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## **1 ARTICLE 10**

### **1.1 Text of Article 10**

#### **Article 10**

All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

### **1.2 General**

1. The Panel in *Thailand – Cigarettes (Philippines)* explained that Article 10 prohibits customs authorities from disclosing information which is in essence confidential when an importer provided it for the purpose of customs valuation.<sup>1</sup> Regarding the specific types of information falling within the scope of Article 10, the Panel stated that:

"The Customs Valuation Agreement neither defines confidential information nor provides a specific list of information that qualifies as confidential information. We find useful guidance in the discussions of the Ad Hoc Group on Implementation in the Committee on Anti-Dumping Practices. The record of the discussions indicates that information can be considered as confidential if it is not in the public domain and if its disclosure would be likely *inter alia*: 'to be of significant competitive advantage to a competitor ... to have a significant adverse effect upon the party who submitted the information ... to prejudice the commercial position of a person who supplied or who is the subject of the information ...'.

Both parties agree that the PM Thailand's c.i.f. price, transaction values and imports volume were revealed to the press by Thai officials. ...

Thailand does not dispute that PM Thailand's c.i.f. price is classified as confidential information. Thailand also admits that PM Thailand's customs value is confidential information. Concerning import volumes, however, Thailand submits that although import volumes *may* be confidential information, they would not be confidential either when a company is the sole importer of a given good, or when the company has agreed that the information shall be publicly disclosed. In this regard, we note that PM Thailand is not the sole cigarette importer in Thailand. Furthermore, at no point has PM Thailand agreed to make its confidential information available to the public. On the contrary, PMTL has insisted on multiple occasions that this information should be kept confidential. Moreover, we agree that the very disclosure of PM Thailand's c.i.f. price, transaction values and imports volume information could cause commercial damages to PM Thailand by giving its competitors access to its sensitive business information. For example, the nature of such information could give competitors useful indications on PM Thailand's business strategy, including profit margins."<sup>2</sup>

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<sup>1</sup> Panel Report, *Thailand – Cigarettes (Philippines)*, para. 7.407.

<sup>2</sup> Panel Report, *Thailand – Cigarettes (Philippines)*, paras. 7.408-7.410.