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EU Anti-Circumvention Rules & Practice

By

Edwin Vermulst

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Introduction



Introduction (1)



- **WTO:** No consensus has yet been reached by WTO Members on whether circumvention of anti-dumping (“AD”) and anti-subsidy (“AS”) duties is in fact actionable under the WTO Agreements.
- **The EU’s approach on anti-circumvention (“AC”) measures in the AD and AS contexts:**

“the anti-circumvention provisions of the basic Regulation are not incompatible with the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures. Indeed, the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations contains a Decision on anti-circumvention, referring the matter to the Committee on Anti-dumping Practices in the absence of an agreement on a specific text. As this Decision was made knowing that several WTO Members already had their own anti-circumvention legislation, the [EU] interprets it as permitting individual Members to adopt or maintain provisions in this respect, pending the adoption of multilaterally agreed rules. The same principles should logically apply to anti-subsidy investigations.” [Anti-circumvention investigations of AD and AS measures on PET film from India, 2004]



Introduction (2)



➤ Legal framework:

- **EU AD Regulation** - Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ [2009] L343/51).
- **EU AS Regulation** - Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community –(OJ [2009] L188/93).

➤ Circumvention provisions:

- Article 13 EU AD Regulation comprising five sub-paragraphs.
- Article 23 EU AS Regulation comprising four sub-paragraphs.

- ## ➤ Circumvention:
- In simple words is a practice, process or work by virtue of which an exporter subject to an AD/AS duty or importer liable to pay the duty attempts to avoid that duty.



Introduction (3)



- An AC investigation is carried out by the European Commission [“Commission”] in the EU.
- Circumvention can be of several types which will be discussed in detail in the following sections.
 - **Product alternation: export of slightly modified product;**
 - **Importing country circumvention: importation of parts for assembly;**
 - **Third country circumvention: transshipment, exports after minor assembly operations or of slightly modified product;**
 - **Lower duty rate company circumvention.**
- If circumvention is found to be taking place, the AD/AS duty imposed in the original investigation is extended to the product from the circumventing third country or to parts/components of the product or to the slightly modified product as the case may be.



Introduction (4)



- Per the author's information, between 1995-March 2012, there have been three AC investigations concerning AS measures in the EU:
 - ❖ *Graphite electrode systems originating in India (2004)*: Terminated without the extension of the measures.
 - ❖ *PET film originating in India (2004)*: Extension of measures to imports of PET film consigned from Brazil and Israel.
 - ❖ *Biodiesel from the United States (2010-2011)*: Extension of measures to imports from Canada and to certain biodiesel blends not originally subject to the measures.
- There have been 34 AC investigations concerning AD measures per the author's research, during the period 1995-2012.



Comparison – Anti-Circumvention Rules In EU Anti- Dumping & Anti-Subsidy Laws



Comparison (1)



- **The AC provisions in the EU AD and AS Regulations are largely similar in terms of:**
- definition of circumvention;
 - substantive requirements for establishing the existence of circumvention;
 - procedural requirements as regards the initiation and conduct of the investigation;
 - the time period for the completion of the investigation, *i.e.* nine months.
 - possibility of granting exemption from the duties to companies not found to be circumventing; and
 - procedure for the extension of the measures by the EU institutions.



Comparison (2)



- **The AC provisions in the EU AS Regulation differ from those in the EU AD Regulation as regards two aspects -**
 - There is no equivalent-specific rule for assessment of circumvention by assembly operations in Article 23 of the EU AS Regulation (comparable to Article 13(2) in the EU AD Regulation).
 - One of the essential conditions for the finding of circumvention in the context of AD measures is that dumping has to be established in comparison to the normal value determined in the original investigation, in the context of AS measures, it has to be established that the circumventing product benefits from countervailed subsidies.
- On account of the extensive similarity of the AC provisions in the EU AD and AS Regulations, these are being discussed together in the following slides.
- For the fact that there are comparatively more EU AC cases concerning AD measures, the presentation focuses more on the EU practice as discerned from those cases.



Anti-Circumvention Investigation: Substantive Aspects



Key Elements



- Circumvention is found if the existence of the following five cumulative conditions is determined by the Commission pursuant to an investigation [Article 13(1) EU AD Regulation; Article 23(1) EU AS Regulation] -
 - there is a change in the pattern of trade between third countries and the EU or between individual companies in the country subject to measures and the EU,
 - which stems from a practice, process or work,
 - for which there is insufficient due cause or economic justification other than the imposition of the duty, and
 - there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product, and
 - there is evidence of dumping in relation to the normal values established for the like product in the original investigation leading to the measures/the imported like product and/or parts thereof benefit from countervailed subsidies.



Change In Pattern Of Trade (1)



- No specific definition; generally a two-step approach is adopted.
- **First step:** Assessment whether imports of the product from the country originally subject to the measure (*i.e. country X*) declined in volume.
- **Second step:** Assessment whether this decline is accompanied by an increase in/replacement by imports of “like products”:
 - ✓ parts or slightly modified products from country X;
 - ✓ product originating in country X shipped via a third country *i.e.* pure transshipment or export pursuant to simple assembly operations/slight modifications.
 - ✓ product concerned manufactured by a company in country X that got the all others/residual duty rate (which is generally the highest), exported via another producer in country X which got a low-individual duty.
- Where the decline and consequent replacement coincides with the initiation of the original investigation/imposition of measures against country X, change in the pattern of trade is found.
- **Note: Change can occur years after the imposition of measures also. e.g. silicon metal from China: AD duties imposed in 1992; change in pattern of trade was assessed from 2002-2006.**



Change In Pattern Of Trade (2)



- **Note:** One-to-one match between decline and substitution is not necessary; substantial/significant increase is deemed enough.
- **Exceptions:**
 - ❖ AC investigation concerning *hand pallet trucks and parts from China* via Thailand, where the imports from China continued to increase significantly and the Thai imports also increased. The Commission however reasoned that increased imports from China were attributable only to one company that had the lowest dumping margin.
- **Period considered for the comparison of import volumes:**
 - ✓ AC investigation IP which is generally a one year period ending closest to the initiation of the AC investigation;
 - ✓ Period from the imposition of the provisional or definitive measures/initiation of the original investigation or earlier period, until the AC investigation IP; and
 - ✓ Often also between the AC investigation IP and the original investigation IP.



Change In Pattern Of Trade (3)



- In case of third country circumvention, the exports from country X of the product/parts to the third country are also evaluated for the same period for which the EU import trends are evaluated.
- ❖ For instance, in the AC investigation concerning *footwear with leather uppers from China* via Macao, the Commission noted that during the AC IP, the population of Macao SAR was 0.5 million but there were imports of 4.5 million pairs from China.
- Additionally, if there is cooperation from the third country producers/other data available, assessment of production of the product in the third country is also made.
- **The data used for the assessment generally is from:**
 - EU import statistics for EU import trends;
 - Country X export statistics for export trends to third countries involved;
 - Third country import statistics for imports of the product concerned/parts from country X.
 - Data from the cooperating exporters from country X and the third country/ies involved.



Practice, Process Or Work (1)

- The change in pattern of trade has to stem from/be linked to a practice, process or work.
- **Product modification:** Slight modification of the product concerned to make it fall under customs codes which are normally not subject to the measures provided that the modification does not alter its essential characteristics including reversible product alterations. Examples:
 - *Polyster stable fibres (“PSF”) from Belarus (AD):* Polyster filament tow (“PFT”) began to be exported to the EU after the imposition of the provisional measures on PSF. Transformation from PFT to PSF entailed only a simple cutting operation.
 - *Zinc oxides from China (AD):* Zinc oxides mixed with silica were exported to the EU after the imposition of the measures on zinc oxides from China.
 - *Biodiesel from the US (AD and AS):* After the imposition of the AD and AS measures, biodiesel blends not covered by the measures were exported to the EU.



Practice, Process Or Work (2)

- **Transshipment with or without minor modification:** Consignment of the product subject to measures via third countries. Examples:
 - *Footwear with leather uppers from China (AD):* Transshipment via Macao.
 - *Silicon metal from China (AD):* Transshipment via Korea.
 - *Coumarin from China (AD):* Purification and transshipment via India.
- **Exports through companies with lower duty rates:** Reorganization by exporters or producers of their patterns and channels of sales in country X in order to have their products exported to the EU through producers benefiting from an individual duty rate lower than that applicable to the products of the manufacturers.
 - *Plastic sacks from China (AD):* Measures were imposed in 2006. A company subject to a 8.4% duty rate was found to be exporting plastic sacks manufactured by two companies subject to the 28.8% residual duty rate.
- **Assembly operations:** Special rules exist in the EU AD law [Article 13(2)] which will be discussed in detail further.



Insufficient Due Cause (1)



- Assessment is based on the circumstances in each case. Economic justifications have to be provided by the investigated/cooperating exporters or importers as the case may be.
- **The Commission analyzes the viability of economic justifications provided to explain the coincidence between the changed pattern of trade and the imposition of the measures/initiation of the original investigation. For example -**
 - ✓ Cost benefit analysis is undertaken of economic benefits/cost savings from the production and exports of modified products/of undertaking assembly in another country or the EU;
 - ✓ Importance is given to the timing of the establishment of the company in the third country undertaking assembly/start of production or export of slightly modified product;
 - ✓ Whether the exports of the product by the producer to other markets remained the same and the modified product is exported only to the EU.
 - ✓ When there is no cooperation from the third country producers/exporters, it is considered that there was no economic justification for the changed trade pattern, and it stemmed from the imposition of the measures.



Insufficient Due Cause (2)



Examples: No economic justification found for changed trade pattern

- *PSF from Belarus (imports of PFT):*
 - Cutting of PFT into PSF in the EU entailed high costs in terms of labor and packing which were not offset by any cost savings or price premiums;
 - If importing PFT had cost-associated benefits then PFT should have been imported prior to the measures as well but then such imports were negligible;
 - The Belarusian exporter continued to supply PSF to other markets (and not PFT) showing that there was no economic benefit associated in exporting PFT.
- **RMBs from China (imports of slightly modified RMBs):**
 - Modifications made to the product were very minor and if a certain saving in the use of the main raw material could be made, it was negligible (around 2%).
 - Any saving in the consumption of raw materials was largely offset by costs incurred for the adaptation of machinery.
 - All sales of modified RMBs were only to the EU and mainly to the operator upon whose request they were designed implying that they had one buyer worldwide.



Insufficient Due Cause (3)



Example: Economic justification found

- *Graphite electrode systems from India (AD & AS):* The Indian exporting producer started selling to its related company in Germany semi-finished products/parts. The Commission considered that the -
 - Purchase of the related German company was not motivated by the measures as it involved significant investment;
 - The related German company never produced the parts/certain semi-finished products which were generally outsourced and thus it was logical therefore that the company would procure those materials from its Indian parent company;
 - The difference in the total cost of manufacturing between Germany and India was not very significant, and the small cost advantage of manufacturing the entire product in India was outweighed by other advantages, such as having the products finished in Germany and sold under the German company's label, and being able to offer the entire product range for sale dispatched from the site in Germany.



Undermining Remedial Effects (1)



- Generally, assessment of the effects in terms of both prices and quantities is done by the Commission even though the term “or” is used.
- A full injury analysis is not required, nor is done by the Commission.

Assessment of the effect in terms of quantities

- The assessment partly overlaps that concerning a change in trade flows, *i.e.* as regards the increase in/substitution by the imports of parts/slightly modified products/imports via third countries. However, additional assessment is made as regards the quantity of the substituting imports, *i.e.* if they are material and significant enough to undermine the remedial effects of the measures originally imposed, considering the size of and consumption in the EU market.
 - Undermining of remedial effects in terms of quantities may be found even when the increase in imports of modified/transshipped product/parts is lower than the decline in the imports of the product concerned originally subject to the measures from country X.



Undermining Remedial Effects (2)



Assessment of the effect in terms of prices

- A comparison is made between:
 - The average export prices during the AC investigation IP of the product being investigated and the injury elimination level established for the EU industry in the original investigation [e.g. *Molybdenum wires from China (via Malaysia); glyphosate from China (via Malaysia)*] and/or
 - The average export prices during the AC investigation IP of the product being investigated and the export prices in the original investigation from country X [e.g. *Malleable cast iron & tube fittings from Brazil (via Argentina); zinc oxides from China (via Viet Nam); tube & pipe fittings from China (via Indonesia); steel ropes & cables from China (via Morocco)*].
 - The average import prices of the product being investigated (adjusted for post importation costs) during the AC investigation IP and the injury elimination level established for the EU industry in the original investigation [e.g. *PET from India (via Brazil and Israel); RMBs from China (slightly modified); Coumarin from China (via Thailand and India)*].



Undermining Remedial Effects (3)



Assessment of the effect in terms of prices (*cont.*)

- In case of low or no cooperation import/export prices of the investigated imports are assessed on the basis of Eurostat data (adjusted at times) or other available information including third country statistics.
- In case of AC investigations after the original measures have been extended pursuant to expiry review/s, import/export prices of the investigated imports during the AC investigation IP are compared to:
 - ❖ injury elimination levels in the last expiry review [e.g. *Steel ropes and cables from China (via Korea); silicon metal from China (via Korea)*] and/or
 - ❖ import prices of the product concerned from country X in the previous expiry review and in the AC investigation IP [e.g. *Coumarin from China (via Indonesia)*].



Evidence Of Dumping/Subsidization (1)



AC investigations concerning AD measures

- There is no requirement of calculating a new dumping margin only evidence of dumping in relation to the normal value established in the original investigation (against country X) is required.
- The weighted average export price to the EU during the AC investigation IP of the investigated product from third countries/slightly modified product, is compared to the weighted normal value established in the original investigation.
- If the AC investigation is initiated after the extension of the measures pursuant to expiry review/s, the normal value established in the last expiry review is used.
- In case of non-market economy countries, the analogue country normal established in the original investigation or expiry review is used.



Evidence Of Dumping/Subsidization (2)



AC investigations concerning AD measures (*cont.*)

- In making the assessment concerning evidence of dumping:
 - ❖ the exports from companies cooperating in the investigation not found to be engaged in circumvention are excluded;
 - ❖ for the purpose of fair comparison due allowance in the form of adjustments is made for factors affecting price comparability such as indirect taxes, transport and insurance costs; and
 - ❖ In case of circumvention by imports of semi-finished products or parts of the product concerned, the export price is constructed for the product concerned by making the necessary adjustments.



Evidence Of Dumping/Subsidization (3)



AC investigations concerning AS measures

- Only evidence that the imported products/parts thereof benefit from subsidies, is required.
- It is not required to be established by the Commission that the subsidies received continue to be countervailable, nor a recalculation of the level of the subsidy amounts/subsidy margin is necessary.
- To the extent some of the subsidy schemes identified during the original investigation as countervailable continue to remain in place, it is considered sufficient.



Circumvention Via Assembly Operations (1)



- A Specific provision exists only in the EU AD Regulation - Article 13(2).
- Article 13(2) is considered *lex specialis* for assembly operations [*RMBs from China via Thailand*].
- An assembly operation in the EU or a third country is considered to circumvent the measures in force where four cumulative criteria are met:
 - **Criterion 1:** the operation started or substantially increased since, or just prior to, the initiation of the AD investigation.
 - ✓ Assessment regarding this criterion is similar to the analysis of the change in trade flows conducted pursuant to Article 13(1).
 - ✓ Focus is on the timing of the starting or substantial increase in the assembly operations in the EU or third countries as the case may be.
 - ✓ **Example:** In *compact fluorescent lamps from China*, it was found that a company in Pakistan was registered after the initiation of the original investigation; started operations after the imposition of provisional measures; and it imported semi-finished kits from its related Chinese company and did not even have the machinery to undertake manufacturing.



Circumvention Via Assembly Operations (2)



- **Criterion 2:** the parts concerned are from the country subject to the measures (country X) and the parts constitute 60% or more of the total value of the parts of the assembled product [**“60% value of parts test”**] but in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than 25% of the manufacturing cost [**“25% value-added test”**].

- **60% value of parts test:**

- ✓ The denominator is the value of all parts (irrespective of origin) used for the exports made during the IP. Profits and overheads are excluded.
- ✓ The numerator is the value of all parts imported from country X.
- ✓ The Commission generally requires a list of all parts and their purchase prices, and information on the origin of each part.
- ✓ Parts consigned (not originating) from country X will be considered originating unless the investigated assembler can establish the origin of a third country.
- ✓ **Example:** AC investigation concerning *RMBs from China via assembly in Viet Nam*: The Commission found that the entirety of the parts were purchased during the AC investigation IP from China.



Circumvention Via Assembly Operations (3)



▪ **Criterion 2 (cont.):**

- **25% value-added test or “safe harbor”:** Even if 60% of the parts of the assembled product are from country X, circumvention may not be found when 25% value is added in the assembly operation in the EU/third country.
- ✓ Manufacturing cost = arm’s length into-factory value of all parts used + labor costs + factory overheads. SG&A and profits are excluded.
- ✓ Exact approach to be used for the 25% test is an open question.
- ✓ Approach used by the Commission in the AC investigations concerning *bicycles from China* and *electronic weighing scales from Japan and Singapore*:
 - ❖ Manufacturing costs other than material costs namely direct labor, depreciation and manufacturing overheads should represent 25% or more of the total manufacturing costs.
- ✓ Other more liberal interpretation: The costs of locally originating parts is also to be included in reaching 25%.



Circumvention Via Assembly Operations (4)



➤ Cumulative criteria (*cont.*):

- **Criterion 3:** remedial effects of the duty are being undermined in terms of the prices and/or quantities of the assembled like product.
 - **Criterion 4:** there is evidence of dumping in relation to the normal values previously established for the like or similar products.
 - ✓ Assessment regarding these criteria are the same as in the case of circumvention via other means analyzed pursuant to Article 13(1) and discussed previously.
- If one of these criteria are not met, then circumvention via assembly operations may not be found.



Duty Rate



➤ Dealt in Article 13(1) EU AD Regulation and Article 23(1) EU AS Regulation:

- If circumvention is found, the maximum amount of duty that can be extended to the circumventing imports is the “all others duty/residual duty” imposed in the original investigation on imports from country X.
- In case of circumvention by individual companies with low duty rates, the circumventing company is generally made subject to the residual duty rate and does not benefit any longer from its individual duty rate.
- In case of imports of parts, the duty will be applied to the value of the parts which are imported by the assembler.
- It does not matter that the dumping margin assessed for the cooperating companies is lower than the extended duty rate.



Registration Of Imports



- Pursuant to Article 13(4) EU AD Regulation and Article 23(3) EU AS Regulation:
 - At the time of initiation of the investigation, investigated imports may be made subject to registration (or guarantees may be requested).
 - Provisions on registration are provided for in Articles 14(5) EU AD Regulation and Article 24(5) EU AS Regulation.
 - In almost all AC cases even if the case is initiated *ex-officio*, imports are made subject to registration to ensure that should the investigation result in finding of circumvention, the AD/AS duty can be levied retroactively from the date of initiation of the investigation.
 - Registration may be limited to part of the products subject to the investigation. **Example:**
 - ❖ In *bicycles from China* the AC investigation covered several bicycle parts but registration was limited to four main parts.
 - Exemption from registration can be requested within 37 days of initiation of the investigation.



Exemption From Duty (1)



- Dealt in Article 13(4) EU AD Regulation and Article 23(3) EU AS Regulation.
- Companies may request exemption from the application of the extended duty. **Exemptions are company-specific** and can be benefitted only by the companies that receive them.
- Exemptions can be requested by:
 - exporting producers in country X or the third country as the case may be;
 - in case of assembly in the EU - importers, assemblers or producers and in exceptional cases traders on the basis of specific end-use control.
- If exemption is granted to a company during the investigation, it does not have to pay the extended duty in future and registration of imports from this company is also terminated without retroactive collection of the duty.
- Exemptions can be revoked if the Commission finds that the party exempted is circumventing or breaching its obligations.



Exemption From Duty (2)



➤ Exceptional case: *Coumarin from China* -

- The Indian exporter imported coumarin from China, purified it and exported it to the EU. Alongside it also manufactured coumarin in India and exported it to the EU.
 - Given the fungible nature of the product and the difficulties in identifying the Indian and Chinese origin product, undertaking was accepted and the company could sell the Indian origin coumarin up to a quantitative ceiling (based on exports during the AC investigation IP) without the payment of the extended duty.
 - For the same reasons, it was not subject to the duty retroactively despite registration.
- A company may request exemption within 37 days of the initiation of the investigation:
- A questionnaire has to be completed and the Commission analyzes the information provided by the company and also conducts on-the-spot verification to assess whether or not the company is engaged in circumvention.
 - Exemption is granted if the company is found not to be circumventing and related to a producer subject to the measures. Exceptions to the latter condition have been made [Example: *Steel ropes and cables from China* OJ (2010) L117/1].



Exemption From Duty (3)



- Exemptions can also be requested after the extension of the duties (for companies that did not export in the IP and other companies). Express provision is made in the EU Regulation extending the duties. In such case, if exemption is granted, the duty is not collected from the date of the request.
- Once exemption is granted, imports from the exempted exporters are exempt from the AD/AS duty upon importation if:
 - Accompanied by a valid commercial invoice containing all elements specifically listed by the Commission generally in an annex to the Regulation extending the measures (e.g. name of the company, exact description of the goods, certification by the company that goods are manufactured by it).
- **Exceptional case of exemptions:** Pursuant to the AC investigation concerning imports of bicycles from China, the measures were extended to bicycle parts. More than 250 exemptions have been granted to EU assembles/producers importing bicycle parts from China.



Anti-Circumvention Investigation: Procedural Aspects



Procedural Aspects (1)



- Procedural rules are detailed in Article 13(3) EU AD Regulation and Article 23(2) EU AS Regulation.
- A decision whether or not to initiate an investigation has to be taken within 45 days of the receipt of a complaint.
- **Initiation of the investigation:**
 - Can be *ex-officio* or pursuant to a complaint from a Member State or the EU producers. In case of the latter, the standing requirement as applicable in original investigations and expiry reviews is not required to be fulfilled.
 - “Sufficient evidence” regarding the five circumvention conditions (discussed previously) in a complaint is deemed enough.
 - The advisory committee for AD and AS comprising representatives of the EU Member States is consulted prior to initiation.
 - Notice of Initiation [“NoI”] is published in the Official Journal of the EU.



Procedural Aspects (2)



➤ Conduct of the investigation:

- Parties willing to cooperate in the investigation, e.g. exporters and importers can make themselves known within 15 days from the initiation of the investigation and request questionnaires.
- The parties that make themselves known within the 15-day deadline can provide information supported by evidence within 37 days of the publication of the Nol and may request hearings within this period.
- Questionnaire responses have to be provided by cooperating exporters/EU importers (as the case may) be within 37 days of the initiation of the investigation.
- Cooperating exporters/importers (as the case may be) are subject to on-the-spot verification.
- Complainant EU producers do not have to complete any questionnaire.
- A disclosure is provided to the cooperating parties along with an opportunity to comment.



Procedural Aspects (3)



- Completion of the investigation: within 9 months of initiation.
- Review of AC measures:
 - Provided that at least a year has lapsed from the extension of the measures, and
 - In case the number of parties requesting an exemption is significant, the Commission can initiate a review of the extension of the measures and such a review is required to be completed within 15 months.
 - It is investigated whether circumvention is continuing and the same tests are applied as in an original circumvention investigation. Additionally, it is examined whether the non-existence of circumvention practices would be of a lasting nature.
 - **Example:** *Review of extension of AD measures on bicycle parts from China* [OJ (2008) L55/1]:
 - Review initiated in November 2006 and completed in February 2008.
 - Result – continuation of the extended measure.



Overview Of EU Anti-Circumvention Investigations



AC Investigations Completed During 1995-2012: Summary

- To the author's knowledge, **37 AC investigations** were conducted and completed between 1995-2012 concerning Ad and AS measures:
 - **8 investigations were terminated without the imposition of measures;**
 - **29 investigations resulted in the extension of measures.**
 - ✓ In 6 of these investigations, measures were terminated against certain countries but extended to others/to modified products.
 - **Exemptions were granted to exporters in 12 cases and to EU importers and traders in one case.**
- Measures concerning only a few products have been subject to AC investigations more than once.

| AC investigation once | AC investigation twice | AC investigations more than two times |
|--|---|---|
| AD and AS measures on 17 products: <ul style="list-style-type: none"> ▪ Examples – Graphite electrodes from India (AD and AS), silicon metal from China (AD), plastic sacks from China (AD) | AD measures on 4 products: <ul style="list-style-type: none"> ▪ Electronic weighing scales from Japan; ▪ Steel ropes and cables from China; ▪ Zinc oxides from China; and ▪ Coumarin from China | AD Measures on 2 products: <ul style="list-style-type: none"> ▪ Tubes and pipes of iron or steel from China (four times); and ▪ Ring binder mechanisms from China (four times). |



AC Investigations Completed During 1995-2012: Summary

- In 8 AC investigations circumvention by more than one practice/process or work was investigated.
- Forms of circumvention: **Transshipment via third countries** is the most common form of circumvention and was investigated in 28 cases.

| Transshipment | Slightly modified product | Assembly in third countries | Assembly in the EU | Company with lower duties |
|-------------------|---------------------------|-----------------------------|--------------------|---------------------------|
| 28 investigations | 9 investigations | 5 investigations | 2 investigations | 1 investigation |

- Overview of countries involved:
 - **Measures imposed on imports from the following countries** have been the subject of AC investigations: China, India, Japan, the US, Belarus, Chinese Taipei, Russia and Brazil.
 - **Circumvention by companies in the following countries** has been found in investigations: Brazil, Malaysia, Indonesia, Viet Nam, Korea, Canada, Thailand, Philippines, Chinese Taipei, Macao, Hong Kong, India, Pakistan, Sri Lanka, Morocco, Moldova and Israel.



AC Investigations 1995-2012 (1)



| No. | Product | Circumvention mode investigated | Year of completion of investigation | Complaint by EU Industry | Result | Exemptions |
|-----|--|---|-------------------------------------|--------------------------|--|---|
| 1 | Magnetic disks from Japan, Chinese Taipei and China (AD) | transshipment via Canada, Hong Kong, India, Indonesia, Macao, Malaysia, the Philippines, Singapore and Thailand | 1996 | Yes | No extension of measures | - |
| 2 | Electronic weighing scales from Japan (AD) | assembly operations; transshipment via Indonesia | 1997 | Yes | No extension of measures | - |
| 3 | Electronic weighing scales from Japan and Singapore (AD) | assembly in the EU | 1997 | Yes | No extension of measures | - |
| 4 | Bicycles from China (AD) | assembly in the EU | 1997 | Yes | Measures extended to bicycle parts | Exemptions granted |
| 5 | PSF from Belarus (AD) | imports of PFT | 1997 | Yes | Measures extended to PFT from Belarus | No exemptions granted |
| 6 | Non-refillable pocket lighters from China (AD) | transshipment via, Hong Kong, Macao and Chinese Taipei; imports of slightly modified products, e.g. refillable lighters | 1999 | Yes | Measures extended to Chinese Taipei and terminated against Macao and Hong Kong | No exemptions granted |
| 7 | Tube or pipe fittings of iron or steel from China (AD) | transshipment via Chinese Taipei | 2000 | Yes | Measures extended to Chinese Taipei | Investigation terminated against three companies not found to be circumventing |
| 8 | Glyphosate from China (AD) | transshipment via Malaysia and Chinese Taipei | 2002 | Yes | Measures extended to Malaysia and Chinese Taipei | Exemptions granted to one Malaysian company and one company from Chinese Taipei |
| 9 | Zinc oxides from China (AD) | transshipment via Vietnam; mixing with silica | 2003 | Yes | Measures extended to Viet Nam and zinc oxides mixed with silica | No exemptions granted |
| 10 | Malleable cast iron tube or pipe fittings from Brazil (AD) | transshipment via Argentina | 2003 | Yes | Measures extended to Argentina | Investigation terminated against one company |
| 11 | Tube or pipe fittings of iron or steel from China (AD) | transshipment via Indonesia | 2004 | Ex-officio | Measures extended to Indonesia | No exemptions granted |
| 12 | Tube or pipe fittings of iron or steel from China (AD) | transshipment via Sri Lanka | 2004 | Yes | Measures extended to Sri Lanka | No exemptions granted |



AC investigations 1995-2012 (2)



| No. | Product | Circumvention mode Investigated | Year of completion of investigation | Complaint by EU Industry | Result | Exemptions |
|-----|--|---|-------------------------------------|--------------------------|---|--|
| 13 | Seamless pipes and tubes from Russia and Ukraine (AD) | slightly modified products; mis-declaration in CN codes not covered by the measures | 2004 | Yes | No extension of measures - complaint withdrawn | - |
| 14 | Steel ropes and cables from China (AD) | transshipment from Morocco | 2004 | Yes | Measures extended to Morocco | Exemption granted to one company |
| 15 | Steel ropes and cables from Ukraine (AD) | transshipment via Moldova | 2004 | Yes | Measures extended to Moldova | No exemptions granted |
| 16 | PET film from India (AD) | transshipment via Brazil and Israel | 2004 | Yes | Measures extended to Brazil and Israel | Exemption granted to one Israeli and one Brazilian company |
| 17 | PET film from India (AS) | transshipment via Brazil and Israel | 2004 | Yes | Measures extended to Brazil and Israel | Exemption granted to one Israeli and one Brazilian company |
| 18 | Coumarin from China (AD) | transshipment via India and Thailand | 2004 | Yes | Measures extended to India and Thailand | Special type of partial exemption granted to the Indian exporter |
| 19 | RMBs from China (AD) | transshipment via Thailand | 2004 | Ex-officio | No extension of measures | - |
| 20 | RMBs from China (AD) | assembly in Viet Nam | 2004 | Yes | Measures extended to Viet Nam | No exemptions granted |
| 21 | RMBs from China (AD) | transshipment via Lao PDR | 2006 | Yes | Measures extended to Lao | - |
| 22 | Compact florescent lamps from China (AD) | assembly in & transshipment via Viet Nam, Pakistan and Philippines | 2006 | Yes | Measures extended to Viet Nam, Pakistan and Philippines | No exemptions granted |
| 23 | Zinc oxides from China (AD) | transshipment via Kazakhstan | 2006 | Yes | No extension of measures | - |
| 24 | Tube or pipe fittings of iron or steel from China (AD) | transshipment via Philippines | 2006 | Yes | Measures extended to Philippines | No exemptions granted |
| 25 | Coumarin from China (AD) | transshipment via Indonesia and Malaysia | 2006 | Yes | Measures extended to Indonesia and Malaysia | No exemptions granted |
| 26 | Silicon metal from China (AD) | transshipment via Korea | 2007 | Yes | Measures extended to Korea | No exemptions granted |
| 27 | Graphite electrode systems from India (AD) | imports of modified product from India (artificial graphite rods and carbon rods) | 2007 | Yes | No extension of measures | - |
| 28 | Graphite electrode systems from India (AS) | imports of modified product from India (artificial graphite rods and carbon rods) | 2007 | Yes | No extension of measures | - |
| 29 | Footwear with leather uppers from China (AD) | Transshipment and simple assembly | 2008 | Ex-officio | Measures extended to Macao | No exemptions granted |

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| No. | Product | Circumvention mode investigated | Year of completion of investigation | Complaint by EU Industry | Result | Exemptions |
|-----|--|--|-------------------------------------|--------------------------|--|--|
| 30 | RMBs from China (AD) | transshipment via Thailand; imports of slightly modified RMBs from China | 2008 | Yes | No extension of measures to Thailand but to slightly modified RMBs from China | - |
| 31 | Hand pallet trucks and their essential parts from China (AD) | assembly operations in Thailand | 2009 | Ex-officio | Measures extended to Thailand | No exemptions granted |
| 32 | Steel ropes and cables from China (AD) | transshipment via Korea and Malaysia | 2010 | Yes | Measures extended to Korea and investigation terminated as regards Malaysia | Exemptions granted to 11 Korean companies |
| 33 | Biodiesel from the US (AD) | transshipment via Canada and Singapore; and imports of blends not covered by the measure | 2011 | Yes | No extension of measures to Singapore; measures extended to other blends and imports from Canada | Exemptions granted to two Canadian companies that cooperated |
| 34 | Biodiesel from the US (AS) | transshipment via Canada and Singapore; and imports of blends not covered by the measure | 2011 | Yes | No extension of measures to Singapore; measures extended to other blends and imports from Canada | Exemptions granted to two Canadian companies that cooperated |
| 35 | Iron or steel fasteners from China (AD) | transshipment via Malaysia | 2011 | Ex-officio | Measures extended to Malaysia | Exemptions granted to 8 companies |
| 36 | Plastic sacks and bags from China (AD) | exports via a company with lower duty | 2011 | Ex-officio | Residual duty imposed on the company which originally had a low individual duty | Not applicable |
| 37 | Molybdenum wires from China (AD) | transshipment via Malaysia and Switzerland | 2012 | Yes | No extension of measures to Switzerland; measures extended to Malaysia | No exemptions granted |

Notes:

- The above list is based on the author's research;
- A single AC investigation concerning circumvention via imports from various countries has been counted as one and not individually for each country.



Thank You

