

## Duty Evasion in Other Countries

1. Depypere, Stefaan. "Enforcement of Trade Defence Measures." *European Commission: External Trade*. .....2

This presentation from the European Commission discusses duty evasion and anti-circumvention measures. The European Commission can initiate proceedings and can request customs authorities to register imports or request guarantees. Forms of anti-circumvention measures include: extension of duties only to those imports which circumvent.

2. Lian, Lee Wei. "Chinese firms use Malaysia to evade anti-dumping laws." *The Malaysian Insider*. Feb. 23, 2010. <http://www.themalaysianinsider.com/index.php/business/52324-chinese-firms-use-malaysia-to-evade-anti-dumping-laws>.....15

Transshipping and other types of cheating are being used by Chinese producers/exporters to evade dumping duties in Europe. The Europeans are taking some proactive steps to tackle the problem. According to this article, not only are European authorities working with local agencies to try to stop transshipments, but they are also not reluctant to make implicit threats that Malaysian products could be subject to trade actions if the transshipments are not brought under control.

3. "Action against Circumvention of Duties." The Department of Trade and Industry. South Africa. <http://www.dti.gov.za/offerings/offering.asp?offeringid=80>.....18

South Africa is experiencing the same kind of duty evasion. The Government has set up a procedure for dealing with allegations of trade law violations.

## **ENFORCEMENT OF TRADE DEFENCE MEASURES**

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## Structure of the presentation

- **Forms of evasion of TDI measures + solutions**
- **How to detect?**
- **Purpose of enforcement measures**
- **Definition of circumvention**
- **Lack of multilateral solution**
- **AC procedure - overview**

## Enforcement - introduction

Companies may be tempted to evade TDI measures - enforcement is an **inherent problem**

## Forms of evasion of measures + solutions

- **Circumvention of duties** ⇨  
**anti-circumvention measures**
- **Violation of price undertakings** ⇨  
**withdrawal of UT**
- **Absorption of duties by lowering the export price** ⇨  
**anti-absorption measures**

## How to detect duty avoidance?

- Know-how from the investigation
- Input from interested parties
- Monitor trade flows, statistics, liaise with stakeholders
- Monitor price undertakings, including on-spot verifications at the premises of the companies

## **Purpose of enforcement measures**

- **Quick and effective relief to industry suffering injury**
- **Ensuring that for imports which should be subject to a duty, the duty is actually paid**
- **Simplified procedure (rather than new full investigation covering dumping injury and Community interest)**

## Anti-Circumvention

- Anti-circumvention rules are necessary to ensure effectiveness of AD measures
- **Wide range of possible forms of circumvention:**
  - transshipment (via third countries),
  - slight modifications to change the customs code, reversible product alterations (e.g. blending of chemical products),
  - channelling exports through companies with lower duties,
  - assembly operations,
  - repackaging,
  - fraud (wrong customs declaration, wrong origin)



## Multilateral solution?

- **Uruguay Round:** proposals of AC rules put forward by US and EU. No compromise could be reached
- Ministerial declaration:
  - “Ministers, noting that while the problem of circumvention of AD duty measures formed part of the negotiation [...], negotiators were unable to agree on a specific text,  
**Mindful of the desirability of the applicability of uniform rules in this area as soon as possible...**
- Decide to refer this matter to the Committee on AD Practices...”
- EC and US interpret this as permitting Members to adopt domestic AC rules

## How to define circumvention?

- Globalisation: production and assembly of goods can be rapidly shifted from one country to another
- Main challenge: How to ensure efficiency of AD measures without interfering with legitimate decisions of producers where to locate their production?

EC definition of circumvention:

**change in the pattern of trade** for which there is **insufficient due cause or economic justification** other than evasion of duties + the effect of duties is being undermined and there is evidence of dumping

## Change in the pattern of trade

- imports from the country under measures are being replaced by:
  - Increased imports of parts of the product subject to the measures (e.g. AD measures on bicycles from China – increase of imports of bicycle frames from China by 139% and parallel decrease of imports of bicycles from China by 98%)
  - Increased imports from the circumventing country
  - Imports of slightly altered product (e.g. refillable – disposable flint lighters)
- clear and consistent trend of substitution over an extended period

## **Insufficient due cause or economic justification**

- **Important to distinguish circumvention from normal market reactions to the imposition of measures**
- **Business practices that would not normally take place but for the avoidance of measures (cost-benefit analysis of circumvention activity)**

## Anti-circumvention procedure

- Request by: MS, exporters, importers, community producers
- Commission takes a decision to initiate proceedings and can request customs authorities to register imports or request guarantees
- AC measures imposed by Council regulation
- Form of measures: **extension of duties** only to those imports which circumvent (assembly operations can be done in good faith)
- **Exemptions** on request (to exclude operators not engaged in circumvention)

## Extension of duties – careful analysis

### Example: **bicycles from China**

- the investigation showed that imports of bicycle parts circumvented the measures – simple assembly operations were carried out in the EC
- imports of spare parts and imports by bona fide importers **were exempted from duties**

