

made on the Philippines' identical substantive claims in relation to the 2002-2003 Charges; and that, in the light of those findings above in this Report, the issues raised by the Philippines' procedural claims in relation to the revised NoAs are rendered largely academic.

7.506. Taken together, the foregoing considerations lead the Panel to decline to rule on the 1,052 revised NoAs that have now all been terminated.

## **8 CONCLUSIONS AND RECOMMENDATIONS**

8.1. Regarding the Charges filed by the Public Prosecutor on 26 January 2017 concerning 780 entries of *Marlboro* and *L&M* cigarettes imported by PMTL between January 2002 and July 2003, the Panel finds that the Philippines' claims are admissible and fall within the scope of this compliance proceeding, and concludes that:

- a. the 2002-2003 Charges are inconsistent with Article 1.1 and/or the substantive obligation in Article 1.2(a), second sentence, of the CVA because the Public Prosecutor's rejection of PMTL's declared transaction values based on pricing and cost information reported by PM Indonesia in the CK-21A forms constitutes a failure to conduct a proper examination of the circumstances surrounding the sale, and/or a proper determination of the price actually paid or payable;
- b. the 2002-2003 Charges are inconsistent with Article 6.1 and/or Article 7.1 of the CVA, because the Public Prosecutor improperly relied on pricing and cost information reported by PM Indonesia in the CK-21A forms to determine the revised customs value of the imported goods;
- c. the Public Prosecutor acted inconsistently with the obligation to sequentially apply the customs valuation methods in Articles 2 through 7 of the CVA when it determined the revised customs values of PMTL's imported goods; and
- d. the Public Prosecutor did not violate the procedural obligation in Article 1.2(a), third sentence, of the CVA because prior to the issuance of the 2002-2003 Charges the DSI had already sufficiently communicated the grounds for considering that the relationship between PMTL and PM Indonesia influenced the price, and PMTL responded.

8.2. The Panel declines to make findings on the Philippines' additional claims regarding the 1,052 revised Notices of Assessment that PMTL received in November 2017 from Thailand's Customs Department, because most if not all of these NoAs were withdrawn prior to the establishment of the Panel by the DSB; there is no reason to expect that the Thai authorities would reintroduce the same or materially similar measures; and any additional findings by the Panel on the NoAs would have limited practical value for implementation beyond the Panel's other findings on the 2002-2003 Charges.

8.3. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. The Panel concludes that, to the extent that the measures at issue are inconsistent with the Customs Valuation Agreement, they have nullified or impaired benefits accruing to the Philippines under that agreement.

8.4. The Panel therefore concludes that Thailand has failed to implement the recommendations and rulings of the DSB to bring its measures into conformity with its obligations under the Customs Valuation Agreement. The recommendations and rulings of the DSB in the original proceeding in DS371 remain operative, to the extent that Thailand has failed to comply with them.

---