

1 ARTICLE 13	1
1.1 Text of Article 13.....	1
1.2 General	1
1.3 "final determination"	1
1.4 "guarantee"	2

1 ARTICLE 13

1.1 Text of Article 13

Article 13

If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer of the goods shall nevertheless be able to withdraw them from customs if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable. The legislation of each Member shall make provisions for such circumstances.

1.2 General

1. In *US – Certain EC Products*, the Panel examined whether the increased bonding requirements imposed by the United States on certain products imported from the European Communities were consistent with, among others, Article II of *GATT 1994* and certain provisions in the *DSU*. The United States put forward Article 13 of the Customs Valuation Agreement as a defence, arguing "that the non-compliance of the European Communities [with a certain DSB recommendation] created a risk, which allowed the United States to have concerns over its ability to collect the full amount of duties which might be due"¹, and that the increased bonding requirements were consistent with that Article. The Panel stated that:

"In the present dispute the United States is not claiming that, as of 3 March, it required additional guarantees because the customs value of the EC listed imports had increased or changed on 3 March 1999. In the present dispute, there is no disagreement between the parties on the customs value of the EC listed imports. Article 13 of the Customs Valuation Agreement allows for a guarantee system when there is uncertainty regarding the customs value of the imported products, but is not concerned with the level of tariff obligations as such. Article 13 of the Customs Valuation Agreement does not authorise changes in the applicable tariff levels between the moment imports arrive at a US port of entry and a later date once imports have entered the US market. As we discuss further below, the applicable tariff (the applicable WTO obligation, the applicable law for that purpose), must be the one in force on the day of importation, the day the tariff is applied. In other words, Article 13 of the Customs Valuation Agreement is of no relevance to the present dispute. We reject, therefore, this US defense."²

1.3 "final determination"

2. In *Thailand – Cigarettes (Philippines)*, the Panel observed that:

"Article 13 of the Customs Valuation Agreement states, 'if, in the course of determining the customs value of imported goods, it becomes necessary to delay the *final* determination of such customs value, the importer of the goods shall nevertheless be able to withdraw them from customs if where so required the importer provides sufficient guarantee'. This shows that when the drafters intended to

¹ Panel Report, *US – Certain EC Products*, para. 6.75.

² Panel Report, *US – Certain EC Products*, para. 6.77.

distinguish final actions or determinations from provisional actions or determinations, they did specifically add the term 'final'.³

1.4 "guarantee"

3. In *Thailand – Cigarettes (Philippines)*, the Panel considered the meaning of the term "guarantee" in the context of Article 13. The Panel stated:

"We will first examine the nature of a guarantee imposed in the context of customs valuation. The determination to impose a guarantee under Article 13 of the Customs Valuation Agreement is not a mandatory procedural step that needs to be taken to arrive at a final customs value. Rather, as the text of Article 13 stipulates, a guarantee is a tool in the form of a surety or a deposit that enables importers to withdraw their goods from customs when it becomes necessary for a customs office to delay the final determination of the customs value of the imported goods. A guarantee should also be sufficient to cover the ultimate customs duties for which the goods may be liable. In this context, we consider that the imposition of a guarantee is a distinct decision purported to play a specific role, namely to secure the payment of final customs duty. ...

Overall, we consider that the imposition of a guarantee in the context of the customs valuation process is a decision that is intended to serve the distinct purpose of *securing* the payment of the ultimate actual amount of customs duty pending final determination by customs."⁴

4. In considering the issue of guarantees in *Colombia – Textiles (Article 21.5 – Colombia) / Colombia – Textiles (Article 21.5 – Panama)*, the Panel agreed with Colombia in that "the fact that Article 13 of the Customs Valuation Agreement contemplates the use of guarantees expressly for the payment of customs duties does not mean that the use of guarantees to cover other taxes or penalties is prohibited under that article".⁵

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³ Panel Report, *Thailand – Cigarettes (Philippines)*, para. 7.1034.

⁴ Panel Report, *Thailand – Cigarettes (Philippines)*, paras. 7.1039-7.1040.

⁵ Panel Report, *Colombia – Textiles (Article 21.5 – Colombia) / Colombia – Textiles (Article 21.5 – Panama)*, para. 7.636.