

PHILIPPINES – TAXES ON DISTILLED SPIRITS

Notification of an Other Appeal by the European Union
under Article 16.4 and Article 17 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU),
and under Rule 23(1) of the *Working Procedures for Appellate Review*

The following notification, dated 28 September 2011, from the Delegation of the European Union, is being circulated to Members.

Pursuant to Articles 16.4 and 17 of the *DSU*, the European Union hereby notifies to the Dispute Settlement Body its decision to appeal to the Appellate Body certain issues of law covered and certain legal interpretations developed by the Panel in *Philippines — Taxes on Distilled Spirits* (WT/DS396, WT/DS403) ("Panel Report"). Pursuant to Rule 23(1) of the *Working Procedures for Appellate Review*, the European Union simultaneously files this Notice of Other Appeal with the Appellate Body Secretariat.

For the reasons further elaborated in its submissions to the Appellate Body, the European Union appeals, and requests the Appellate Body to reverse, modify or declare moot and of no legal effect the findings and conclusions of the Panel, with respect to the following errors of law and legal interpretations contained in the Panel Report, and to complete the analysis¹:

**I. MISCHARACTERISATION OF THE EUROPEAN UNION CLAIM UNDER
ARTICLE III:2, SECOND SENTENCE, OF THE GATT**

The Panel erred in its interpretation and application of Article 7, paragraphs 1 and 2, of the *DSU*, and/or failed to make an objective assessment pursuant to Article 11 of the *DSU*, and/or falsely exercised judicial economy, thereby violating Articles 3.7 and 21.1 of the *DSU*, when it wrongly characterised the claim put forward by the European Union under Article III:2, second sentence, of the GATT as "alternative"², and consequently failed to make any findings in relation to it.³ The European Union requests the Appellate Body to complete the analysis.

¹ Pursuant to Rule 20(2)(d)(iii) of the *Working Procedures for Appellate Review* this Notice of Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to the ability of the European Union to refer to other paragraphs of the Panel Report in the context of its appeal.

² Panel Report, paras. 7.1, 7.5, 7.17, 7.92, 7.93, 7.95 and 8.3.

³ Panel Report, paras. 7.95 and 8.3.