



WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

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Customs Valuation and the World Trade Organization

**Market Access Division
World Trade Organization**



Structure of this presentation

- A. The CVA in the WTO context
- B. The Committee on Customs Valuation
- C. WTO Disputes on Customs Valuation

Customs management and regulation under the GATT...

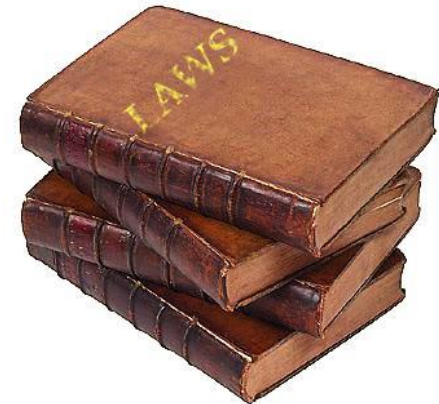
- International trade is necessarily conducted under the supervision of customs, potentially all WTO Agreements or obligations have some implication for Customs Authorities
- In addition, some specific obligations are directly targeted at Customs Authorities and their operations.

Customs management and regulation under the GATT...

- General objective: ensure that regular customs operations
 - do not hinder unnecessarily international trade: acknowledgement that customs controls, inspection, paperwork have a real impact on trade (that is, can both facilitate or hinder it – **concept of “non tariff barrier”, NTB**)
 - are not used to offset concessions that WTO Members have exchanged between one another: acknowledgement that some practices are preferable because they are more neutral on trade (**notion that common rules secure greater predictability**)
- While at the same time recognizing the discretionary autonomy that Customs Authorities must retain in order to fulfil their objectives: ensure security, promote product safety, implement laws and regulations, fight fraud and illegal practices, etc.

Customs management and regulation under the GATT...

- Examples:
 - Art. V – freedom of transit
 - Art. VII – Valuation for Customs Purposes
 - Art. VIII – Fees and formalities connected with importation and exportation
 - Art. IX – marks of origin
 - Art. X – publication and administration of trade regulations



Customs management and regulation under the GATT/WTO...

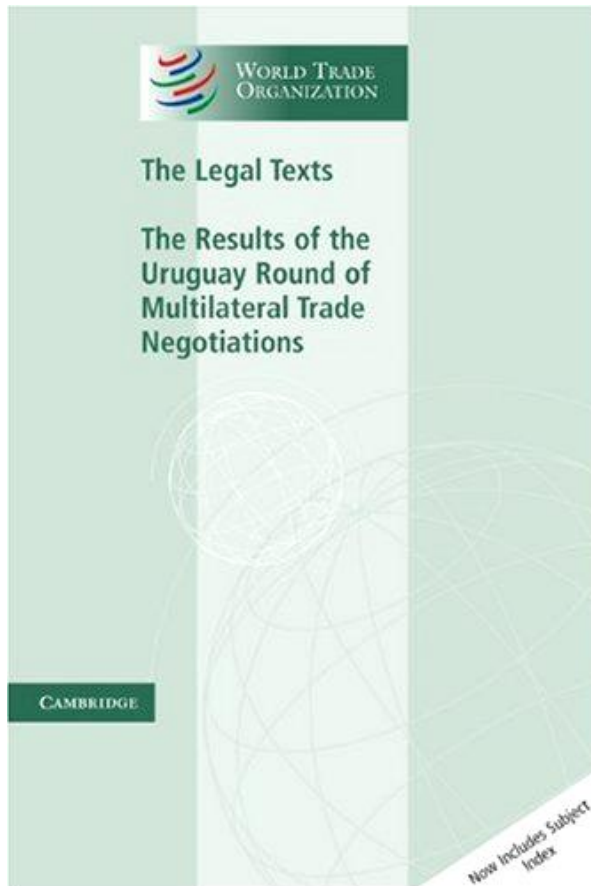
Specific obligations are further elaborated by additional instruments:

Agreement on the implementation of Art. VII – Customs Valuation

Agreement on Rules of Origin

Agreement on Trade Facilitation





The Agreement on Customs Valuation

CUSTOMS VALUATION

- GATT Article VII – Valuation for Customs Purposes
- WTO Agreement on the implementation of Art. VII (Customs Valuation Agreement)

Preamble:

- *“recognizing the need for a fair, uniform and neutral system for the valuation of goods for customs purposes that precludes the use of arbitrary or fictitious customs values [...]*
- *Recognizing that customs value should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between sources of supply”*

Importance of “customs value”

Calculation of import duties



Harmonized
System (HS)
Nomenclature



Tariff
treatment

Rules of
Origin (if
preferential)

Value is not always required

Importance of « customs value »

- Importation of bananas (10€/Kg):



Rules needed to preserve the value of tariff bindings

- Import duties:

- « 2€/Kg »

➔ 2 €

- « 20% »

➔ ?

20% ...of how much?

- If value = 5 € ➔ 1 €

- If value = 15 € ➔ 3 €

Current “valuation” rules

Uruguay Round added (1994) :

1. **Agreement on the Implementation of Article VII of the GATT 1994, a.k.a. the “Customs Valuation Agreement”**
2. **Decision Regarding Cases Where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value**
3. **Decision on Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionaires**

CVAL Committee added (1995):

4. **Decision Concerning the Interpretation (x 5) and the Administration (x 4) of the Agreement (G/VAL/5)**

Content of the Agreement



- **Valuation Methods** (Art. 1-8)
- Currency conversion (Art. 9)
- Confidentiality (Art. 10)
- Right of Appeal (Art. 11)
- Publication (Art. 12)
- Release of Goods (Art. 13)



- **Definitions** (Art. 15)
- Written explanation (Art. 16)



- **Interpretative Notes** (Annex I)
- Technical WCO Committee (Annex II)
- Developing countries (Annex III)

The annexes are an integral part of the CVA

- ✓ Primacy of the transaction value method
- ✓ Uniformity in valuation
- ✓ Fairness and neutrality
- ✓ Simple and equitable criteria
- ✓ Consistency with commercial practice

WTO and WCO Valuation Committees:

Art. 18

WTO Committee

- All WTO members
- Consult on administration of CV systems by any Members
- Review of national legislations (Art. 22)
- Oversees the implementation of the Agreement
- 2 formal meetings per year, Geneva

WCO Technical Committee

- Customs specialists
- Provide advice on implementation of the Agreement
- Technical assistance
- Report to the WTO Committee and WCO Council
- Report to WTO panels
- 2 formal meetings per year, Brussels

Notifications required under the CVA

Provision	Measure	Member concerned
Art. 22	Notification of laws and regulations related to valuation and changes thereof	All Members
G/VAL/5	<ul style="list-style-type: none"> • Copies of national valuation legislations • Written responses to checklist of issues 	All Members
S&D Treatment Art. 20.3; 20.3 and Annex III	Deferred application of the Agreement for up to 5 years	Developing countries

Authorized Valuation Methods

Order MUST be followed

- 1 - Transaction value
- 2 - Transaction value of identical goods
- 3 - Transaction value of similar goods
- 4 - Deductive value
- 5 - Computed value
- 6 - “Fall-back “method



Prohibited Valuation Methods

(Article 7)

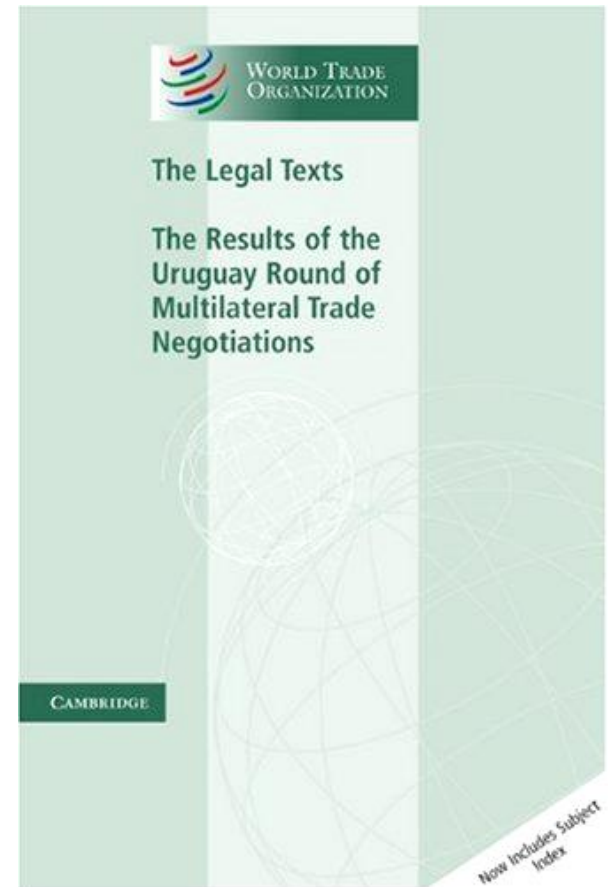
- Selling price of goods domestically produced
- Higher of two alternative values
- Price of goods in the domestic market of the country of exportation
- Cost of production other than computed values
- The price of goods for export to a country other than the country of importation
- Minimum customs values
- Arbitrary and fictitious values



Decision on Reasonable doubts about the truth of the importer's declaration

- Customs *may* ask importer for additional information/documentation
- Customs *must* inform importer of its reasons for doubts
- Customs *must* give importer reasonable opportunity to respond
- Customs *must* inform importer in writing of final decision
- Transaction value *can* be rejected

C. WTO DISPUTES ON CUSTOMS VALUATION



Overview of WTO Disputes in General

A dispute arises when a Member believes that another Member is not complying with a covered Agreement or a specific commitment made in the WTO.

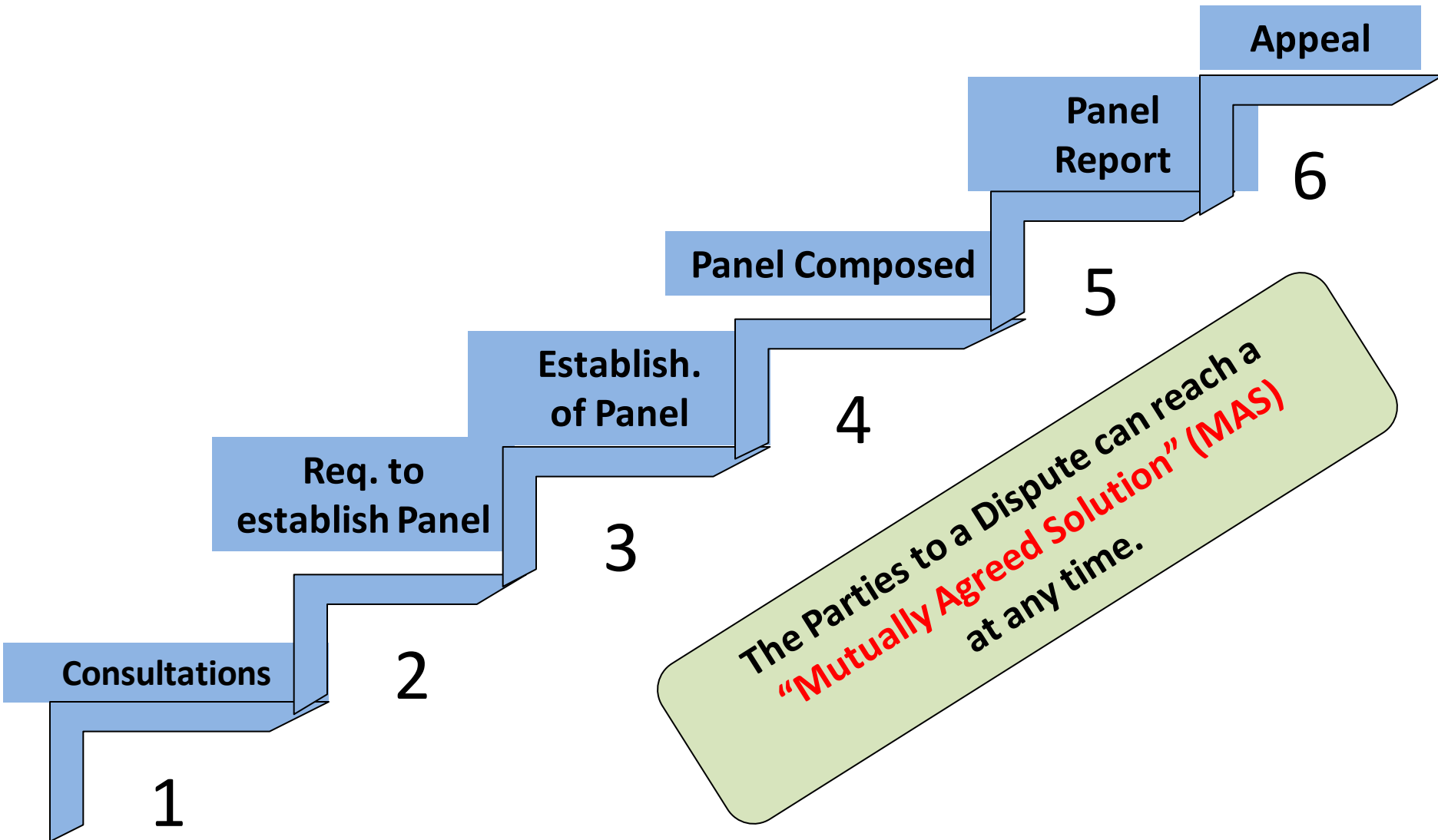
Dispute Settlement Body (DSB)

- This has the ultimate responsibility for settling disputes.

Dispute Settlement Understanding (DSU)

- This is the main WTO agreement on settling disputes, and One of the cornerstones of the multilateral trading system.

Steps in a WTO dispute



Disputes involving valuation

GATT 1947:

- 3 disputes involving valuation.
- Only one of them resulted in a report (*Exports of potatoes to Canada, BISD 11S/88*)

WTO:

- 17 disputes where the complainant mentioned a provision of the Agreement on Customs Valuation

Customs Valuation Dispute Cases

Nearly all cases involve the same question of issue:

- the uses of minimum values or reference prices in place of transaction value
- Nearly all the cases involving a valuation claim have been settled or otherwise resolved in the consultation phase, without the establishment of a panel.

No.	DS	Short Name
1	DS9	EC - Cereals
2	DS13	EC – Grains (Withdrawn)
3	DS17	EC - Rice (Thailand)
4	DS56	Argentina - Textiles and Apparel (Panel Report did not deal with CV claims)
5	DS134	EC - Import Duties on Rice
6	DS183	Brazil - Minimum Import Prices (EC)
7	DS197	Brazil - Minimum Import Prices (US)
8	DS198	Romania - Minimum Import Prices (MAS)
9	DS210	Belgium – Rice (MAS)

No.	DS	Short Name
10	DS241	Argentina - Poultry Anti-Dumping Duties (Panel Report did not deal with CV claims)
11	DS298	Mexico - Pricing Measures (MAS)
12	DS348	Colombia - Customs Measures (MAS)
13	DS366	Colombia - Ports of Entry (Panel Report)
14	DS370	Thailand - Customs Valuation
15	DS371	Thailand - Cigarettes (Philippines) (Panel Report; Appeal did not look into CV)
16	DS457	Peru - Agricultural Products
17	DS485	Russia - Tariff Treatment

Colombia – Ports of Entry (DS366)

Colombia – Ports of Entry (DS366)

Complainant:

Panama



Respondent:

Colombia



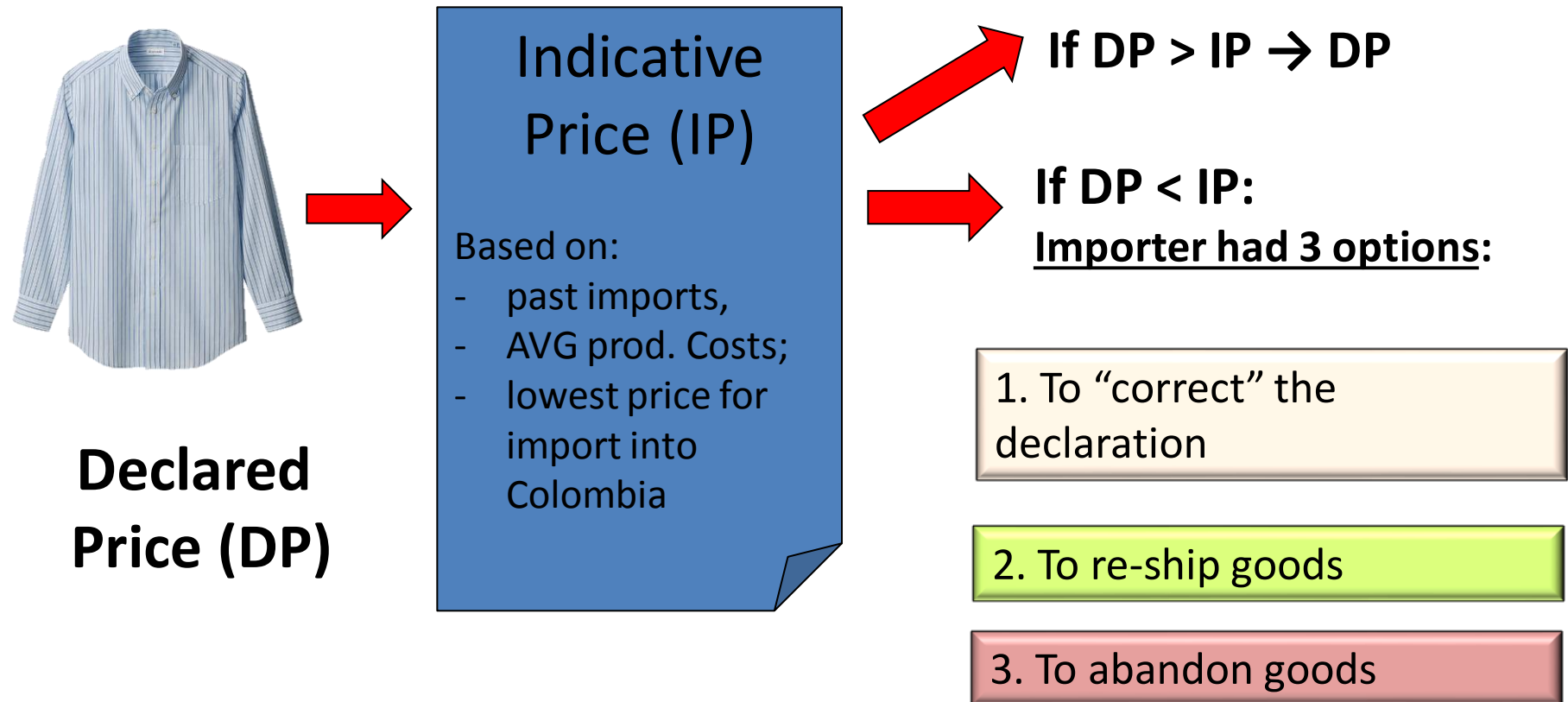
Timeline

Request for consultations:	12 July 2007
Request to establish panel:	14 September 2007
Establishment of Panel:	22 October 2007
Panel composition:	8 February 2008
Circulation of panel Report:	27 April 2009
Adoption:	20 May 2009



Colombia – Ports of Entry (DS366)

Measure: List of indicative prices





Colombia – Ports of Entry (DS366)



Panama alleged that :

1. Customs duties & other duties and charges: based on indicative prices, rather than on the six valuation methods.

2. Sales tax:

- Imported products: Indicative prices
- Like domestic products: Transaction value



Colombia – Ports of Entry (DS366)



Colombia's defence:

- It is not the **payment** of a duty;
- It is rather a system for a **guarantee** allowed by Article 13 of the CVA.



Colombia – Ports of Entry (DS366)

Panel Findings:



1. It is a system to determine the payment of a duty, not do determine a guarantee.
2. System is based on choosing the maximum of two values (Prohibited by Article 7:2(b)+(f) CVA).
3. System does not reflect any of the 6 methods. Therefore, in violation of Arts. 1, 2, 3, 5 and 6 CVA.
4. Recommended Colombia to bring its measures into conformity with the CVA.

Thailand – Cigarettes (DS371)

Thailand – Cigarettes (Philippines) (DS371)

Complainant:
Philippines



Respondent:
Thailand



Timeline	
Request for consultations:	7 February 2008
Request to establish panel:	29 September 2008
Establishment of Panel:	17 November 2008
Panel composition:	16 February 2009
Circulation of panel Report:	15 November 2010
Appeal	22 February 2011
Appellate Body Report	17 June 2011



Thailand – Cigarettes (Philippines) (DS371)

Products at issue: Cigarettes



Complaint: The Philippines claimed that:

Alleged measure at issue:	Were in violation of:
A number of fiscal and customs measures: customs valuation practices, excise tax, health tax, TV tax, VAT regime, retail licensing requirements and import guarantees	CVA: Art. 3, 1.1, 1.2, 4, 5, 6, 7, 10, 13, 16 GATT: Art. II:1(b), III:2, III:3, VII:1; VII:2, VII:5, X



Thailand – Cigarettes (Philippines) (DS371)



The Philippines argued that (1):

1. Systematic rejection of transaction value just because importer and seller were “related”, in violation of Art 1.1 and 1.2(a) of the CVA.
2. Failed to follow the procedural steps:
 - To examine the circumstances of the transaction
 - To follow the sequential order of the methods
 - To inform the importer of the grounds for rejecting the transaction value



Thailand – Cigarettes (Philippines) (DS371)



The Philippines argued that (2):

2. Thai Customs applied the **deductive method** inconsistently with Articles 5 (failed to make deductions for sales allowances, internal transportation costs, and provincial taxes) and 7 of the CVA.
3. Thailand violated obligations under Article 10 (not to disclose **confidential information**) and Article 16 (to provide an **explanation** for the determination of the final customs value)



Thailand – Cigarettes (Philippines) (DS371)



Thailand replied that :

- The **burden** of establishing that the relationship did not influence the price is on the importer.
- Thai Customs act consistently with the CVA, because the importer **failed to provide sufficient information** to prove that the relationship did not influence the price.
- Explanation was provided



Thailand – Cigarettes (Philippines) (DS371)

Panel Findings: (1)

Procedural steps to determine Transaction Value



- 1.Importer declares a transaction value
- 2.Customs examines the circumstances of the sale (only if it has doubts about the validity)
- 3.Customs examines information provided by importer; obligation to communicate grounds for doubts
- 4.Customs gives reasonable opportunity to respond; importer submits further information
- 5.Customs makes a final decision on the value; provides written explanation if importer requires (it is not only a formal, but also a substantive obligation)





Thailand – Cigarettes (Philippines) (DS371)

Panel Findings : (2)



- Thai Customs failed to “**examine**” the circumstances of sale (Art. 1.2(a))
- Thai Customs did not “**consult with the importer**” for any further relevant information as required under article 7 of the CVA.
- Thai Customs “**explanation**” was insufficient to reject the importer’s declared transaction value and to give a different customs value to the transaction.



Thailand – Cigarettes (Philippines) (DS371)

Panel Findings : (3)



Article 5 of the CVA

Thailand failed to **deduct certain expenses** (sales allowances, provincial taxes and transportation costs) that should have been deducted in accordance with



Thailand – Cigarettes (Philippines) (DS371)

Appeal:

Thailand appealed to the Appellate Body. However the reason they appeal did not concern with the panel's conclusion on valuation matters. Therefore the Panel's conclusion would be accepted by the WTO.



Thank you

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