



a percentage of the corresponding domestic consumption<sup>3</sup> during the three preceding years for which data are available:

( )<sup>3</sup> Where domestic consumption is not taken into account, the base trigger level under subparagraph 4(a) shall apply.

- (a) where such market access opportunities for a product are less than or equal to 10 percent, the base trigger level shall equal 125 percent;
- (b) where such market access opportunities for a product are greater than 10 percent but less than or equal to 30 percent, the base trigger level shall equal 110 percent;
- (c) where such market access opportunities for a product are greater than 30 percent, the base trigger level shall equal 105 percent.

In all cases the additional duty may be imposed in any year where the absolute volume of imports of the product concerned entering the customs territory of the Member granting the concession exceeds the sum of ( ) the base trigger level set out



the 'price at which that product may enter the customs territory' of the importing Member should be construed to mean just that -- the price at which the product may enter the customs territory, not the price at which the product may enter the customs territory of the importing Member. And that price is a price that does not include customs duties and internal charges. It is upon entry of a product into the customs territory, but before the product enters the domestic market, that the obligation to pay customs duties and internal charges accrues."<sup>1</sup>

2. The Appellate Body in *US – Wheat Gluten* then noted that the Agreement on Agriculture does not define the term "c.i.f. import price", but considered the customary usage of this term in international trade:

"Article 5.1(b) also states that the relevant import price is to be 'as determined by the c.i.f. import price of the shipment concerned'. (emphasis added) The Panel interprets this phrase to mean 'that the market entry price is something that has to be constructed using the c.i.f. price as one of the parameters.' <sup>2</sup> We disagree. In the light of our construction of the preceding phrase 'the price at which imports of the product may enter the customs territory of the Member granting the concession', we conclude that the phrase 'as determined by the c.i.f. import price of the shipment concerned' in Article 5.1(b) refers simply to the c.i.f. price without customs duties and taxes. There is no definition of the term 'c.i.f. import price' in the Agreement or in any of the other covered agreements. However, in customary usage in international trade, the c.i.f. import price does not include any taxes, customs duties, or other charges that may be imposed on a product by a Member upon entry into its customs territory.<sup>3</sup> We think it significant also that ordinary customs duties are not mentioned as a component of the relevant import price in the text of Article 5.1(b). Article 5.1(b) does not state that the relevant import price is 'the c.i.f. price plus ordinary customs duties'. Accordingly, to read the inclusion of customs duties into the definition of the c.i.f. import price in Article 5.1(b) would require us to read words into the text of that provision that simply are not there."<sup>4</sup>

3. The Appellate Body in *US – Wheat Gluten* found support for its finding referenced in paragraph 2 above in the context of Article 5.1(b):

"This reading of the text of Article 5.1(b) is supported by our rea



c.i.f. import price' in Article 5.1(b) as the c.i.f. import price not including ordinary customs duties."<sup>8</sup>

### 1.3 Article 5.5

6. Regarding Article 5.5, in \_\_\_\_\_, the Appellate Body examined whether it was permissible for the importing Member to offer the importer a choice between the use of the c.i.f. price of the shipment as provided in that provision, and another method of calculation which departs from this principle. Under the relevant regulation, the European Communities calculated a periodic representative price, based, \_\_\_\_\_, in part on prices in third-country markets and prices at various stages of marketing within the European Communities. The Commission, in its determination of the trigger price for the purposes of the special safeguard provision, would use this "representative price", unless the importer specifically requested the use of the c.i.f. price, conditional upon the presentation of certain documents and the lodging of a security by the importer. The Appellate Body held as follows:

"[N]either the text nor the context of Article 5.5 of the \_\_\_\_\_ permits us to conclude that the additional duties imposed under the special safeguard mechanism in Article 5 of the \_\_\_\_\_ may be established by any method other than a comparison of the \_\_\_\_\_ with the trigger price."<sup>9</sup>

### 1.4 Relationship with other provisions of the Agreement on Agriculture

7. The Appellate Body in \_\_\_\_\_ ± \_\_\_\_\_ identifies Article 5 as an exception to the obligations that Article 4.2 imposes to all WTO Members:

"In the original proceedings, the Appellate Body acknowledged the importance of agricultural products to many developing country Members of the WTO, and the role of special and differential treatment for developing country Members under the \_\_\_\_\_ . At the same time, the Appellate Body recognized that the requirements of the \_\_\_\_\_ apply to developing country Members except where otherwise provided . Article 4.2 expressly identifies two exceptions to the obligations that it imposes on all WTO Members, namely, Article 5 and Annex 5 to the \_\_\_\_\_ . Annex 5 exempts developing country Members from these disciplines in specific circumstances. Article 5 specifies that a Member may, under certain conditions, impose a special safeguard on imports of an agricultural product 'in respect of which measures referred to in [Article 4.2] have been converted into an ordinary customs duty'. The provisions of Article 5 establish the conditions in which a Member may have recourse to such a special safeguard, set out rules on the form and duration of such safeguard measures, and establish certain transparency requirements that attach to their use. One circumstance in which a qualifying Member may be authorized to adopt a special safeguard is when the priceimporte5(h)-6(e(g)-3(u)-6(ar)15(d)-3( )-194(i)-

