

WTO Rules and Disciplines (WTO Framework to regulate dumping)

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Fundamental principles

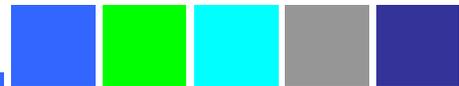
Horizontal exceptions

GATT rules and obligations do not prevent a Member, in certain situations and under certain conditions, to adopt measures that would otherwise be illegal

Articles XIX, XX and XXI, *GATT*

Anti-dumping measures

Article VI, GATT: Members may adopt measures to compensate for distortions created by certain trade practices



Trade remedies

- Dumping practices



Anti-dumping Measures

- Subsidies



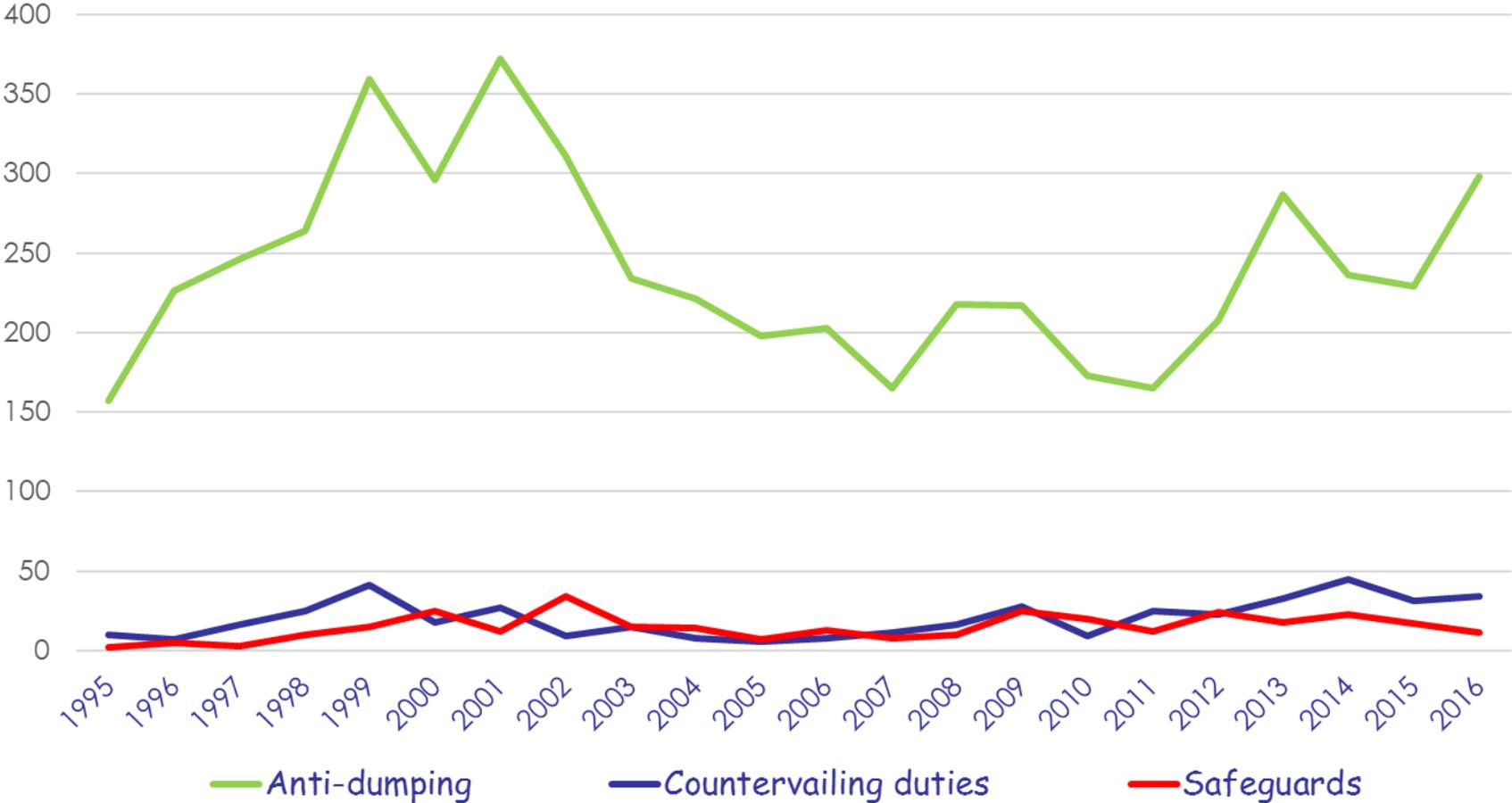
Countervailing Measures

- Sudden increases in imports

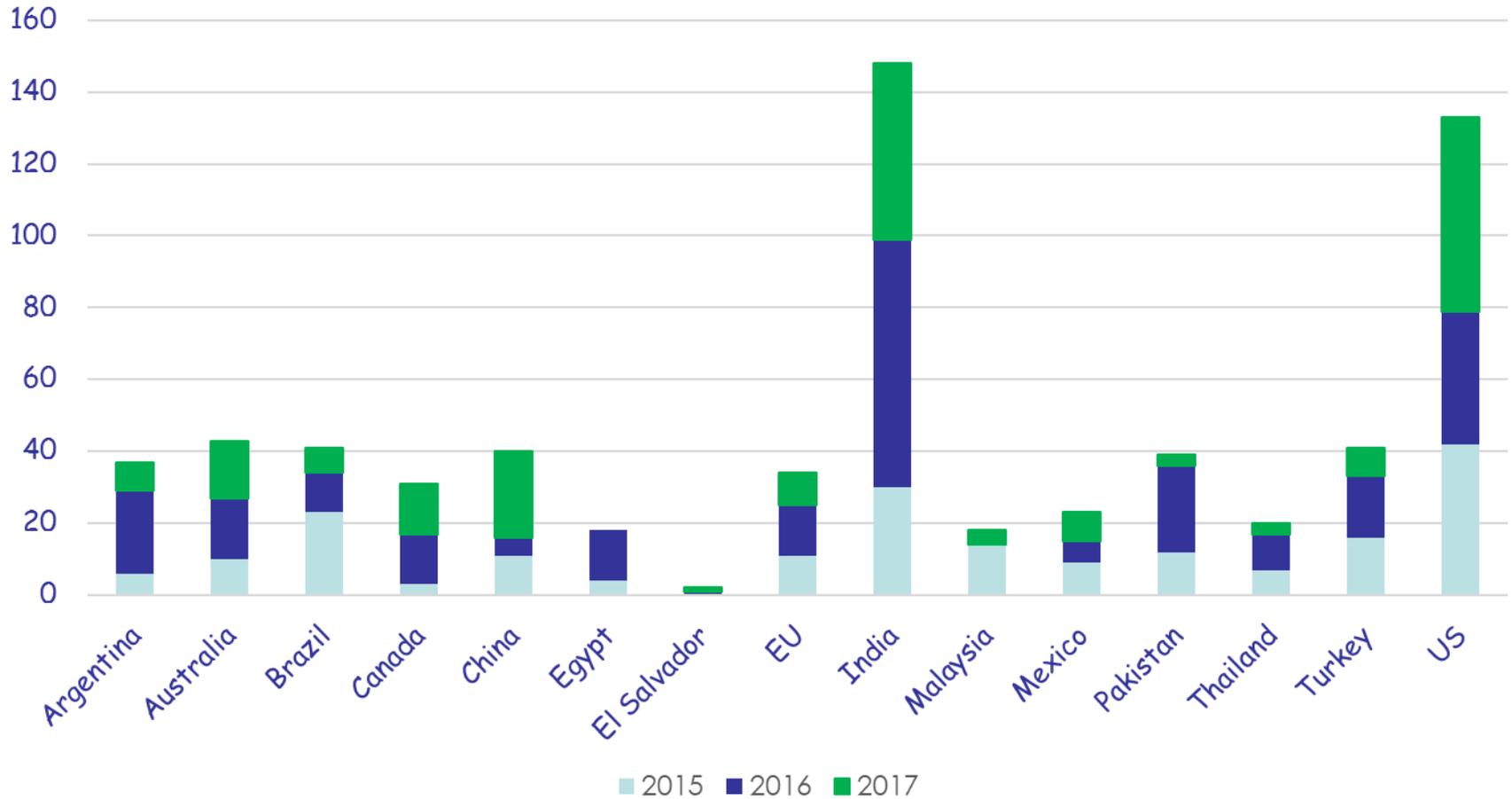


Safeguard Measures

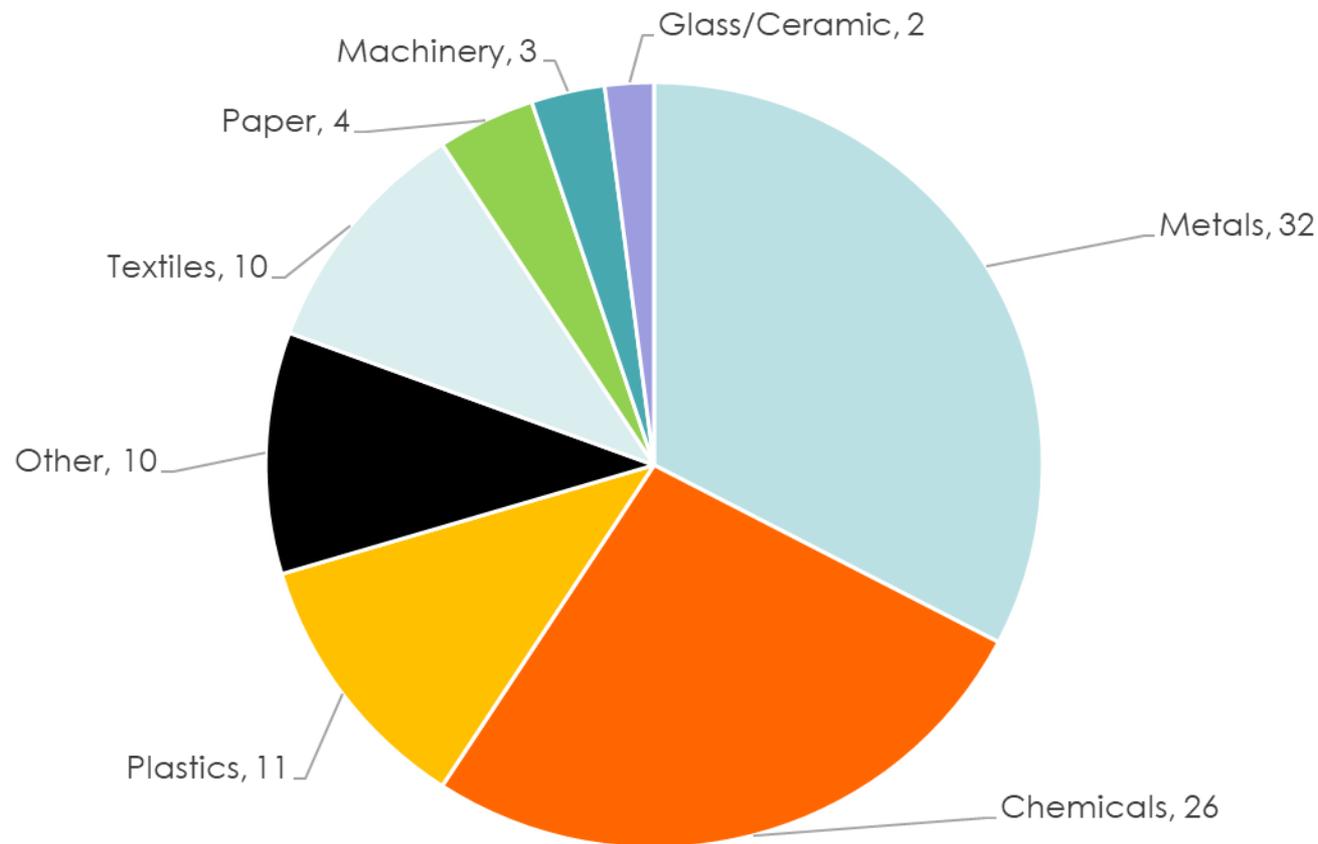
Initiation of investigations



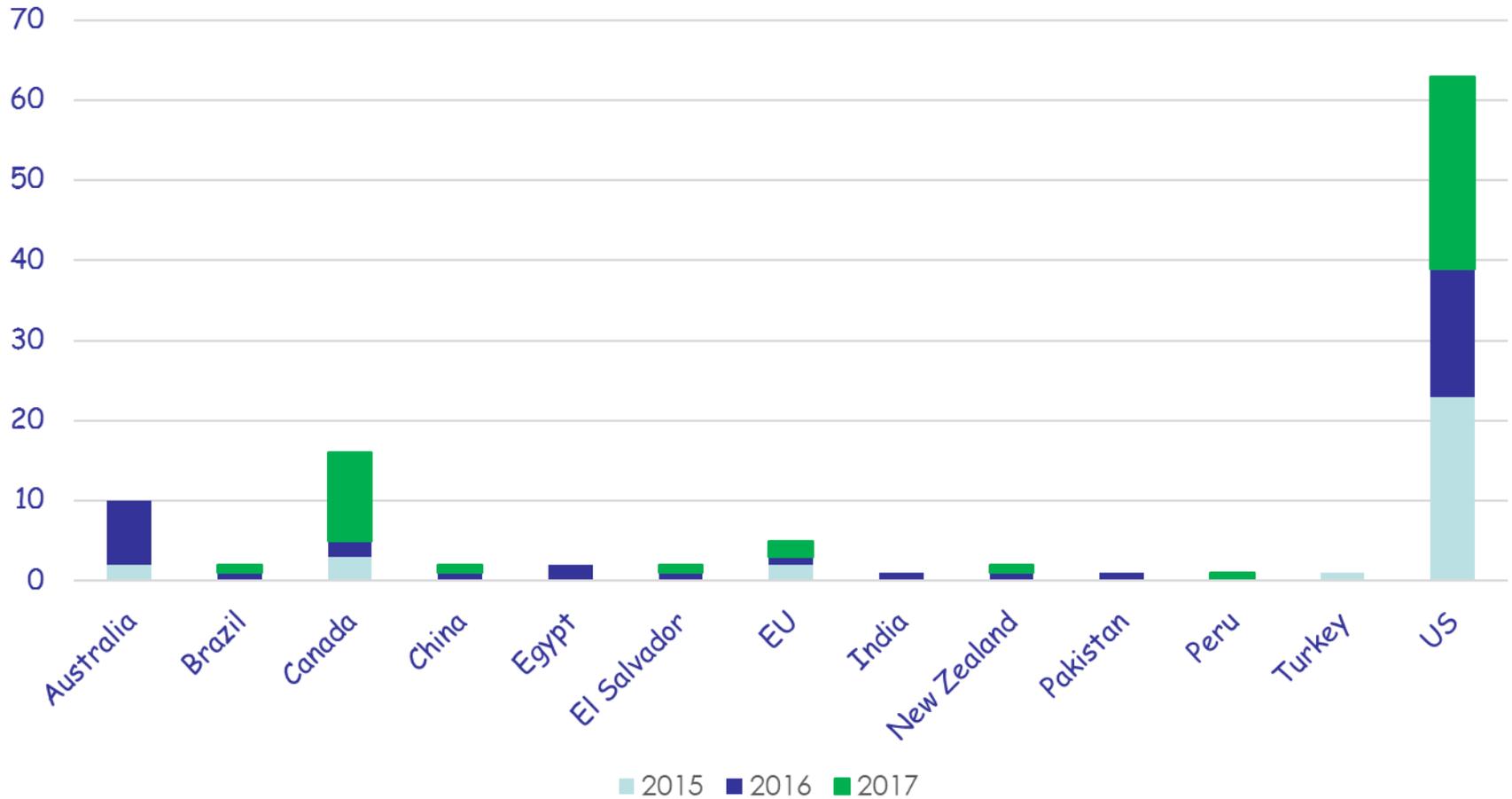
Initiation of anti-dumping investigations



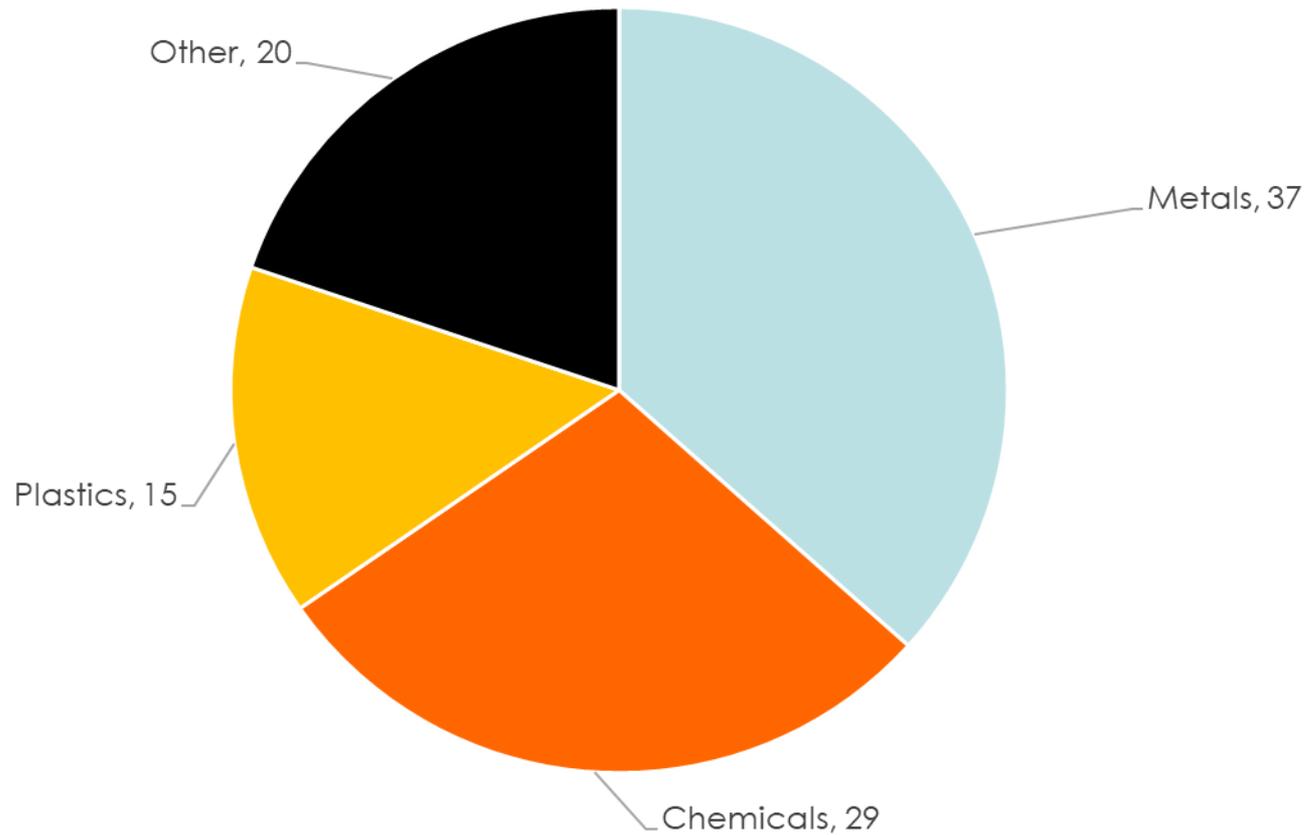
Initiation of antidumping investigations (2017)



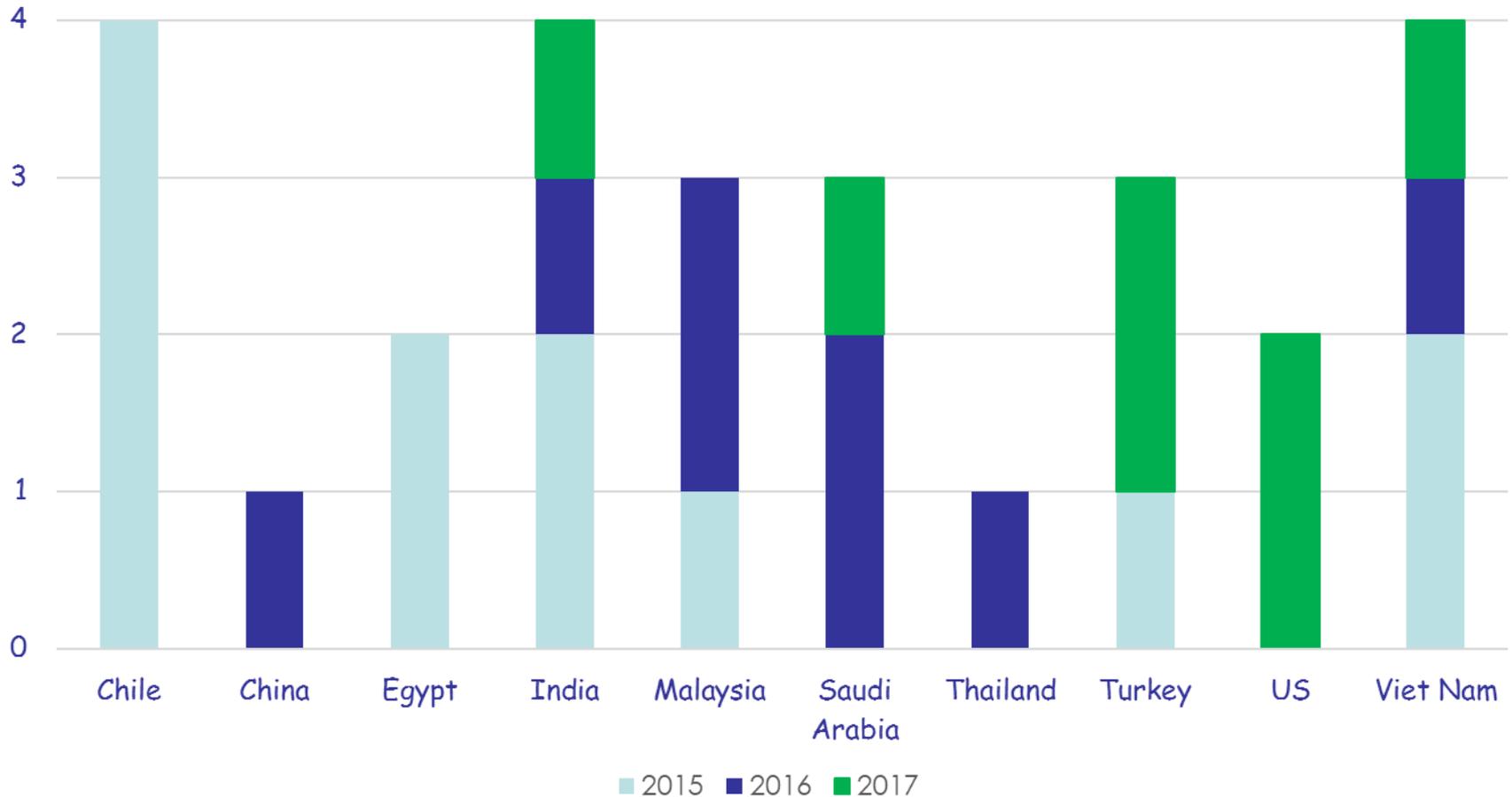
Initiation of countervailing investigations



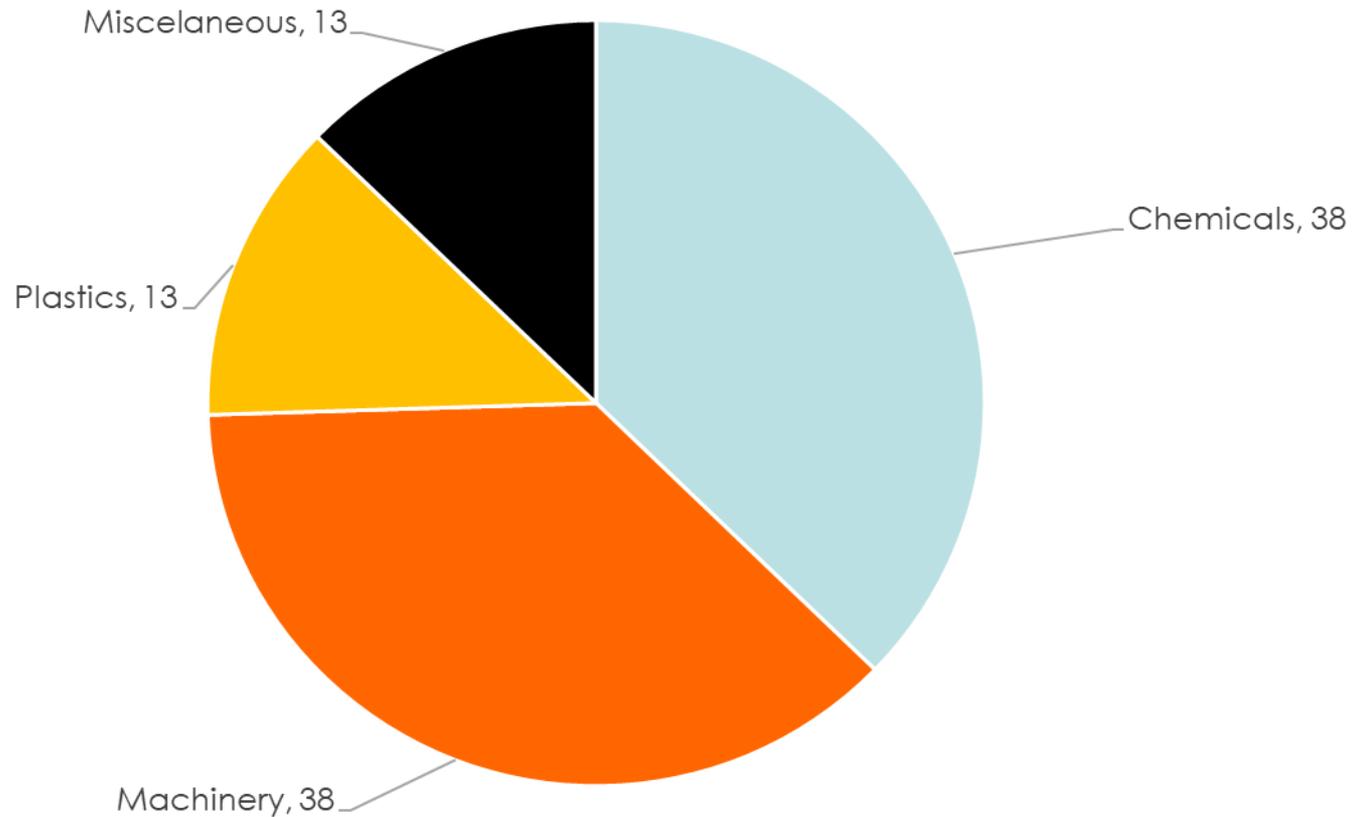
Initiation of countervailing investigations (2017)



Initiation of safeguards investigations



Initiation of safeguards investigations (2017)



Imposition of anti-dumping duties

- Legal basis:
 - Article VI of GATT
 - Anti-dumping agreement
- Requirements:
 - A proper investigation
 - Determination of dumping, injury, and causation

Anti-dumping measures in the WTO

- Substantive aspects
 - **Dumping determination**
 - **Injury and causation**
 - **Imposition of duties**
- Procedural aspects

Dumping determination

Dumping

Normally, when an exporter sells a product at a price lower than the price at which the same product (or a like product) is sold in the exporting country market

Dumping determination

- A comparison between:
 - Normal value
 - Export price

$$EP < VN = \text{Dumping}$$

Relevant products

- Normally, there are 3 relevant products:
 - Product under consideration - **Product exported**
 - Like product in the export market - **Normal value**
 - Like product in the importing Member - **Injury**

Like products

- Some criteria:
 - Properties, nature and quality
 - End use
 - Consumers' perceptions
 - Governmental regulations

Normal value

- The price at which the like product is sold in the exporting country
- Normally:
 - The comparable price
 - In the ordinary course of trade
 - For the like product
 - When destined for consumption in the exporting country

Normal value

- Unless:
 - There are no sales of the like product in the ordinary course of trade in the exporting country
 - The particular market situation in the domestic market does not permit a proper comparison
 - The low volume of sales in the domestic market does not permit a proper comparison

Normal value

- Then: the normal value may be:
 - A comparable price of the like product when exported to an appropriate third country
 - The cost of production plus a reasonable amount for administrative, selling, and general costs

Export price

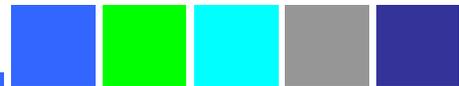
- The export price in the importing country market
- Unless:
 - There is no export price; or
 - The export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer

Fair comparison

- The comparison between export price and normal value must be fair
 - In some cases, adjustments may be made to the normal value and/or the export price
 - Comparison at the same level of trade (normally "ex factory")
 - Based on sales made at as nearly as possible the same time

Margin of dumping

- Normally, an individual margin for each known exporter or producer of the product under investigation
- If the number of exporters, producers, importers or types of products is so large that it is impracticable:
 - Statistically valid samples of interested parties or products
 - The largest percentage of the volume of exports that can reasonably be investigated



Injury

- Material injury to a domestic industry
- Threat of material injury to a domestic industry
- Material retardation of the establishment of a domestic industry

Domestic industry

- Domestic producers as a whole of the like products; or
- Those producers whose collective output of the products constitutes a major proportion of the total domestic production of those products

Domestic industry

- Producers excluded:
 - Producers related to exporters or importers
 - Producers who are importers of the product under consideration
- Excluded producers are not considered for the injury determination

Injury determination

- An objective examination based on positive evidence of:
 - Volume of dumped imports
 - Effect of dumped imports on prices of like products in the domestic market
 - Consequent impact of dumped imports on domestic producers of like products

Injury determination

Volume of dumped imports

Has there been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member?

Injury determination

Effect of dumped imports

Has there been:

- Significant price undercutting by the dumped imports;
- Significant price depression; or,
- Significant price increase suppression

Injury determination

Impact of dumped imports

- Evaluation of all relevant economic factors and indices having a bearing on the state of the industry
- Non-exhaustive list of factors
- No factor is decisive

Causal relationship

- No specific test in the agreement
- It must be demonstrated that dumped imports are, through the effect of dumping, causing injury
- Injury caused by other factors must not be attributed to the dumped imports

Anti-dumping investigations

- Normally, several stages:
 - Initiation
 - Collection of evidence
 - Preliminary determination
 - Additional investigation
 - Verification of information
 - Final determination

Anti-dumping measures

- Cannot exceed the margin of dumping
- Can consist in:
 - *Ad valorem* duties
 - Specific duties
 - Variable duties



Subsidies and countervailing measures

- Two sets of multilateral disciplines:
 - On subsidies
 - On the imposition of countervailing measures

Countervailing measures

- Requirements:
 - An investigation in accordance with the agreement
 - A determination of a subsidy, injury and causal relationship
- Measures:
 - Cannot exceed the amount of the subsidy
 - Should be lower if that is enough to remove or prevent the injury
 - Subsidies lower than 1% ad valorem are *de minimis*