

1 ARTICLE 11 **1**

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 administration or to an independent body, but the legislation of each Member shall provide
 for the right of appeal without penalty to a judicial authority.

3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any rights of further appeal.

1.2 Text of interpnof3 (h)4 (ts a)an6 (of n)3.3(o)8 (t)6 (e)4.6 (ts a)o()5A(ts a) (r)1.6 (ts a)anc3 (

1. Article 11 provides the importer with the right to appeal against a valuation determination made by the customs administration for the goods being valued. Appeal may first be to a higher level in the customs administration, but the importer shall have the right in the final instance to appeal to the judiciary.

2. "Without penalty" means that the importer shall not be subject to a fine or threat of fine merely because the importer chose to exercise the right of appeal. Payment of normal court costs and lawyers' fees shall not be considered to be a fine.

3. However, nothing in Article 11 shall prevent a Member from requiring full payment of assessed customs duties prior to an appeal.

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Member concerned, to determine whether the manner or means of valuation by a customs authority was consistent with the importing Member's WTO obligations."¹

1.4 General

1.4.1 Relationship with Article 16 of the Customs Valuation Agreement

2. The Panel in *Thailand – Cigarettes (Philippines)* touched upon Article 11 in the context of interpreting Article 16 of the Customs Valuation Agreement. In the context of interpreting the scope of the requirement to provide an explanation under Article 16, the Panel stated that:

"We also heed the transparency and due process objective that Article 16 is intended to achieve. As the Philippines submits, an explanation under Article 16 enables importers and foreign governments to effectively exercise their respective rights under Articles 11 and 19 of the Customs Valuation Agreement when requesting domestic reviewing tribunals, courts and WTO panels to determine whether the manner or means of valuation by a customs authority was consistent with the importing Member's WTO obligations. It provides a window through which domestic tribunals and WTO panels review and understand a customs authority's valuation determination. ... [O]ur objective assessment of the Philippines' claims under Articles 1.1 and 1.2(a) required us to base our evaluation of Thai Customs' examination of the circumstances of the sale on, *inter alia*, its explanation provided pursuant to Article 16."²

1.4.2 Relationship with Article X:3(b) of the GATT 1994

3. In *Thailand – Cigarettes (Philippines)*, the Philippines]T0.14-f1564()T0.006 (l)6.7 (W)0.156 violation of Article X:3(b) of the GATT 1994. Thailand responded that

