

Colombia - Textiles

Short Title	Full Case Title and Citation
<i>US – Large Civil Aircraft (2nd complaint)</i>	Appellate Body Report, <i>United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)</i> , WT/DS353/AB/R, adopted 23 March 2012, DSR 2012:I, p. 7
<i>US – Oil Country Tubular Goods Sunset Reviews</i>	Appellate Body Report, <i>United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina</i> , WT/DS268/AB/R, adopted 17 December 2004, DSR 2004:VII, p. 3257
<i>US – Section 211 Appropriations Act</i>	Appellate Body Report, <i>United States – Section 211 Omnibus Appropriations Act of 1998</i> , WT/DS176/AB/R, adopted 1 February 2002, DSR 2002:II, p. 589
<i>US – Shrimp</i>	Appellate Body Report, <i>United States – Import Prohibition of Certain Shrimp and Shrimp Products</i> , WT/DS58/AB/R, adopted 6 November 1998, DSR 1998:VII, p. 2755
<i>US – Tuna II (Mexico)</i>	Appellate Body Report, <i>United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products</i> , WT/DS381/AB/R, adopted 13 June 2012, DSR 2012:IV, p. 1837
<i>US – Upland Cotton</i>	Appellate Body Report, <i>United States – Subsidies on Upland Cotton</i> , WT/DS267/AB/R, adopted 21 March 2005, DSR 2005:I, p. 3
<i>US – Upland Cotton (Article 21.5 – Brazil)</i>	Appellate Body Report, <i>United States – Subsidies on Upland Cotton – Recourse to Article 21.5 of the DSU by Brazil</i> , WT/DS267/AB/RW, adopted 20 June 2008, DSR 2008:III, p. 809
<i>US – Wheat Gluten</i>	Appellate Body Report, <i>United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities</i> , WT/DS166/AB/R, adopted 19 January 2001, DSR 2001:II, p. 717
<i>US – Zeroing (EC)</i>	Appellate Body Report, <i>United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")</i> , WT/DS294/AB/R, adopted 9 May 2006, and Corr.1, DSR 2006:II, p. 417

1. INTRODUCTION

1.1 Colombia appeals certain issues of law and legal interpretations developed in the Panel Report, *Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear*¹ (Panel Report). The Panel was established on 25 September 2013 to consider a complaint by Panama² with respect to a measure taken by Colombia affecting imports of textiles, apparel, and footwear.

¹ WT/DS461/R, 27 November 2015.
² Request for the Establishment of a Panel by Panama, WT/DS461/3, 20 August 2013.

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1.2 This dispute concerns the imposition by Colombia of a "compound tariff" on the importation of certain textiles, apparel, and footwear classified under Chapters 61 through 64 of Colombia's Customs Tariff.³ The compound tariff was introduced by Decree of the President of the Republic of Colombia No. 074 of 23 January 2013⁴ (Decree No. 074), which was subsequently "replace[d] and repeal[ed]"⁵ by Decree of the President of the Republic of Colombia No. 456 of 28 February 2014⁶ (Decree No. 456). Decree No. 456 entered into force on 30 March 2014 for a period of two years⁷, and was recently extended until 30 July 2016.⁸

1.3 The compound tariff is composed of an *ad valorem* levy, expressed as a percentage of the customs value of goods, and a specific levy, expressed in units of currency per unit of measurement.⁹ While the *ad valorem* component of the compound tariff is 10% for all products regardless of their value, the specific component varies depending on the product and the declared free on board (f.o.b.) price in respect of two thresholds: (i) for products classified in Chapters 61, 62, and 63 (textiles and articles of apparel), and under tariff line 6406.10.00.00 of Chapter 64 of the Customs Tariff (uppers of footwear and parts thereof, other than stiffeners), the specific levy is US\$5/kg when the declared f.o.b. price is US\$10/kg or less, and US\$3/kg when the declared f.o.b. price is greater than US\$10/kg; and (ii) for products classified in Chapter 64 (footwear), with the exception of those under heading 64.06 (parts of footwear), the specific levy is US\$5/pair when the declared f.o.b. price is US\$7/pair or less, and US\$1.75/pair when the declared f.o.b. price is greater than US\$7/pair.¹⁰ When, in a single transaction, some goods under the same subheading are imported at prices at or below and others at prices above the respective threshold, the compound tariff payable is 10% *ad valorem* plus the highest specific levy applicable, i.e. US\$5/kg or US\$5/pair, depending on the classification of the

³ Panel Report, para. 2.1. The relevant chapters of Colombia's Customs Tariff are: (i) Chapter 61 – "Articles of apparel and clothing accessories, knitted or crocheted"; (ii) Chapter 62 – "Articles of apparel and clothing accessories, not knitted or crocheted"; (iii) Chapter 63 – "Other made up textile articles; sets; worn clothing and worn textile articles; rags"; and (iv) Chapter 64 – "Footwear, gaiters and the like; parts of such articles". (*Ibid.*, fn 58 to para. 7.24)

⁴ Decree of the President of the Republic of Colombia No. 074 of 23 January 2013, partially amending Colombia's Customs Tariff (Panel Exhibits PAN-2 and COL-16). Decree No. 074 came into effect on 1 March 2013 and remained in force for one year. (Panel Report, para. 7.31)

⁵ Panel Report, para. 7.37.

⁶ Decree of the President of the Republic of Colombia No. 456 of 28 February 2014, partially amending Colombia's Customs Tariff (Panel Exhibits PAN-3 and COL-17).

⁷ Panel Report, paras. 2.7 and 7.31. For the products concerned, Decree No. 456 modifies Colombia's Customs Tariff adopted pursuant to Decree No. 4927 of 26 December 2011 (Decree No. 4927), which establishes ordinary customs duties in Colombia. (Decree of the President of the Republic of Colombia No. 4927 of 26 December 2011, adopting the Customs Tariff and other provisions. (See Panel Exhibit PAN-1, containing extracts of Chapters 61 through 64) See also Panel Report, para. 7.141)

⁸ Colombia's response to questioning at the oral hearing.

⁹ Panel Report, para. 2.4.

¹⁰ Panel Report, para. 7.25.

goods.¹¹ Finally, with respect to certain imports of goods, the compound tariff does not apply.¹²

1.4 Panama claimed before the Panel that the compound tariff imposed by Colombia is inconsistent with Article II:1(a) and (b) of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and Colombia's Schedule of Concessions.¹³ Furthermore, in response to the defences invoked by Colombia, Panama requested the Panel to reject the argument that the compound tariff is justified under the general exceptions set out in Article XX(a) and Article XX(d) of the GATT 1994.¹⁴ Finally, Panama requested the Panel to suggest, in accordance with Article 19.1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), that Colombia introduce a cap mechanism that would guarantee compliance with the relevant bound tariffs, or, alternatively, that it revert to an *ad valorem* tariff system, without exceeding the bound levels of 35% and 40% *ad valorem* depending on the product.¹⁵

1.5 Colombia requested that the Panel reject Panama's claims in their entirety.¹⁶ Colombia contended that the compound tariff is a measure designed to combat illegal trade operations that are not covered by Article II:1 of the GATT 1994 and that Panama had not presented any evidence to support a *prima facie* case that the compound tariff results in a breach of the levels bound in Colombia's Schedule of Concessions.¹⁷ In the event that the Panel were to find that the measure at issue is inconsistent with any of the obligations under Article II:1 cited by Panama, Colombia maintained that the measure is justified under the general exceptions set out in Article XX(a) and Article XX(d) of the GATT 1994.¹⁸ Finally, Colombia requested the Panel to refrain from making suggestions as to the manner in which Colombia could comply with a recommendation of the Dispute Settlement Body (DSB) to bring the measure at issue into conformity with its World Trade Organization (WTO) obligations.¹⁹

1.6 In the Panel Report, circulated to Members of the WTO on 27 November 2015, the Panel found that the measure at issue is structured and designed to be applied to all imports of the products concerned, without distinguishing between "licit" and "illicit" trade, and that no provision in Colombia's legal system bans

¹¹ Panel Report, para. 7.26.

¹² The compound tariff does not apply to: (i) imports of goods from countries with which Colombia has signed free trade agreements, in which subheadings subject to Decree No. 456 have been negotiated; (ii) imports of goods entering certain regions of Colombia designated as Special Customs Regime Zones; and (iii) imports of goods under the Special Import-Export Systems for Capital Goods and Spare Parts, also known as the "Plan Vallejo" (i.e. production inputs, which are subsequently processed or used to manufacture goods for export). (Panel Report, paras. 7.27-7.30)

¹³ Panel Report, para. 3.1.

¹⁴ Panel Report, para. 3.2.

¹⁵ Panel Report, para. 3.3.

¹⁶ Panel Report, para. 3.4.

¹⁷ *Ibid.*

¹⁸ Panel Report, para. 3.4.

¹⁹ Panel Report, para. 3.5.

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the importation of goods whose declared prices are below the thresholds established in the measure.²⁰ In the light of these findings, the Panel did not consider it necessary to rule on Colombia's claim that the obligations contained in Article II:1(a) and (b) of the GATT 1994 are not applicable to illicit trade.²¹

1.7 The Panel found that the compound tariff constitutes an ordinary customs duty that exceeds the levels bound in Colombia's Schedule of Concessions, and is therefore inconsistent with the first sentence of Article II:1(b) of the GATT 1994, and accords treatment less favourable than that envisaged in Colombia's Schedule of Concessions, in a manner inconsistent with Article II:1(a) of the GATT 1994, in the following instances²²:

- a. for imports of products classified in Chapters 61, 62, and 63, and under tariff line 6406.10.00.00 of Chapter 64 of Colombia's Customs Tariff:
 - i. the tariff consisting of an *ad valorem* component of 10% plus a specific component of US\$5/kg, when the f.o.b. import price is US\$10/kg or less;
 - ii. the tariff consisting of an *ad valorem* component of 10% plus a specific component of US\$5/kg, when, in a single transaction, some products under the same subheading are imported at f.o.b. prices above and others at f.o.b. prices below the threshold of US\$10/kg; and
 - iii. with regard to subheading 6305.32, the tariff consisting of an *ad valorem* component of 10% plus a specific component of US\$3/kg, when the f.o.b. import price is greater than US\$10/kg but lower than US\$12/kg; and
- b. for imports of products classified under various tariff headings of Chapter 64 of Colombia's Customs Tariff subject to the measure at issue:
 - i. the tariff consisting of an *ad valorem* component of 10% plus a specific component of US\$5/pair, when the f.o.b. import price is US\$7/pair or less; and
 - ii. the tariff consisting of an *ad valorem* component of 10% plus a specific component of US\$5/pair, when, in a single transaction, some products under the same subheading are imported at f.o.b. prices above and others at f.o.b. prices below the threshold of US\$7/pair.

1.8 Thus, according to the Panel, the *ad valorem* equivalent of the compound tariff necessarily exceeds the levels bound in Colombia's Schedule of Concessions in the following circumstances:

²⁰ Panel Report, para. 8.1.

²¹ *Ibid.*

²² Panel Report, paras. 8.2-8.4.

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Products covered	Declared f.o.b. price	Formula for calculating the compound tariff
Chapters 61, 62, and 63, and Chapter 64, tariff line 6406.10.00.00	Prices of US\$10/kg or less	10% <i>ad valorem</i> plus US\$5/kg
Chapter 63, subheading 6305.32	Prices above US\$10 and below US\$12/kg	10% <i>ad valorem</i> plus US\$3/kg
Chapters 61, 62, and 63, and Chapter 64, tariff line 6406.10.00.00	Some prices above and others below US\$10/kg when imported under the same subheading	10% <i>ad valorem</i> plus US\$5/kg
Chapter 64, except for heading 64.06	Prices of US\$7/pair or less	10% <i>ad valorem</i> plus US\$5/pair
Chapter 64, except for heading 64.06	Some prices above and others below US\$7/pair when imported under the same subheading	10% <i>ad valorem</i> plus US\$5/pair

Source: Panel Report, para. 7.187.

1.9 With respect to Colombia's recourse to certain of the general exceptions under Article XX of the GATT 1994, the Panel found that Colombia had failed to demonstrate that the compound tariff is a measure necessary to protect public morals within the meaning of Article XX(a), or necessary to secure compliance with Article 323 of Colombia's Criminal Code within the meaning of Article XX(d).²³ The Panel further found that, even assuming that Colombia had succeeded in demonstrating that its measure is provisionally justified under Article XX(a) or Article XX(d), the compound tariff is not applied in a manner that meets the requirements of the chapeau of Article XX.²⁴

1.10 In accordance with Article 19.1 of the DSU, the Panel recommended that Colombia bring the measure at issue into conformity with its obligations under the GATT 1994, but refrained from making a suggestion as to the manner in which Colombia could do so.²⁵

1.11 On 22 January 2016, Colombia notified the DSB, pursuant to Articles 16.4 and 17 of the DSU, of its intention to appeal certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel, and filed a Notice of Appeal and an appellant's submission pursuant to Rule 20 and Rule 21, respectively, of the Working Procedures for Appellate Review²⁶ (Working Procedures). On 9 February 2016, Panama filed an appellee's submission.²⁷ On 12 February 2016, the European Union filed a third

²³ Panel Report, paras. 8.5-8.6.
²⁴ Panel Report, para. 8.7.
²⁵ Panel Report, paras. 8.9-8.10.
²⁶ WT/AB/WP/6, 16 August 2010.
²⁷ Pursuant to Rule 22 of the Working Procedures.

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participant's submission.²⁸ On the same day, China, Ecuador, El Salvador, Guatemala, Honduras, the Philippines, and the United States each notified its intention to appear at the oral hearing as a third participant.²⁹

1.12 By letter of 22 March 2016, the Chair of the Appellate Body notified the Chair of the DSB that the Appellate Body would not be able to circulate its Report in this appeal within the 60-day period pursuant to Article 17.5 of the DSU, or within the 90-day period pursuant to the same provision.³⁰ The Chair of the Appellate Body explained that this was due to a number of factors, including the overlap in the composition of the Divisions in appeals concurrently pending before the Appellate Body, constraints resulting from the need for Spanish-speaking staff of which the Appellate Body Secretariat has only a limited number, and the need to translate documents from Spanish into English for non-Spanish-speaking Appellate Body Members and staff. On 11 April 2016, the Chair of the Appellate Body informed the Chair of the DSB that the Report in these proceedings would be circulated no later than 7 June 2016.³¹

1.13 The oral hearing in this appeal was held on 4-5 April 2016. The participants and five third participants (China, the European Union, Guatemala, Honduras, and the United States) made opening and/or closing statements. The participants and third participants responded to questions posed by the Members of the Appellate Body Division hearing the appeal.

1.14 By letter of 1 June 2016, the participants and third participants were informed that, in accordance with Rule 15 of the Working Procedures, the Appellate Body had notified the Chairman of the DSB of its decision to authorize Mrs Yuejiao Zhang, the Presiding Member of the Division hearing this appeal, to complete the disposition of this appeal even though her second term as Appellate Body Member was due to expire before the completion of the appellate proceedings.

2. ARGUMENTS OF THE PARTICIPANTS

2.1 The claims and arguments of the participants are reflected in the executive summaries of their written submissions provided to the Appellate Body.³² The Notice of Appeal and the executive summaries of the participants' written submissions are contained, respectively, in Annexes A and B of the Addendum to this Report.³³

²⁸ Pursuant to Rule 24(1) of the Working Procedures.

²⁹ Pursuant to Rule 24(2) of the Working Procedures.

³⁰ WT/DS461/7.

³¹ WT/DS461/8.

³² Pursuant to the Appellate Body Communication on "Executive Summaries of Written Submissions in Appellate Proceedings" and "Guidelines in Respect of Executive Summaries of Written Submissions in Appellate Proceedings". (WT/AB/23, 11 March 2015)

³³ WT/DS461/AB/R/Add.1.

3. ARGUMENTS OF THE THIRD PARTICIPANTS

3.1 The arguments of the European Union, as third participant, are reflected in the executive summary of its written submission provided to the Appellate Body³⁴, contained in Annex C of the Addendum to this Report.³⁵

4. ISSUES RAISED IN THIS APPEAL

4.1 The following issues are raised in this appeal:

- a. with respect to Article II:1(a) and (b) of the GATT 1994:
 - i. whether the Panel acted inconsistently with its duty to make an objective assessment of the matter pursuant to Article 11 of the DSU, including an objective assessment of the applicability of the relevant covered agreements, in concluding that it was not necessary to issue a finding as to whether or not the obligations of Article II:1(a) and (b) of the GATT 1994 apply to what Colombia considers to be illicit trade; and
 - ii. whether Article II:1(a) and (b) of the GATT 1994 applies to what Colombia considers to be illicit trade; and whether the Panel erred in the application of Article II:1(b) in finding that the measure did not incorporate a legislative ceiling;
- b. with respect to Article XX(a) of the GATT 1994:
 - i. whether the Panel erred in the interpretation and application of Article XX(a) in finding that Colombia failed to demonstrate that the measure is "necessary to protect public morals", and, in particular:
 - whether the Panel erred by imposing an incorrect legal standard in its analysis of whether the measure at issue is "designed" to protect public morals; and
 - whether the Panel erred in its analysis of whether the measure is "necessary" to protect public morals by imposing an incorrect legal standard in assessing the contribution of the measure towards its objective, and by failing to undertake a proper weighing and balancing of the relevant factors; and

³⁴ Pursuant to the Appellate Body Communication on "Executive Summaries of Written Submissions in Appellate Proceedings" and "Guidelines in Respect of Executive Summaries of Written Submissions in Appellate Proceedings". (WT/AB/23, 11 March 2015)

³⁵ WT/DS461/AB/R/Add.1.

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- ii. whether the Panel acted inconsistently with its duty to make an objective assessment of the matter pursuant to Article 11 of the DSU in its assessment of certain evidence provided by Colombia;
- c. with respect to Article XX(d) of the GATT 1994:
 - i. whether the Panel erred in the interpretation and application of Article XX(d), for the same reasons it erred in the interpretation and application of Article XX(a), in finding that Colombia failed to demonstrate that the measure is "designed" and "necessary" to secure compliance with laws or regulations that are not inconsistent with the GATT 1994; and
- d. with respect to the chapeau of Article XX of the GATT 1994:
 - i. whether the Panel erred in the interpretation and application of the chapeau of Article XX, and acted inconsistently with its duty to make an objective assessment of the matter pursuant to Article 11 of the DSU, in finding that the measure is not applied in a manner that meets the requirements of the chapeau of Article XX.

5. ANALYSIS OF THE APPELLATE BODY

5.1 *Article II:1(a) and (b) of the GATT 1994*

5.1 Colombia appeals the Panel's finding that it was "not necessary for the Panel to issue a finding on whether or not the obligations of Article II:1 of the GATT 1994 can be extended to 'illicit trade'".³⁶ Colombia argues that, in reaching this finding, the Panel failed to make an objective assessment of the matter before it, as required under Article 11 of the DSU. In the event that we reverse this finding of the Panel, Colombia requests us to complete the legal analysis and find that: (i) Article II:1(a) and (b) of the GATT 1994 does not apply to illicit trade; and (ii) because imports priced below the thresholds set out in the measure at issue are imported at artificially low prices that do not reflect market conditions, the compound tariff does not violate Article II:1(a) and (b) of the GATT 1994.³⁷

5.2 We begin by recalling the Panel's findings concerning Article II:1(a) and (b) of the GATT 1994 before turning to address Colombia's claim under Article 11 of the DSU.

³⁶ Panel Report, para. 7.108. See also para. 8.1; and Colombia's Notice of Appeal, para. 5.

³⁷ Colombia's Notice of Appeal, para. 7.

5.1.1 The Panel's findings

5.3 The Panel first addressed Colombia's argument that "Article II of the GATT 1994 only 'covers licit trade and cannot cover operations where there are indications that they are being conducted at artificially low prices in order to launder money'."³⁸ In this connection, Colombia asserted that the terms "commerce" and "importation" in Article II:1(a) and (b) of the GATT 1994, respectively, refer only to licit trade and cannot be extended to trade operations conducted for the purpose of laundering money or for other illicit purposes.

5.4 The Panel began its analysis by noting that Colombia's argument would be pertinent only if the Panel were to make two determinations: (i) that the trade affected by the measure at issue is illicit trade; and (ii) that the obligations contained in Article II:1(a) and (b) of the GATT 1994 do not apply to illicit trade.³⁹

5.5 Turning to the issue of whether the trade affected by the measure is illicit, the Panel pointed out that the covered agreements contain no definition of "illicit trade".⁴⁰ Thereafter, the Panel reviewed the definitions of the concept of illicit trade in various international instruments furnished by Colombia.⁴¹ The Panel observed that the factor common to the various definitions of illicit trade cited by Colombia is that they all refer to "illegal" activities, i.e. "activities that have been prohibited by law".⁴² However, the Panel added that the compound tariff applies to *all* imports of products classified in Chapters 61, 62, 63, and 64 of Colombia's Customs Tariff (except for those classified under some tariff lines of heading 64.06). The Panel pointed out that the "[i]mposition of the compound tariff on imports is not preceded by any declaration on the part of the judicial or administrative authorities that the operation constitutes an unlawful act, nor is it even associated with the commission of any unlawful act."⁴³ Moreover, the Panel noted that Colombia had not identified any legal rule prohibiting the importation of goods at prices lower than the thresholds determined in the measure at issue. Therefore, in the Panel's view, "the compound tariff is applied to all imports of the products in question, without distinguishing as to whether the operations are lawful or unlawful" and "is not structured or designed to apply solely to operations which have been classified as 'illicit trade'".⁴⁴

5.6 The Panel also noted that the compound tariff does not apply to: (i) imports from countries with which Colombia has signed trade agreements in which Colombia's Customs Tariff subheadings subject to the measure at issue have been negotiated; (ii) goods entering Special Customs Regime Zones; and

³⁸ Panel Report, para. 7.59 (quoting Colombia's first written submission to the Panel, para. 67; and second written submission to the Panel, para. 37). See also para. 7.85.

³⁹ Panel Report, paras. 7.91 and 7.104.

⁴⁰ Panel Report, para. 7.93.

⁴¹ Panel Report, paras. 7.94-7.97.

⁴² Panel Report, para. 7.105.

⁴³ *Ibid.*

⁴⁴ Panel Report, para. 7.106.

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(iii) goods entering Colombian territory under the Special Import-Export Systems for Capital Goods and Spare Parts (Plan Vallejo). In the Panel's opinion, this supports the conclusion that "in Colombia's legal system there is no rule prohibiting or restricting what Colombia considers 'illicit trade', that is, the import of goods whose declared prices are below the thresholds provided for in Decree No. 456".⁴⁵

5.7 For these reasons, the Panel concluded that "a finding as to whether or not the obligations in Articles II:1(a) and II:1(b) of the GATT 1994 are applicable to 'illicit trade' would be merely theoretical and would be neither necessary nor of practical use in achieving a satisfactory settlement of the matter placed before [the] Panel."⁴⁶ As a result, the Panel considered it unnecessary to issue a finding on whether or not the obligations of Article II:1 of the GATT 1994 extend to illicit trade.

5.8 The Panel then examined whether the compound tariff exceeds the bound rates in Colombia's Schedule of Concessions. The Panel noted that the "complex feature"⁴⁷ of the present dispute is that the bound tariff rates in Colombia's Schedule of Concessions are expressed in *ad valorem* terms, whereas the compound tariff contains both an *ad valorem* and a specific component. In order to compare the tariff treatment accorded under the compound tariff with the bound rates established in Colombia's Schedule of Concessions, the Panel relied on a "break-even price" for each tariff subheading.⁴⁸ Having reviewed the arithmetical calculations furnished by Panama in respect of each scenario of the application of the compound tariff, the Panel concluded that Panama's calculations were correct and that, in the instances identified in the Panel Report, the compound tariff "*necessarily* exceeds the levels bound in Colombia's Schedule of Concessions of 35% and 40% *ad valorem* (depending on the subheading)".⁴⁹

5.9 The Panel also examined whether, as argued by Colombia, the measure at issue incorporates a legislative ceiling that prevents the bound tariff rates in Colombia's Schedule of Concessions from being exceeded.⁵⁰ Referring to the Appellate Body report in *Argentina – Textiles and Apparel*, the Panel noted that it is possible for a Member to establish a legislative ceiling or cap that would ensure that, even if the type of duty applied differs from the type provided for in that Member's Schedule of Concessions, its *ad valorem* equivalent would not exceed the bound rates provided for in that Schedule.⁵¹

⁴⁵ Panel Report, para. 7.107.

⁴⁶ Panel Report, para. 7.108.

⁴⁷ Panel Report, para. 7.145.

⁴⁸ Panel Report, paras. 7.146-7.148.

⁴⁹ Panel Report, para. 7.189. (emphasis original) See also para. 7.187.

⁵⁰ Panel Report, para. 7.182 (referring to Colombia's first written submission to the Panel, paras. 63-64).

⁵¹ Panel Report, para. 7.184 (referring to Appellate Body Report, *Argentina – Textiles and Apparel*, para. 54).