

## VI. Findings and Conclusions

223. For the reasons set out in this Report, the Appellate Body:

- (a) with respect to the Panel's findings under Article III of the GATT 1994 concerning Thailand's treatment of resellers of imported cigarettes, as compared to its treatment of resellers of like domestic cigarettes:
  - (i) upholds the Panel's finding, in paragraph 8.3(b) of the Panel Report<sup>333</sup>, that Thailand acts inconsistently with Article III:2, first sentence, of the GATT 1994 by subjecting imported cigarettes to VAT liability in excess of that applied to like domestic cigarettes;
  - (ii) with respect to the Panel's findings under Article III:4 of the GATT 1994:
    - finds that the Panel did not err in concluding, in paragraph 7.738 of the Panel Report, that Thailand accords less favourable treatment to imported cigarettes than to like domestic cigarettes;
    - finds that Thailand has not established that the Panel failed to ensure due process and, thus, to comply with its duty under Article 11 of the DSU to make an objective assessment of the matter, by accepting and relying on Exhibit PHL-289 without affording Thailand an opportunity to comment on that evidence;
    - reverses the Panel's finding, in paragraph 7.758 of the Panel Report, regarding Article XX(d) of the GATT 1994; but finds that Thailand failed to establish that its measure is justified under Article XX(d) of the GATT 1994; and
    - upholds the Panel's finding, in paragraph 8.3(c) of the Panel Report<sup>334</sup>, that Thailand acts inconsistently with Article III:4 of the GATT 1994 by subjecting imported cigarettes to less favourable treatment than that accorded to like domestic cigarettes; and

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<sup>333</sup>See also Panel Report, para. 7.644.

<sup>334</sup>See also Panel Report, para. 7.738.

- (b) upholds the Panel's finding, in paragraph 8.4(g) of the Panel Report<sup>335</sup>, that Thailand acts inconsistently with Article X:3(b) of the GATT 1994 by failing to maintain or institute independent tribunals or procedures for the prompt review of guarantee decisions.

224. The Appellate Body recommends that the DSB request Thailand to bring its measures, found in this Report, and in the Panel Report as modified by this Report, to be inconsistent with the *Agreement on Customs Valuation* and the GATT 1994, into conformity with its obligations under those Agreements.

Signed in the original in Geneva this 20th day of May 2011 by:

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Peter Van den Bossche  
Presiding Member

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Ricardo Ramírez-Hernández  
Member

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Yuejiao Zhang  
Member

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<sup>335</sup>See also Panel Report, para. 7.1087.