestic subsidies to farmers distort international markets less than export subsidies. Nonetheless, they also raise the competitive position of subsidised farmers. As long as blue and green box subsidies in industrialised countries remain high, the competitive position of agricultural goods of developing countries is artificially weakened. In consequence, the higher domestic subsidies remain the argument for SP and SSM becomes more convincing.
- (iv) A general appreciation is on the consequence of distortions. Either it is affirmed that there already are too many efficiency diminishing distortions in the world commodity markets so that additional protection was counterproductive. Or, as the opposite view argues, additional effective protection against trade distorting measures should be established in favour of developing countries to raise their effective defensive mechanisms against negative influences of the existing highly distorted markets.⁷
- (v) Lastly, a big deal on the validity of SP and SSM arguments is due to a problem of reliability. The FAO for example has developed a pragmatic view on this issue. FAO renounces to some theoretically convincing indicators because sufficient data are often missing. The dilemma is also present in the recent indicator catalogue proposal of G33 for SP, where non-empirical factors have to be accepted as indicators. This flexibility claim in the G33 proposal somehow reflects the awareness that data are often not available.

Consequently, insufficient empirical evidence complicates empirical reliability of pro SP and SSM arguments in many developing countries.

In addition to that, the impact of underlying reference systems further complicates the discussion on SP and SSM.

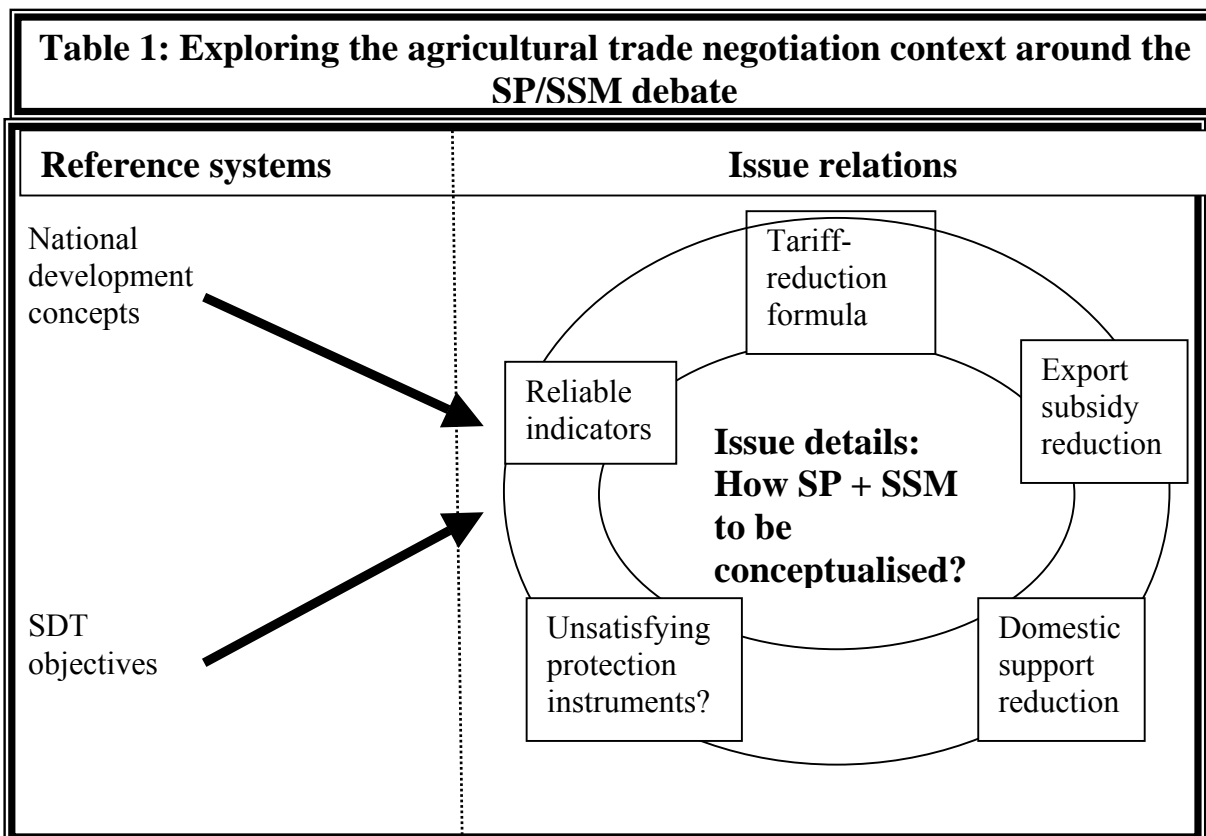
⁵ Swiss formula and Uruguay formula are ideal types to comprehensively show the different concepts. Obviously, a consensus would have to incorporate a mixed formula of the two ideal approaches.

⁶ This is due to the fact that WTO negotiations are on bound tariffs (the tariff marked in the tariff schedules). Often the applied tariff is on inferior level. In many cases countries raise the applied tariffs on a higher level against price and volume fluctuations. This is a legal defensive trade policy instrument which is thus getting less effective if bound tariffs are deeply cut.

⁷ World Bank and IMF would argument in the former way, G33 would prefer the other way.

2.2 Exploring the underlying incompatibilities of reference systems

The outcome of the negotiation is also decisively influenced by differing reference systems. Reference system means a priority structure composed of a set of core norms and interests of a country that is (almost) non-negotiable.



A national development concept consists of a set of development policies a state has designed and implemented to achieve desired development goals. If trade rules are in conflict with development goals and/or impeding development policies, the current state of the Agreement on Agriculture is being put into question. I will furnish an example: Given that for Indonesia and the Philippines an integral part of their *national development concept* is composed of rural development goals of attaining self-sufficient production of some strategic commodities, they will not readily agree to give up the governance means of these commodities.

The *SDT objective* is closely linked to the development concept but in contrast to the latter, SDT is a multilateral reference system. Problems occur if a common reference system is to be formulated for both developing and industrialised countries. For industrialised countries, they have a clear idea in how far concessions are to be given and as to the nature and scope of acceptable SDT commitments. So, maximum flexibility does not fit in the reference system of adversaries of SP and SSM. A common SDT formulation is not found because developing and industrialised countries have different reference systems of how far and to which group of developing countries should special treatment be accorded.

In order to clarify the point, let us have a closer look at a previous Committee on Agriculture's Special Session proposal on SP⁸. The two conditions being proposed are:

- A limited scope to crops grown by subsistence farmers and
- Subsistence farmers are those living in absolute poverty (less than 1 \$/day)

This definition reflects a very limited view of SDTs. It is an SDT that very much resembles charity and remains far behind G33's idea of a more independent food production program. At the same time an SDT proposal limited on charity is opting out the more conflict-intensive negotiation about more significant wealth distribution resulting of a privileged treatment of more competitive developing countries and is neglecting, that in many developing countries (that are not LDC's), there are farmers earning less than 1\$/day. However, a solely charity-focused reference system is unacceptable for a developing country wishing to be self-sufficient in their basic nutrient needs.

The two conflicting reference systems invite for a more general inquiry. Given that mutual concessions are the overall objective of trade negotiations, the challenge is to find an agreement on SP and SSM which necessarily exceeds the charity component but nonetheless prominently takes into account arguments against a too wide SP and SSM scope. A clear definition of the scope of SP and SSM is so crucial because a vague decision on the scope may lead to protectionism and not for purposes other than food security, livelihood security and rural development. Industrialised and export-oriented developing countries have the right to link their concessions to a guarantee for a limited scope of SP and SSM. In contrast, it also seems to me a very serious argument of developing countries that trade policy commitments should not impede development goals. Furthermore, it is incontestably legitimate for a public policy that effectively aims at the protection of vulnerable groups against trade induced shocks. But without legally binding concessions from both developing and industrialised countries on the matter, there would be no agreement on a concession-based WTO. Confronted with the complex deadlock situation and with conflicting claims from proponents and adversaries of SP and SSM, I argue that a look at the stakeholders outside the WTO might contribute to solve the deadlock.

Summary Chapter 2

The deadlock in current negotiations on SP and SSM is better understood if one takes into account the interrelation of issues and diverging reference systems. It is argued that without a commonly acceptable reference system on what SDT is and what defensive trade policy instruments are for; it will be hard to find a compromise. For this reason, the 3rd part of the paper inquires whether a broader stakeholder context might bring fresh air in the SP and SSM discussion.

⁸ cf. Bridges Weekly, Vol. 9, No 25, 13th of Juli 2005.

3. Could a broad stakeholder context facilitate an agreement on SP and SSM?

Transcending the narrow debates inside the WTO, a more generalised debate on the potential contributions of SP and SSM as SDT related policy instruments might facilitate consensus.

3.1 Concepts of the broader stakeholder context – Mapping the field

In the broader stakeholder context, one is confronted with differing assessments concerning the significance of defensive trade policy instruments as a means to rebalance agricultural trade.

In the following assessment, I will concentrate on positions linked to the role of SP and SSM for livelihood security, food security (and the more emancipating concept of food sovereignty) and rural development. These were the indicators proposed by the G33 for the designation of SP and implementation of SSM.

First of all, a mapping of the field gives an initial approximation of the policy orientations of the actors. Table 2 integrates a representative⁹ set of actors'¹⁰ positions in a two dimensional policy space. The actors are grouped corresponding to their policy orientation (x-dimension) and to their position for further market access (y-dimension). To mirror the present purpose of the paper on SP and SSM, the y-dimension shows the scope of protection an actor advocates. This issue specific positioning is linked to the (ideological) policy orientation in the x-dimension.

⁹ It is intended to present an exemplary set of actor positions. The mapping neither has any holistic pretension, nor is it intended to show the whole variety of positions that stakeholders articulate.

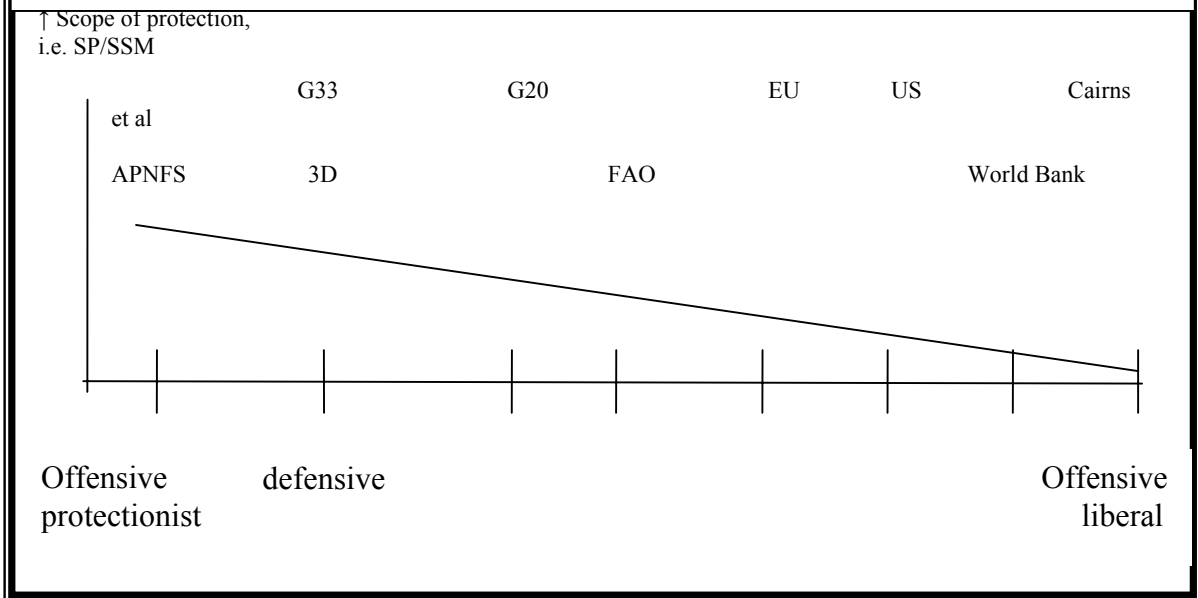
¹⁰ **APNFS**, the Asia Pacific Network on Food Sovereignty, is an NGO very active in policy advocacy against negative effects caused by liberalisation of trade in agriculture.

3D is an NGO with headquarter in Geneva. 3D is describing its field of competencies as follows "Trade - Human Rights - Equitable Economy promotes collaboration amongst trade, development and human rights professionals, to ensure that trade rules are developed and applied in ways that promote an equitable economy." URL:www.3Dthree.org.

G20 is a group of developing WTO member countries with an increasing level of competitiveness on a growing number of economic sectors. They are particularly interested in access to developed countries markets demanding to quicker abolish tariff and non-tariff barriers.

The **Cairns** are a group of agricultural export-oriented countries standing for deep cuts in tariff and non-tariff barriers.

Table 2: Mapping of stakeholder positions on agricultural trade



On the right side of the continuum and reclaiming the least scope of SP and SSM are the Cairns group and agriculture export-oriented developing countries interested in increasing the exports of their highly competitive agricultural goods.

The World Bank has a welfare economics (utilitarian) perspective very close to the Cairns position to liberalisation of the agriculture sector and thus against additional flexible defensive trade policy instruments. Cairns, World Bank and to a lesser extend the US and the EU argument from a dynamic, long term perspective. This means that mutual market access is augmenting competition and is leading to increasing efficiency of production (= increasing productivity). Increasing productivity therefore can contribute to guaranteeing long term food security. Hence this is a productivist view on rural development and food security. Concerning the latter World Bank and also the FAO have very small definitions¹¹: The narrow definition of food security, without looking at the basic structures, reflects a very traditional view on development. But the most vulnerable point of the ideological position of these actors is livelihood security. If most developing countries lack the resources to counter the negative effects of liberalisation, how can they compensate the affected groups and ensure their livelihood security? For the G33 and NGOs that are opposed to trade liberalization of the agriculture sector, they principally stress the need to protect vulnerable groups and highlight the need for SDT for reasons of livelihood security.

¹¹ “**Food security** exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life”, cf. <http://www.fao.org/spfs/>

Another argument for the need of SDT is the very need of developing countries to ensure livelihood security given their lack of appropriate resources. Proponents of an offensive liberal approach do not explain in a satisfying way, how to realise not only in the long term but also in the short term the adequate livelihood security given that there are few options for developing countries to protect their vulnerable sectors. 3D's position well exemplifies this point. Their "people-centred Human Rights Framework" starts from the image of an individual who autonomously decides on his living conditions. In contrast to the utilitarian concept of welfare economics that principally is interested in increasing the overall welfare (global gains and losses), the people-centred Human Rights Framework is interested in the impact of policies on the weakest. Proposed policies must be measured against their contribution to improve living conditions of the poorest and the most vulnerable (Smaller: 2005).

On non state actors' side, moderate NGOs like 3D support the SP and SSM initiative of G33 from a normative framework deduced from a human rights perspective. To additionally illustrate this point, 3D addresses each state to comply with the "obligation to fulfill". The obligation to fulfill means "that the State should identify vulnerable groups and implement policies to ensure their access to adequate food, by facilitating their ability to feed themselves (R.S.)" (Smaller:2005, 4).

NGOs like APNFS have a more emancipating view on agriculture. It is best illustrated by the G33 indicator of food security. In order to clearly distinguish from the food security perspective, APNFS and partners have used the concept of food sovereignty. Food sovereignty is not contradicting food security but simply exceeds its limited definition.

There is an intense scepticism against the world market mechanism since it is feared that market forces would determine the use of agricultural resources without the chance for the local level to influence distributive outcomes. Additionally it is feared and contested that politically decided goals on national, regional and/or local level might be impeded by the nature of the market. On the World Conservation Congress', 17-15 of November 2004 in Bangkok, a resolution states that food sovereignty "is not opposed to trade and advocates for a system of international agricultural trade which prioritises local production for local markets before exports".¹²

For these NGOs, SP and SSM may be considered as appropriate trade policy instruments. Hence, they would not be seen as sufficient answers against the menace of uncontrollable price and volume fluctuations that put at risk small, vulnerable farmers and fragile regional developing structures

To sum up, the use of defensive trade policy instruments like SP and SSM can be either supported, like G33 and 3D do, or be judged as insufficient like the position of APNFS, or be rejected and judged as counterproductive on the long run, as done by the US, EU, export-oriented developing countries and the World Bank among others.

On the basis of the present analysis, what can we now learn about the relation of SDT and defensive trade policy instruments?

¹² In resolution CGR3.RES067-REV1 participant of the World Conservation Congress claim for active lobbying and policy advocacy towards governments and international organisations.

3.2 Systemising policy recommendations on SP and SSM

A pre-requisite for advancing the process on SP and SSM is the acceptance of SDT as a necessary principle - from which more concrete recommendations can be derived.

Concrete recommendations on the scope of SP and SSM as SDT will vary. The appropriate scope will be wider or smaller depending on ones assessment of (i) the degree of embeddedness into the logic of the WTO and (ii) on the degree of confidence in the benefits of trade in agriculture.

Agricultural trade proponents who recognise the current imbalances in the design of defensive trade policy instruments to the detriment of developing countries and who keep underlining the importance of increased South-South trade are proposing mechanisms like Charlton's asymmetric opt out provision – short AOP. (Charlton:2005). Corresponding to AOP, developing countries could opt out preferences conceded to richer or larger countries in case of commodity market turbulences. Hence, suspensions of concessions to smaller and less technologically sophisticated countries should be forbidden with the goal not to diminish South-South trade opportunities. The AOP is completely anchored into the WTO framework and conceptualised as derogation from MNF (Most Favoured Nation) clause.

Other trade analysts like Ruffer and Vergano would push the need for reform a bit further. Ruffer (2003) tries to differentiate SP eligibility principally in function of several quantitative criteria like: Products eligible to SP should not represent more than 5 % of world market share; trying to determinate the impacts of a protective measure could have on world commodity markets.

Also believing in the benefits of increasing trade, Ruffer premises that SP should only be applied in combination with tariff reduction commitments

Concerning SSM (Ruffer/Vergano:2002), developing countries can justify the need for it if: (i) insufficient protection measures are available to affected groups, (ii) affected population is composed of small vulnerable farmers and (iii) under the condition that commodity markets really are subject to turbulence. These criteria fulfilled, a SSM could contain in Ruffer's and Vergano's view following key characteristics (among others):

- No requirement of a proof of injury
- Short time limit for application
- No obligation of compensation

A deep reform-oriented contribution is indeed what the G33 proposes. Clear deficiencies are affirmed and heavily criticised. Nonetheless, an optimistic picture on a more equitable world trade system is premised if the set of quantitative and qualitative indicators recently proposed for SP and a flexible approach on both SP and SSM is agreed upon.

In contrast to these WTO-framed recommendations, emancipation-oriented NGO are affirming an alternative path which argues for the often neglected livelihood perspective. Indicators should for example be primarily of qualitative nature and

gender sensitive (Hernandez:2005) and environment protection rules (Wiggerthale:2004) should be taken into account. Qualitative indicators adapted to specific fragile development contexts should prevail against abstract and generalized quantitative indicators. More general, national (rural) development policy objectives should prevail against trade policy goals. SDT has to fulfil the promise of a development sensitive flexible framework enhancing developing countries to attain their national development goals. For the development to be sustainable, exemption provisions for gender sensitive and environmental protection policies should be put on the same rank as socio-economic development policies.

Concluding overview: Can SDT inspired trade policy instruments contribute to a fairer world trade order?

The paper gave a critical overview on the debate and exposed diverging reference systems on SP and SSM. The technical debate is important because reliable arguments advanced by developing countries that show a lack of flexibility regarding sudden price and volume fluctuation reinforced SP and SSP claims. Thus the interrelations of issues and the diverging reference systems are impeding a common understanding of what SDT should achieve.

The raised question explores the world trade system's justice. I had presented some concepts with different assumptions on what is just and which policies were appropriate in the respective reference system. Is justness reached through the equality of treatment (offensive, liberal view) or should rules be flexibly adjusted in case of market excesses (defensive view)? Or, should trade on agriculture absolutely be subjected to development goals and only be promoted if it is not detrimental to local and regional policy, consumer and producer preferences, gender and environmental protection goals? Or briefly said, if trade does not conflict with national policy goals (offensive, protectionist).

If the SP and SSM proposal of G33 would be recognized and agreed upon, would this contribute to a fairer international trade system? From the discussion, three main lines of response can be distinguished:

- **From a liberal offensive perspective:**
No, because in a dynamic, which means long term perspective, SP and SSM are counter-productive. SP and SSM over-appreciate short run adjustment risks. SP and SSM proponents do not take into account long term efficiency and overall welfare gains induced by increased competition on an international scale (cf. Kerr:2005). The strategic benefits of South-South trade are neglected as intensified trade relations between developing countries diminishing their dependence from market access to industrialised countries.
- **From a defensive perspective:**
Yes, SDT inspired trade policy instruments can effectively protect vulnerable groups against import surges and price fluctuations. SP and SSM might equalise protection instruments for developing countries compared to their

industrialised counterparts and thus establish and guarantee fairer trade conditions.

- **From a emancipation-oriented offensively protectionist perspective:**
SP and SSM alone can not be considered as a remedy. Nonetheless, it is an important step towards a less restrictive framework. However, in an emancipation-oriented perspective and based on a case to case appraisal of the key indicators of livelihood security, food security/sovereignty and rural development, the WTO framework remains a constraint on sustainable development policy goals.

Emancipation-oriented actors are introducing a very important element in the debate. It consists of the inequitable lack of sustainability in the current agreement on agriculture. It must be accepted that sustainable policies have to be aware of gender and environmental factors. Gender-blind trade policies are inequitable as they ignore that women are more affected by adjustment effects of agricultural trade liberalisation. The risk of community erosion resulting from powerful market adjustment is creating a major challenge to polity. Are SP and SSM appropriate means to protect vulnerable groups in their specific development contexts? As long as there is no convincing answer from offensive liberal proponents on this crucial question, defensive, re-regulative trade policy instruments seem to me the only appropriate claim a political representative can make to protect vulnerable groups he is responsible for.

In this debate, concepts of both SP and SSM gain value the more developing countries empirically show that their existing set of defensive trade policy instruments is insufficient because tariff reduction and other trade-related commitments had hampered their sustainable development policy objectives. Nonetheless, for SP and SSM to be acceptable for all sides, I consider as indispensable that these protective trade policy instruments are restricted in scope - namely conditioned to reliable policy measures to protect vulnerable population and secure sustainable development. Even if this indeed is extremely complicated and time intensive, it will be from a pragmatic perspective necessary in order to convince other parties to agree on SP and SSM. Given that these conditions are fulfilled I believe that SP and SSM indeed have the potential to contribute to a fairer multilateral system because developing countries which are lacking resources to use the “de jure” existing defensive trade policy instruments would “de facto” obtain the capacity to practice, what on paper, is their right.

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