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**THAILAND – CUSTOMS AND FISCAL MEASURES ON CIGARETTES
FROM THE PHILIPPINES**

COMMUNICATION FROM THE PHILIPPINES

The following communication, dated 29 June 2020, was received from the delegation of the Philippines with the request that it be circulated to the Dispute Settlement Body (DSB).

The Philippines sets forth below the content of its intervention at the DSB meeting held on 29 June 2020 regarding Item 11 of the agenda, *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines*, particularly the Philippines' Recourse to Article 22.2 of the DSU (WT/DS371/32).

1. Thank you, Mr. Chairman. At the outset, allow me to take this opportunity to congratulate you on your election as Chair of the Dispute Settlement Body, and to express our appreciation for the resumption of the DSB and WTO physical meetings. As a user and a firm believer in the WTO dispute settlement system, the Philippines is confident that your principled leadership will contribute to its strengthening and improvement.

2. The Philippines wishes to thank the DSB Chair for his report to the Members, as well as for providing us with an opportunity to continue our dialogue with Thailand in a constructive spirit through consultations. We also wish to commend his continuing efforts to help us resolve these important and urgent concerns that have systemic implications to the rights of Members, under the Dispute Settlement Understanding (DSU).

3. At the last DSB meeting, and in our Chair-guided consultations, the Chair had suggested that both parties attempt to find a way forward. In this context and with reference to our previous statements (WT/DS371/35; WT/DS371/37), the Philippines is pleased to update the Members that on 09 March 2020, in a letter addressed to the DSB Chair and Thailand, the Philippines proposed that the parties commence discussions to arrive at a constructive solution in order to complete the two (2) pending Article 21.5 appeals—including but not limited to proceedings under Article 25 of the DSU, Article 22.6 of the DSU, or other hybrid approaches acceptable to all parties, or through an agreed level of compensation. The Philippines maintains its good faith and openness to a time-bound and Chair-guided solution to this situation and awaits any ideas or suggestions from the Chair and Thailand.

4. I must emphasize, however, that while the Philippines is open to a constructive solution to the issue at hand, as shown by our 09 March letter, the Philippines maintains that it is fully within its rights to seek Recourse under Article 22.2 of the DSU.

5. Mr. Chairman, the provisions of Article 22.6 of the DSU are clear:

- "The DSB, upon request, **shall** grant authorization to suspend concessions or other obligations within 30 days of the expiry of the reasonable period of time unless the DSB decides by consensus to reject the request"; and
- "If the Member concerned objects to the level of suspension proposed, [...] the matter **shall** be referred to arbitration".

6. Therefore, there are only two (2) options under the reverse-consensus rule of DSU Article 22.6: (1) the DSB granting authorization to suspend concessions, or (2) the DSB referring the matter to arbitration.

7. The Philippines does not insist, at this meeting of the DSB, that the DSB through the Chair grant the authority we seek, given the good-faith consultations currently being conducted between the Chair and the parties. Our flexibility, however, is finite, and dependent on reaching a prompt and constructive way forward. At some point, if no solution is reached, we expect that the DSB should act in accordance with the Rules.

8. Thank you, Mr. Chairman.

The Philippines provides the Dispute Settlement Body with a copy of its 09 March 2020 letter addressed to the DSB Chair and Thailand, proposing that the parties commence discussions to arrive at a constructive solution in order to complete the two (2) pending Article 21.5 appeals in DS371—including but not limited to proceedings under Article 25 of the DSU, Article 22.6 of the DSU, or other hybrid approaches acceptable to all parties, or through an agreed level of compensation.

Without Prejudice

*Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines
(WT/DS371)*

Excellencies,

Further to the resumed meeting of the DSB on 5th March 2020, the Philippines remains committed to the rules-based dispute settlement system of the WTO and to work together to find a positive solution to the current procedural impasse. The Philippines stands ready to continue those efforts in a time-bound manner.

As we are all aware, on 10 December 2019, the Appellate Body Division hearing Thailand's two compliance appeals issued procedural rulings that indefinitely suspended work on the appeals. The Philippines believes that it is fully entitled to proceed to Article 22.2 remedies but respects and notes Thailand's concerns that its pending 21.5 appeals should be first resolved.

Recalling paragraph 12 of the Sequencing Understanding and noting Thailand's letter of 26 February 2020 to the Chair citing the same provision, the Philippines therefore formally expresses its request and willingness to find a solution under paragraph 12 of the sequencing understanding, under the leadership and guidance of the DSB Chair.

In this spirit of cooperation, the Philippines proposes that the parties commence discussions to arrive at a constructive solution in order to complete the pending Article 21.5 appeals, including but not limited to proceedings under Article 25 of the DSU, Article 22.6 of the DSU or other hybrid approaches acceptable to all parties, or through an agreed level of compensation.

We sincerely hope for a successful and prompt conclusion to the discussions ahead of the next DSB meeting, pursuant to our respective commitments to find a prompt solution to procedural issues not addressed in the sequencing understanding.
