



Trade Defence Instruments:

Anti-circumvention

**D. Spatharis, Head of Unit DG
Trade, Trade Defence Directorate**

Legal and Regulatory Context

Article 13 of the BR allows to extend the AD duties

- to imports from specified 3rd country(ies) OR
- to slightly modified products OR
- to other exporters benefiting from individual duties

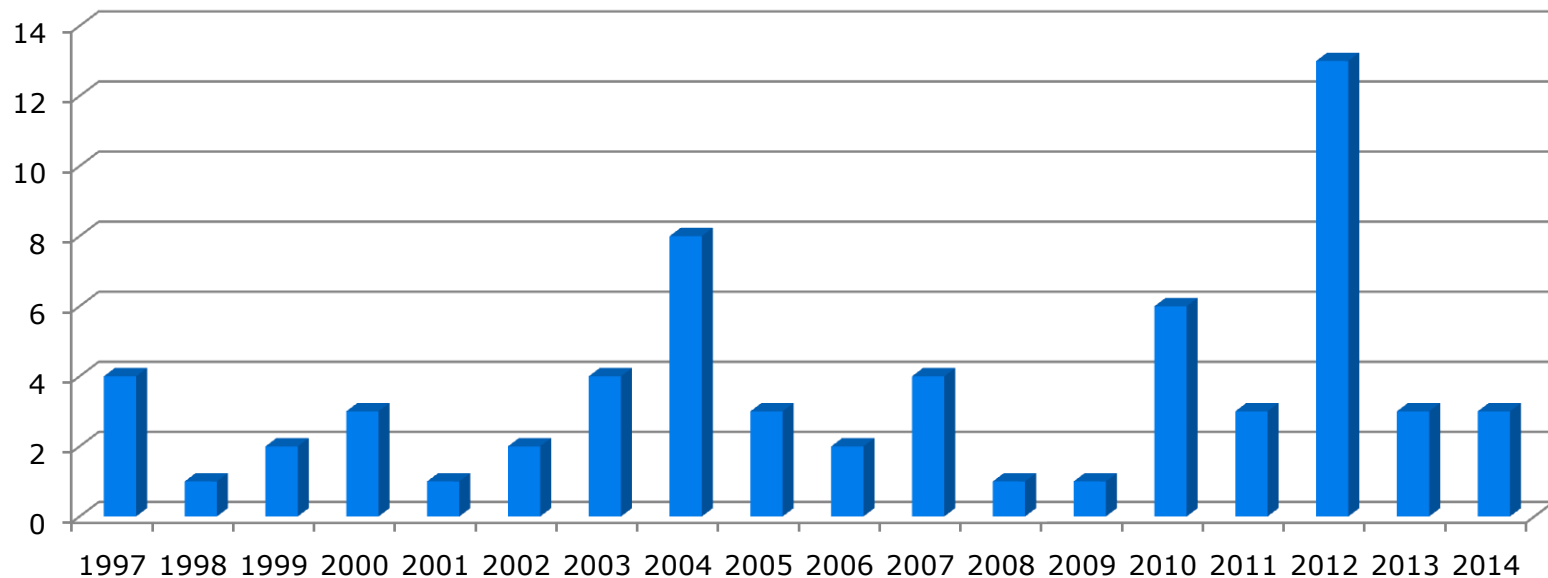
Only if it can be demonstrated that circumvention is taking place.

*No equivalent provision in the WTO AD agreement
but WTO Ministerial Decision: desirability for
uniform rules*

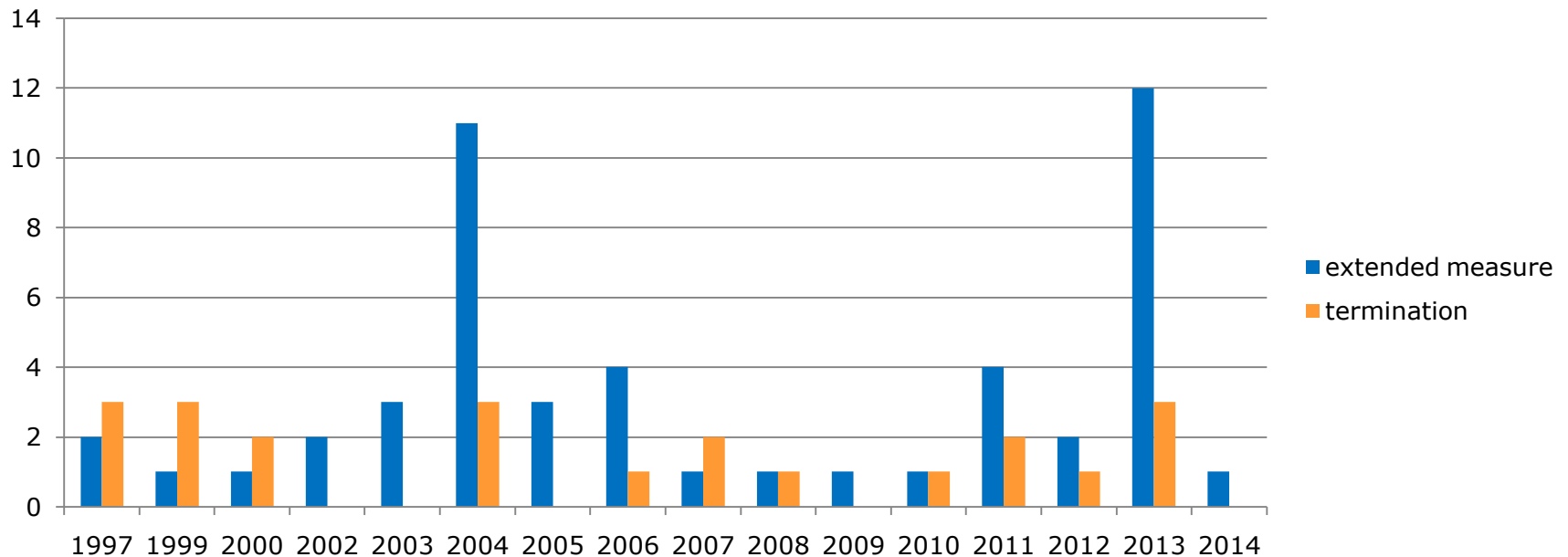
Rationale of Anti-circumvention provisions

- To ensure the effectiveness of measures
- To allow relatively rapid relief to the injured industry
- AC measures tackle future imports (past ADD evasion tackled by anti-fraud services)
- The EU is a prudent user of these provisions with very few initiations
- Genuine exporters NOT affected (exempted)

Low level of initiations, apart from spikes in 2004 and 2012

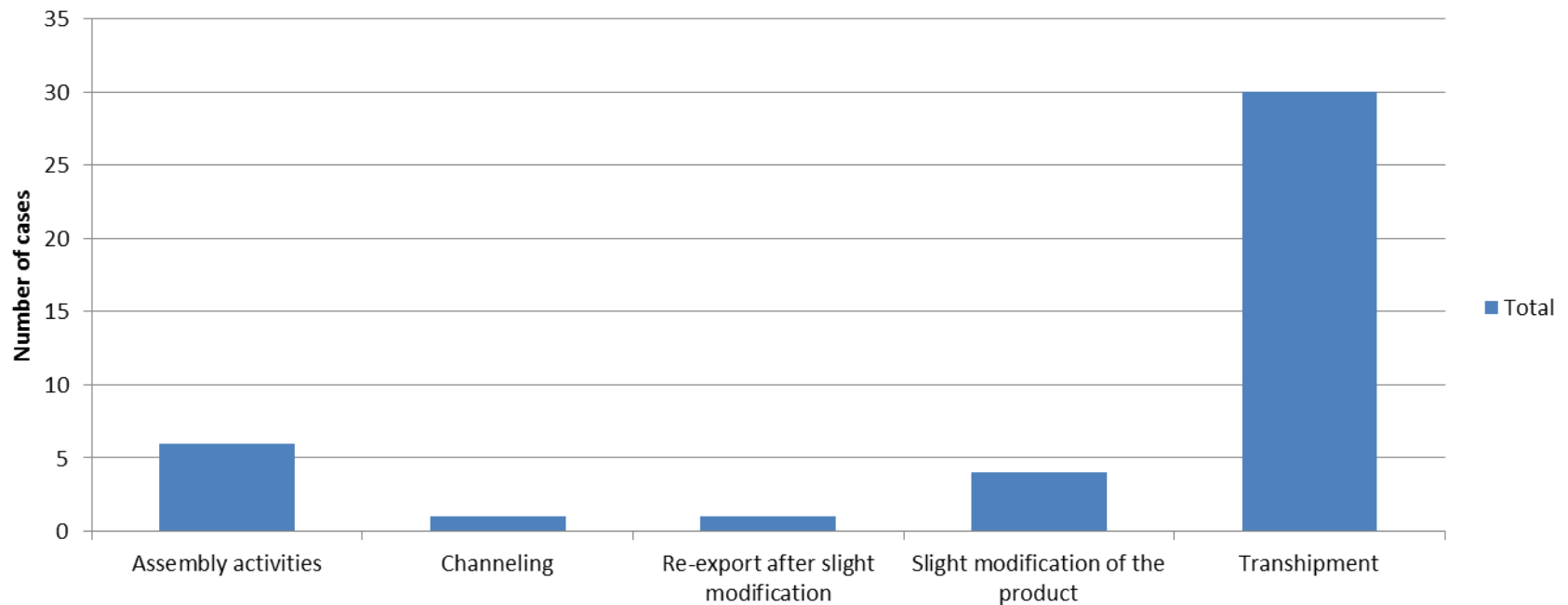


Constant low level of extensions over the years, except for 2004 and 2013



More than 70 % of circumvention is due to pure transshipment

Type of circumvention causing extension of duties



Definition of circumvention

... a change in the pattern of trade between some 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 where 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 where there is evidence of dumping in relation to the normal values previously established

Definition explained...

- **Change in pattern of trade** – e.g. imports from country under measures replaced by parts of product or slightly altered product from same country or imports from circumventing country
- **Practice, process or work** – refers to possible forms of circumvention e.g. transshipment, channelling, slight modification, assembly/completion operations
- **Insufficient economic justification** – distinguish from normal market reaction to the imposition of measures. Acting in a non-economical way :cost benefit analysis of activity
- **Evidence of injury/remedial effects** – in terms of quantities /market shares and/or import prices vs non-injurious prices
- **Evidence of dumping** – in terms of the price of substituted or assembled product compared to the established NV (adjustments may be made for differences affecting prices and price comparability)

Assembly/completion operations – 'classic' case of circumvention

Circumvention if:

- (a) the operation started since the initiation of the AD investigation and the parts concerned are from the country subject to measures; and
- (b) these parts constitute 60 % or more of the total value of the parts of the assembled product, except that 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, and
- (c) the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the assembled like product and there is evidence of dumping in relation to the normal values previously established for the like or similar products.'

Anti-circumvention measures

Extension of duties with retroactive effect from the date on which the registration of imports was imposed (initiation date)

The level of duty shall be the same as the level of duty which has been circumvented (*'extended'*) – normally the residual duty

The extended duties will be collected on importation of the product or parts

Exemptions

- Imports shall not be subject to registration or measures where they are traded by companies which benefit from exemptions.

Purpose: to exclude economic operators which did not engage in circumvention practices i.e. genuine producers!

Exemptions may be granted to:

- A) producers found not to be engaged in circumvention practices;
- B) importers that can show that they are not related to producers subject to the measures

Exemptions

Can be granted either during the anti-circumvention investigation or after the imposition of the anti-circumvention measures

Exemptions remain valid for the period and under conditions set therein

Exemptions have retroactive effect (to date of initiation)

During the examination of an exemption request, the party concerned is exempted from paying the extended AD duty but imports will be registered.