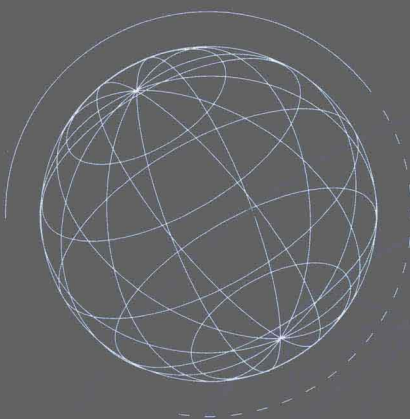




WORLD TRADE  
ORGANIZATION

**Dispute Settlement Reports 2009**  
**Volume VI: Pages 2533 to 2908**

2009



CAMBRIDGE

WORLD TRADE ORGANIZATION

Dispute Settlement Reports

2009  
Volume VI

Pages 2533-2908



CAMBRIDGE  
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo,  
Delhi, Tokyo, Mexico City

Cambridge University Press

The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781107007666](http://www.cambridge.org/9781107007666)

© World Trade Organization 2003, 2005, 2007, 2008, 2009, 2010 and 2011

This publication is in copyright. Subject to statutory exception and  
to the provisions of relevant collective licensing agreements,  
no reproduction of any part may take place without  
the written permission of Cambridge University Press.

First published 2011

Printed in the United Kingdom at the University Press, Cambridge

*A catalogue record for this publication is available from the British Library*

ISBN 978-1-107-00766-6 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy  
of URLs for external or third-party internet websites referred to in this publication,  
and does not guarantee that any content on such websites is, or will remain,  
accurate or appropriate.

## THE WTO DISPUTE SETTLEMENT REPORTS

The *Dispute Settlement Reports* of the World Trade Organization (the "WTO") include panel and Appellate Body reports, as well as arbitration awards, in disputes concerning the rights and obligations of WTO Members under the provisions of the *Marrakesh Agreement Establishing the World Trade Organization*. The *Dispute Settlement Reports* are available in English. Volumes comprising one or more complete cases contain a cumulative list of published disputes. The cumulative list for cases that cover more than one volume is to be found in the first volume for that case.

*This volume may be cited as DSR 2009:VI*

**TABLE OF CONTENTS**

*Page*

**Colombia - Indicative Prices and Restrictions  
on Ports of Entry (WT/DS366)**

Report of the Panel ..... 2535

**Cumulative List of Published Disputes ..... 2887**



## COLOMBIA - INDICATIVE PRICES AND RESTRICTIONS ON PORTS OF ENTRY

### Report of the Panel

WT/DS366/R\*

*Adopted by the Dispute Settlement Body  
on 20 May 2009*

### TABLE OF CONTENTS

	Page
I. INTRODUCTION .....	2564
II. FACTUAL ASPECTS.....	2565
A. Background .....	2565
B. The Use of Indicative Prices in Relation To Textile, Apparel and Footwear .....	2568
C. Restriction on Ports of Entry and International Transit Rules Applicable to Textiles, Apparel and Footwear Arriving from Panama.....	2571
D. The Requirement to Present an Advance Import Declaration and Pay Customs Duties and Sales Tax on the Basis of the Advance Declaration Applicable to Imports of Textiles, Apparel and Footwear Arriving from Panama .....	2573
E. The Requirement to Pay a Fee to Rectify an Import Declaration Applicable to Textile Imports Arriving from Panama .....	2574
III. PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS.....	2575
IV. ARGUMENTS OF THE PARTIES .....	2577
A. Executive Summary of the First Written Submission of Panama .....	2577
1. Introduction.....	2577
2. The measures at issue.....	2578

---

\* WT/DS366/R and Corr.1.

(a)	Customs valuation of textiles, footwear and other products on the basis of "indicative prices" .....	2578
(b)	Port of entry and transit restrictions and customs regulations for textiles from Panama...	2578
3.	Legal argument .....	2579
(a)	Colombia's use of indicative prices to determine the customs value of textiles, footwear and other products is inconsistent with Articles 1, 2, 3, 5, 6 and 7.2 (b), (f) and (g) of the <i>Customs Valuation Agreement</i> .....	2579
(i)	Colombia's use of indicative prices is inconsistent with Article 1 of the <i>Customs Valuation Agreement</i> .....	2579
(ii)	Colombia's use of indicative prices is inconsistent with the methodologies set out in Articles 2, 3, 5, and 6 of the <i>Customs Valuation Agreement</i> .....	2580
(iii)	Colombia's use of indicative prices is inconsistent with Articles 7.2(b), (f) and (g) of the <i>Customs Valuation Agreement</i> .....	2581
(iv)	The payment of customs duties based on indicative prices is not a "guarantee" within the meaning of Article 13 of the <i>Customs Valuation Agreement</i> .....	2582
(b)	Colombia's reservation under the <i>Customs Valuation Agreement</i> to use minimum values has expired.....	2582
(c)	Colombia's use of indicative prices to determine the value of imported textiles, footwear and other products for the purpose of levying sales tax when the transaction value is used to determine the value of like domestic products for that purpose is inconsistent with Article III:2, first sentence, of the <i>GATT 1994</i> .....	2583
(d)	Colombia's prohibition of the importation of the importation of textiles from Panama except at the ports of Bogota and Barranquilla is inconsistent with Article XI:1 of the <i>GATT 1994</i> .....	2583



(e)	The port of entry restrictions are applied in a manner that is inconsistent with Article XIII:1 of the <i>GATT 1994</i> .....	2584
(f)	Colombia's suspension of the transit regime for textiles from Panama is inconsistent with Article V:2 of the <i>GATT 1994</i> .....	2584
(g)	The port of entry restrictions that accord treatment less favourable to goods in transit through Panama than that which they would have been accorded had they been transported from their place of origin without going through Panama are inconsistent with Article V:6 of the <i>GATT 1994</i> .....	2585
(h)	The requirement to present an advance declaration and pay customs duties and sales tax for textiles originating in Panama is inconsistent with Article I:1 of the <i>GATT 1994</i> .....	2585
4.	Panama's request for findings and recommendations....	2586
B.	Executive Summary of the First Written Submission of Colombia .....	2587
1.	Request for preliminary ruling .....	2587
2.	Panama's claims with respect to the indicative price measure are to be rejected .....	2587
(a)	Panama's claims under the <i>Customs Valuation Agreement</i> are to be rejected as indicative prices are not a customs valuation method but only a customs control and verification mechanism .....	2587
(b)	Panama's claim of discrimination under GATT Article III:2 is to be rejected as it lacks a factual and legal basis .....	2589
3.	Panama's claims in respect of the port of entry measure are to be rejected .....	2590
(a)	Panama's claim under GATT Article XI is without merit as the port of entry measure does not constitute a prohibited quantitative restriction .....	2591
(b)	Panama's claim that the port of entry measure is applied in a manner that is inconsistent with GATT Article XIII:1 is to be rejected	

	because Article XIII:1 does not apply to the situation at hand.....	2591
(c)	Panama's claim that the port of entry measure is inconsistent with the requirements of GATT Articles V.2 and V.6 lacks a factual basis as the port measure does not apply to goods in transit .....	2592
(d)	Panama's claim that the requirement to present an advance import declaration and pay customs duties and sales taxes for textiles originating in Panama violates Colombia's MFN obligation under GATT Article I:1 lacks merit.....	2593
4.	Colombia's port of entry measure is in any case justified under the general defence of GATT Article XX(d).....	2594
(a)	The port measure is provisionally justified under paragraph (d) of GATT Article XX.....	2594
(i)	The port of entry measure concerns a very important set of interests or values.....	2595
(ii)	The port of entry measure is apt to contribute in a material way to the achievement of the objective .....	2595
(iii)	The port of entry measure does not have a significant adverse impact on legitimate trade .....	2596
(iv)	There were no reasonably available alternative measures .....	2596
(b)	The port of entry measure complies with the chapeau of Article XX .....	2597
5.	Request for findings.....	2598
C.	Executive Summary of the Rebuttal Submission of Panama ...	2598
1.	Legal argument .....	2598
(a)	Colombia has failed to demonstrate that it uses indicative prices as a customs control mechanism and not for customs valuation purposes.....	2598
(b)	Colombia has failed to demonstrate that the correction of the import declaration and the payment of the customs taxes provided for in Article 128.5 e) of Decree No. 2685 are a	

- guarantee mechanism within the meaning of Colombian Law and Article 13 of the *Customs Valuation Agreement*..... 2600
- (c) Colombia has failed to demonstrate that its use of indicative prices is an action taken pursuant to Article 17 of the *Customs Valuation Agreement* and the Decision Regarding Cases Where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value..... 2603
- (d) Colombia has failed to rebut Panama's argument that the indicative prices are a continuation of minimum customs values..... 2604
- (e) Colombia has failed to demonstrate that it does not use indicative prices for the determination of the base for the sales tax for imported products in a manner inconsistent with Article III:2 and Article III:4 of the *GATT 1994*..... 2604
- (f) Colombia has failed to rebut Panama's claim that the port of entry restrictions are inconsistent with Article XI:1 of the *GATT 1994*..... 2606
- (i) The port of entry restrictions do not have the characteristics of a genuine customs enforcement measure ..... 2606
- (ii) Colombia's interpretation that Article XI:1 prohibits only measures that impose a restriction on the quantity of imports is not supported by the text of Article XI:1 or the jurisprudence ..... 2607
- (g) Colombia has failed to rebut Panama's claim that the ports of entry restrictions are inconsistent with Article XIII:1 of the *GATT 1994*..... 2608
- (h) If the Panel were to find that Article XI:1 is not applicable, then Panama requests that the Panel find that the discriminatory features of the port of entry measures are in violation of Article I:1 of the *GATT 1994* ..... 2608
- (i) Colombia has failed to rebut Panama's claim that it imposes limitations on freedom of

	transit in a manner inconsistent with Article V:2 of the <i>GATT 1994</i> .....	2609
(j)	Colombia has failed to rebut Panama's claim that it accords treatment less favourable to goods that have been in transit through Panama in a manner inconsistent with its obligations under Article V:6 of the <i>GATT 1994</i> .....	2609
(k)	Colombia has failed to rebut Panama's claim that the requirements to present an advance declaration and pay customs duties for textiles originating in Panama are inconsistent with Article I:1 of the <i>GATT 1994</i> .....	2610
(l)	Colombia has failed to demonstrate that its port of entry restrictions are justified under Article XX(d) of the <i>GATT 1994</i> .....	2611
	(i) The ports of entry restrictions are not provisionally justified under paragraph (d) of Article XX .....	2612
	(ii) The ports of entry restrictions do not meet the requirements set out in the chapeau to Article XX.....	2615
D.	Executive Summary of the Rebuttal Submission of Colombia.....	2616
1.	Claims relating to Colombia's indicative pricing mechanism as a customs valuation method under the Customs Valuation Agreement .....	2616
	(a) Panama fails to meet its burden of proof .....	2617
	(b) A proper interpretation of the challenged provisions concerning indicative prices shows that the indicative prices are not used for customs valuation purposes .....	2617
2.	Panama's claims on indicative prices under GATT Article III.....	2619
	(a) Panama's claim under GATT Article III:2 is flawed .....	2619
	(b) Panama's unsubstantiated new claim under GATT Article III:4 is to be rejected .....	2620
3.	Panama's claims in respect of the ports of entry measure .....	2620

(a)	Panama's claim under GATT Article XI is without merit as the port of entry measure does not constitute a prohibited quantitative restriction. ....	2620
(b)	The Panel should reject Panama's claim that the port of entry measure is applied in a manner that is inconsistent with GATT Article XIII:1 because Article XIII:1 does not apply to the situation at hand.....	2622
(c)	Panama's new claim of inconsistency of the ports measure with GATT Article I:1 is to be rejected.....	2622
(d)	Panama's claim that the port measure is inconsistent with the requirements of GATT Articles V:2 and V:6 lacks a factual and legal basis.....	2623
(e)	The requirement to present an advance import declaration and pay customs duties and sales taxes for textiles originating in Panama does not violate Colombia's MFN obligation under GATT Article I:1 .....	2624
4.	Colombia's general defence under GATT Article XX(d).....	2624
(a)	The port measure is provisionally justified under paragraph (d) of GATT Article XX.....	2625
(b)	The ports measure complies with the chapeau of Article XX .....	2628
5.	Request for findings.....	2629
V.	ARGUMENTS OF THE THIRD PARTIES .....	2629
A.	Ecuador.....	2629
B.	European Communities .....	2631
1.	Customs valuation methods based on indicative prices .....	2631
(a)	The measure at issue .....	2631
(b)	Indicative Prices and the <i>Customs Valuation Agreement</i> .....	2632
(c)	Indicative Prices and Article III:2 of the <i>GATT 1994</i> .....	2633
2.	Restrictions on ports of entry .....	2634

	(a)	Restrictions on the number of ports available for imports of textiles from Panama: Article XI of the <i>GATT 1994</i> .....	2634
	(b)	Requirement to present an advance declaration to pay customs duties and sales tax for textiles originating in Panama: Article I of the <i>GATT 1994</i> .....	2635
	(c)	Restrictions on the transit regime for textiles from Panama: Article V:2 and V:6 of the <i>GATT 1994</i> .....	2636
	(d)	Justification of the ports of entry restrictions based on Article XX(d) of the <i>GATT 1994</i> .....	2636
C.		Guatemala .....	2637
D.		Honduras .....	2642
E.		Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.....	2642
	1.	Introduction.....	2642
	2.	Claims relating to the indicative prices used by Colombia.....	2643
	3.	Colombia's measures restricting ports of entry for certain Panama products cannot be justified under the <i>GATT 1994</i> .....	2643
	4.	Members should resolve disputes in good faith.....	2645
F.		United States .....	2645
VI.		INTERIM REVIEW .....	2647
A.		Panama's Comments on the Interim Report .....	2648
	1.	Descriptive part.....	2648
	2.	Panama's claims under the Customs Valuation Agreement.....	2648
	3.	Panama's claim under Article III:2 of the <i>GATT 1994</i> .....	2649
	4.	Panama's claim under Article XI:1 of the <i>GATT 1994</i> .....	2650
	5.	Colombia's defence under Article XX(d) of the <i>GATT 1994</i> .....	2650
	6.	Miscellaneous .....	2653
A.		Colombia's Comments on the Interim Report .....	2653
	1.	Descriptive part.....	2653
	2.	Panama's claims under the Customs Valuation Agreement.....	2653

3.	Panama's claim under Article III:2 of the GATT 1994.....	2654
4.	Panama's claim under Article XI:1 of the GATT 1994.....	2655
5.	Panama's claim under Article I:1 of the GATT 1994....	2655
6.	Panama's claim under Article V:6 of the GATT 1994.....	2656
7.	Colombia's defence under Article XX(d) of the GATT 1994.....	2656
VII.	FINDINGS .....	2658
A.	Preliminary Issues .....	2658
1.	Colombia's request for a preliminary ruling.....	2658
(a)	Background.....	2658
(b)	Main arguments of the parties.....	2658
(i)	Timing of the preliminary ruling request.....	2658
(ii)	Scope of the measures .....	2660
(iii)	Type of claims: "as such" and/or "as applied".....	2661
(c)	Consideration by the Panel .....	2661
(i)	General considerations.....	2661
(ii)	Timing of the preliminary ruling request.....	2663
(iii)	Adequacy to Article 6.2 requirements ....	2664
	- Identification of the specific measures at issue concerning the use of indicative prices.....	2665
	- Panama's claims "as applied" .....	2670
2.	Other issues concerning the scope of the matter subject to dispute.....	2672
(a)	Measures potentially outside the Panel's mandate .....	2672
(b)	Admissibility of Panama's second claim under Article I:1 of the <i>GATT 1994</i> .....	2675
B.	Whether Colombia's Use of Indicative Prices is Inconsistent with Articles 1, 2, 3, 5, 6 and 7.2(b), (f) and (g) of the Customs Valuation Agreement.....	2677
1.	Main arguments of the parties.....	2677
2.	Consideration by the Panel.....	2682

(a)	Legislation authorizing the use of indicative prices.....	2682
(b)	Order of analysis.....	2683
(c)	The concept of customs valuation within the <i>Customs Valuation Agreement</i> .....	2685
(d)	Whether the use of indicative prices by Colombia constitutes customs valuation.....	2686
(i)	The legal nature of the payment under Article 128.5 e).....	2688
	- Arguments of the parties .....	2688
	- The Panel's approach to examining Colombia's domestic law – burden of proof.....	2689
	- Analysis of the "very terms" of the challenged provisions.....	2691
	- Contextual analysis of the challenged provisions within Colombian domestic legislation .....	2692
	- Analysis of the specific cases of application of indicative prices.....	2700
(ii)	Conclusion.....	2704
(e)	Whether the use of indicative prices for customs valuation purposes is inconsistent with Articles 1, 2, 3, 5, 6 and 7.2(b), (f) and (g) of the <i>Customs Valuation Agreement</i> .....	2704
(i)	Main arguments of the parties .....	2704
(ii)	The text of Articles 1, 2, 3, 5, 6 and 7.2(b), (f) and (g) of the Customs Valuation Agreement .....	2705
(iii)	The primacy of the transaction value and sequential nature of the valuation methods provided in Articles 1 to 7 of the Customs Valuation Agreement.....	2710
(iv)	Whether the use of indicative prices constitute any of the valuation methods provided for in Articles 1, 2, 3, 5 and 6 of the Customs Valuation Agreement.....	2711
(v)	Whether the use of indicative prices is consistent with the obligation to conduct customs valuation according	



	to the sequential methods laid down in Articles 1, 2, 3, 5 and 6 of the Customs Valuation Agreement.....	2712
	(vi) Whether the use of indicative prices is inconsistent with Article 7(b), (f) and (g) of the Customs Valuation Agreement .....	2713
	(f) Conclusion .....	2715
C.	Whether Colombia's Use of Indicative Prices to Determine the Value of Imported Textiles, Footwear and Other Products for the Purpose of Levying Sales Tax is Inconsistent with Article III:2, First Sentence of the GATT 1994 .....	2716
	1. Main arguments of the parties.....	2716
	2. Consideration by the Panel.....	2718
	(a) Legislation applicable to the calculation of sales tax for imports subject to indicative prices.....	2718
	(b) The Panel's approach to Panama's claim under Article III:2, first sentence .....	2719
	(c) The interaction of Articles 447, 453, 459 and 468 of Decree 624 in connection with Article 128.5 e) of Decree No. 2685 and Article 172.7 of Resolution No. 4240 .....	2721
	(d) The obligations in Article III:2, first sentence ...	2722
	(e) Whether subject imports and domestic products are like products .....	2723
	(f) Whether subject imports are taxed in excess .....	2725
	(g) Conclusion .....	2729
D.	Whether Colombia's Use of Indicative Prices to Determine the Value of Imported Textiles, Footwear and Other Products for the Purpose of Levying Sales Tax is Inconsistent with Article III:4 of the GATT 1994.....	2729
	1. Arguments of the parties .....	2729
	2. Consideration by the Panel.....	2731
E.	Whether the Restriction on Ports of Entry Applicable to Textile, Apparel and Footwear Arriving from Panama is Inconsistent with Article XI:1 of the GATT 1994 .....	2731
	1. Main arguments of the parties .....	2731
	2. Consideration by the Panel.....	2735