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1 ARTICLE 15

1.1 Text of Article 15

Article 15

1. In this Agreement:
 - (a) "customs value of imported goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;
 - (b) "country of importation" means country or customs territory of importation; and
 - (c) "produced" includes grown, manufactured and mined.
2. In this Agreement:
 - (a) "identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical;
 - (b) "similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar;
 - (c) the terms "identical goods" and "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under paragraph 1(b)(iv) of Article 8 because such elements were undertaken in the country of importation;
 - (d) goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued;
 - (e) goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.
3. In this Agreement "goods of the same class or kind" means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.
4. For the purposes of this Agreement, persons shall be deemed to be related only if:
 - (a) they are officers or directors of one another's businesses;
 - (b) they are legally recognized partners in business;
 - (c) they are employer and employee;
 - (d) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;

- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person; or
- (h) they are members of the same family.

5. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Agreement if they fall within the criteria of paragraph 4.

1.2 Article 15.1

1.2.1 "for the purpose of levying *ad valorem* duties"

1. In *Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines)*, Thailand argued that the 2003-2006 criminal charges (the "Charges") filed by the Public Prosecutor against Phillip Morris Thailand Limited (PMTL) were not covered by the CVA. Thailand submitted that the Charges did not satisfy the second element of Article 15.1(a), as they did not result in the levying of *ad valorem* customs duties on imported goods but could only result in criminal fines and penalties. The Panel viewed the terms "for the purpose of levying *ad valorem* duties" in the context of Article 15.1(a) as "embracing any determination of the value of imported goods for the purpose of determining the amount of *ad valorem* duties due on those imported goods."¹ The Panel considered that the applicability of the Charges did not turn on the meaning of the term "levying",² and pointed out that "Thailand's interpretation of Article 15.1(a) is contradicted by various provisions of the CVA which establish that customs duties are not necessarily 'levied on the border', either in physical or temporal terms."³

2. In this light, the Panel concluded that:

"[T]he Public Prosecutor's determination of the monetary worth or price of imported goods of PMTL for the purpose of determining the amount of the *ad valorem* customs duties that should have been levied on goods imported by PMTL, in the context of an allegation that PMTL declared false prices in order to evade customs duties, suffices to establish that this valuation was made 'for the purposes of levying *ad valorem* customs duties on imported goods'."⁴

3. In *Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines II)*, in reiterating its arguments from the first compliance proceedings in the same dispute, Thailand argued that, for a valuation measure to satisfy the second element of Article 15.1(a), it "cannot be an abstract determination of the amount of customs duties that are 'due' or that 'should have been paid'."⁵ The Panel pointed out that, contrary to Thailand's understanding, the first compliance panel's interpretation of the words "for purposes of levying *ad valorem* duties" "does not lead to the consequence that approximate reference values used for risk assessment or guarantees to secure the payment of customs duties are themselves 'customs valuation determinations' that must be calculated in accordance with the customs valuation rules in Article 1 through 7."⁶ The Panel explained that the reason is that the use of such reference values for these purposes would typically not reflect any determination of the monetary worth or price of imported goods and would not suffice to meet the first element of Article 15.1(a).⁷

Current as of: December 2020

¹ Panel Report, *Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines)*, para. 7.669.

² Panel Report, *Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines)*, para. 7.669.

³ Panel Report, *Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines)*, para. 7.670. See also Panel Report, *Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines II)*, paras. 7.325-7.329.

⁴ Panel Report, *Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines)*, para. 7.672.

⁵ Panel Report, *Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines II)*, para. 7.324.

⁶ Panel Report, *Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines II)*, para. 7.327.

⁷ Panel Report, *Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines II)*, paras. 7.327-7.329.