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

**COMMUNICATION FROM THAILAND**

The following communication, dated 26 February 2020, was received from the delegation of Thailand with the request that it be circulated to the Dispute Settlement Body (DSB).

With reference to the Philippines' request of 12 February 2020 for the authorization to suspend concessions or other obligations in the dispute *Thailand – Customs Fiscal Measures on Cigarettes from the Philippines* (DS371)<sup>1</sup>, Thailand hereby requests that the Philippines' request be removed from the agenda for the meeting of the Dispute Settlement Body ("DSB") on 28 February 2020. The Philippines' request is improper because (i) pursuant to the sequencing agreement between the parties in this dispute<sup>2</sup>, the Philippines undertook not to request authorization to suspend concessions or other obligations until the pending Article 21.5 panel and Appellate Body proceedings in this dispute have been completed; and (ii) to the extent that the Philippines seeks to ignore the sequencing agreement, the Philippines' request is made outside the timeframe mandated in Article 22.6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), under which any request for suspension of concessions must be authorized by the DSB "within 30 days of the expiry of the reasonable period of time". As the reasonable period of time in this dispute expired on 15 May 2012, the deadline under Article 22.6 of the DSU for authorizing the suspension of concessions expired on 15 June 2012.

Thailand considers that the Philippines' decision to disregard the rules of the DSU and the sequencing agreement, and instead to proceed unilaterally in making this request at this juncture, is highly improper and completely inconsistent with the Philippines' commitments under the rules-based, two-tier multilateral dispute settlement system. Moreover, endorsing the Philippines' request would raise serious doubts about Members' commitment to the two-tier system and the value of DSU rules, which would only further aggravate the already delicate situation affecting the WTO dispute settlement system.

Thailand regrets the current impasse regarding the Appellate Body. Thailand has actively participated in and supported efforts to resolve this situation and hopes that these efforts will bear fruit as soon as possible. Pending any solutions to this situation that may be agreed by Members, however, the Philippines cannot be permitted simply to bypass the existing rights and obligations it has assumed under the DSU and its sequencing agreement with Thailand. Thailand remains open to discuss means of resolving this situation "that will not affect the other aspects and steps agreed" between the parties.<sup>3</sup>

<sup>1</sup> *Thailand – Customs Fiscal Measures on Cigarettes from the Philippines*, Recourse to Article 22.2 of the DSU by the Philippines, WT/DS371/32, 14 February 2020.

<sup>2</sup> Understanding between the Philippines and Thailand regarding procedures under articles 21 and 22 of the DSU, WT/DS371/16, 7 June 2012 (hereinafter "sequencing agreement").

<sup>3</sup> Ibid, paragraph 12.

For these reasons, Thailand requests that the Philippines' request to suspend concessions or other obligations be removed from the agenda for the meeting of the DSB on 28 February 2020.

Thailand also requests that this communication be circulated to Members of the Dispute Settlement Body.

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