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**Committee on Agriculture
Special Session**

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SPECIAL SAFEGUARD PROVISIONS FOR DEVELOPING COUNTRY MEMBERS

SUBMISSION BY THE G-33¹

Draft Ministerial Decision of 18 December 2015, Nairobi, Kenya

The following communication submitted by the G-33, dated 8 December 2015, is being circulated for consideration by Members.

¹ Without prejudice to the positions of Peru, Pakistan and Guatemala. A G-33 member or the Group as a whole reserves its rights to revisit its position on this proposal at anytime in the negotiation. This proposal co-exists with the G-33 proposal in the document JOB/AG/49 of 18 November 2015.

SPECIAL SAFEGUARD PROVISIONS FOR DEVELOPING COUNTRY MEMBERS

Ministerial Decision of 18 December 2015, Nairobi, Kenya

The Ministerial Conference,

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

Desiring to amend the Agreement on Agriculture to provide for special and differential treatment provisions under the special safeguard provisions under Article 5;

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

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

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

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

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

Decides as follows:

1. The Agreement on Agriculture shall be amended by adding new paragraphs 10-13 under Article 5 to provide special and differential treatment provisions for developing country Members as provided in Attachment 1 to this Decision.
2. The Protocol of Amendment contained in Attachment 2 to this Decision is hereby adopted.
3. This decision, and the resulting amendment, will not form part of the negotiations referred to in paragraph 45 of the Doha Ministerial Declaration.
4. [The Protocol of Amendment shall remain open for acceptance [until 31 December 201_].
5. The Protocol shall enter into force in accordance with Article X:3 of the WTO Agreement.

² WT/L/579

³ WT/MIN(05)/DEC

⁴ WT/MIN(01)/DEC/1

6. Pending entry into force of the Protocol and the amendment, developing country Members may use the additional special safeguard provisions for developing country Members as contained in Attachment 1 to this Decision and Members shall not challenge through the WTO Dispute Settlement Mechanism the compliance of a developing country Member with its obligations under Articles 4 and 5 of the Agreement on Agriculture with respect to any use by that Member of these special safeguard provisions.
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ATTACHMENT 1*Special and Differential Treatment for Developing Country Members*

10. The special safeguard provisions of this Article shall not be applied against a product originating from a least developed country Member or a developing country Member listed in annex ____⁵ hereto, except where the volume increase or import surge is caused exclusively by imports from one or more least developed country Members or one or more of the listed developing country Members.
11. In addition to the provisions under paragraph 1 above, and notwithstanding the provisions of paragraph 1(b) of Article II of the General Agreement on Tariffs and Trade of 1994, any developing country Member shall have the right to recourse to the volume-based and price-based special safeguard provisions under subparagraph 1(a) and subparagraph 1(b) above in any year for products⁶ that are designated in its Schedule with the symbol "SSM"⁷.
12. A developing country Member or least developed country Member applying a special safeguard measure under subparagraph 1(b) above may use a 'reference price' based on the most recent three-year period preceding the year of importation for which data are available and in accordance with the provisions of footnote 2⁸.
13. A developing country Member or least developed country Member with an average agriculture bound tariff of not greater than 40 percent in 2015 may apply a further special safeguard measure in the form of a duty not exceeding [XX] percentage points in addition to the appropriate maximum additional duty under paragraph 4 or paragraph 5, provided the resulting overall duty to be levied on the product concerned shall not exceed twice the level of the ordinary customs duty of the product.

⁵ The developing country Members that, in the period (1999 to 2004), had an average share of (a) world merchandise trade of no more than 0.16% or less, and (b) world trade in non-agricultural products of no more than 0.1% and (c) world trade in agricultural products of no more than 0.4%. Developing country Members that are "10 most vulnerable" to climate change as may be determined in the United Nations are also covered by the provision.

⁶ For no more than (x) percent of total agriculture tariff lines at HS 6-digit level, exclusive of the existing products with "SSG" symbol in the Schedule of a Member, as applicable.

⁷ The symbol "SSG" referred to in paragraph 1 and in the Schedule of a Members and the symbol "SSM" referred to in paragraph 11 and in the same Schedule are for distinction purposes only; hence, the special safeguard provisions of paragraphs 1-13 of Article 5 of the Agreement on Agriculture apply to products with both "SSG" and "SSM" symbols in the Schedule.

⁸ Trigger prices and the basis of the calculations shall be made available and notified to the Committee on Agriculture as far as in advance as may be practicable and in any event within ten days from the beginning of any year. In any event that the price triggers are not available and/or notified, the price triggers will be assumed as those used in the previous year/s, as applicable.

ANNEX____

Developing country Members in the Context of Paragraph 10 of Attachment 1

The listed Member/s referred under paragraph 10 of Article 5 of the Agreement on Agriculture:

1...

2...

ATTACHMENT 2

Protocol of Amendment

The Ministerial Conference,

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

Decides as follows: ...

1. Article 5 of the Agreement on Agriculture shall, upon entry into force of this Protocol pursuant to paragraph 4, be amended by the insertion of additional paragraphs 10-13 as set out in the Attachment 1 to this Protocol.
2. Reservations may not be entered in respect of any of the provisions of this Protocol without the consent of the other Members.
3. This Protocol is hereby open for acceptance by Members [until _____].
4. This Protocol shall enter into force in accordance with paragraph 3 of Article X of the WTO Agreement.⁹
5. This Protocol shall be deposited with the Director-General of the World Trade Organization who shall promptly furnish to each Member a certified copy thereof and a notification of each acceptance thereof pursuant to paragraph 3.
6. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

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

⁹ For the purposes of calculation of acceptances under Article X.3 of the WTO Agreement, an instrument of acceptance by the European Union for itself and in respect of its Member States shall be counted as acceptance by a number of Members equal to the number of Member States of the European Union which are Members to the WTO.