

## TEN IV: Foreword

Edwin Vermulst\*

The TEN IV project is the fourth in a series of comparative studies about certain aspects of anti-dumping law and practice. It focuses on one of the most controversial topics, namely the treatment of perceived circumvention of anti-dumping duties. Despite more than twenty years of ongoing negotiations in the World Trade Organization (WTO), members have not been able to reach consensus on how to deal with circumvention. Faced with this multi-lateral stalemate, major WTO members have gone ahead and unilaterally adopted anti-circumvention legislation at the national level.

The TEN IV project is a follow-up to similar studies which we undertook in 2004,<sup>1</sup> 2007<sup>2</sup> and 2012<sup>3</sup> respectively. As we did at that time, we again requested the authors of the country studies, all of them experienced practising trade lawyers, to succinctly describe the major problems with judicial review in their jurisdictions in less than ten pages.<sup>4</sup>

This time we analysed and compared anti-circumvention law and practice of Australia, Argentina, Brazil, the European Union (EU), India, South Africa, Turkey and the United States which we understand to be the WTO members that have not only adopted anti-circumventing provisions but to also have had at least some experience in using the provisions in practice. In addition, we added an important chapter on the circumvention discussions in the WTO which seemed essential in light of the lack of an agreed upon multilateral framework to deal with circumvention.

We wish to thank Paola Arnolt, Ana Caetano, Serdar Baskin, Peggy Clarke, Seref Coskun, Folkert Graafisma, Gary Horlick, Thinus Jacobsz, Jesse Kreier, Daniel Moulis, Margaret Spicer, Juhi Dion Sud, Gustavo Uruchurtu and Hiromi Yano for their time and efforts in contributing to this project.

## ANNEX I TEN IV

*Anti-circumvention of anti-dumping measures: Law and Practice of Ten World Trade Organization members (maximum 5,000 words each)*

### Template

#### 1 Introduction (about 350 words)

The introductory section would provide a short history of anti-circumvention (AC) law and practice in your country, such as why and when were the provisions enacted, what types of circumvention are covered, how many cases there have been until the end of 2015, which countries have been the main targets, etc. It probably would not be more than one page.

#### 2 Anti-circumvention provisions (about 3,000 words)

This section would describe substantive AC law and practice in your country. It would provide the text of the law and explanations of how the law is applied in practice. This section would be the key part of the study. To the extent that your country's law covers several types of circumvention, you would be requested to use the following subsections:

- 2.1 Transshipment
- 2.2 Slightly changed merchandise
- 2.3 Shipping through exporter with lower rate
- 2.4 Importing country assembly
- 2.5 Third country assembly

In each section, you would give examples of cases. To the extent that your country uses value-of-parts or value-added

### Notes

\* Partner VVGB Advocaten. E-mail: eve@vvgb-law.com, Brussels, Belgium.

<sup>1</sup> The results of the TEN I project were published in Horlick, Vermulst, *The 10 Major Problems with the Anti-Dumping Instrument: An Attempt at Synthesis*, 39(1) J. World Trade 67–74 (2005). The underlying country studies were published in 39(1) J. World Trade 75–180 (2005).

<sup>2</sup> The results of the TEN II project were published in Vermulst, Horlick, *Problems with Dumping and Injury Margin Calculations in Ten User Countries*, 2(1) Global Trade & Cust. J. 1–5 (2007). The underlying country studies were published in 2(1) Global Trade & Cust. J. 6–71 (2007).

<sup>3</sup> The results of the TEN III project were published in Vermulst, Horlick, *Judicial Review of Trade Remedy Determinations in Ten User Countries*, 7(5) Global Trade & Cust. J. 195–199 (2012). The underlying country studies were published in 7(5) Global Trade & Cust. J. 200–289 (2012).

<sup>4</sup> The template that we provided to the authors is attached as Annex 1.

tests, it would be helpful to explain how the percentages are calculated and which items are included or excluded.

### **3 Anti-circumvention procedures (about 700 words)**

In this section, you would provide an overview of the AC procedures in your country. I would think this can be done in about two pages. In case your country allows retroactive application of AC measures, it would be important to explain the duration, etc.

### **4 Other means to combat circumvention (about 750 words)**

Has your country in the past used or does it presently use other legal mechanisms to combat circumvention, such as origin rules (if so, preferential or non-preferential?)

or Rule 2(a) of the General Rules of Interpretation (GRI) of the Harmonized System? Any other rules? If so, please explain the mechanisms, their frequency and if they are used as an alternative to AC rules or complementary (for example, rules of origin could be used to levy anti-dumping duties (ADD) retroactively while AC measures would normally work prospectively, or perhaps with some limited retroactivity).

### **5 Conclusions (about 200 words)**

Here you would make some comments, based on your experience with AC in your country. Are the rules reasonable and are they applied in a reasonable manner or are they abused, etc.