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Page: 1/1

**THAILAND – CUSTOMS AND FISCAL MEASURES ON CIGARETTES FROM THE PHILIPPINES
RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE PHILIPPINES**

COMMUNICATION FROM THE APPELLATE BODY

The following communication, dated 8 March 2019, from the Chair of the Appellate Body to the Chair of the Dispute Settlement Body, is being circulated to Members.

I am writing pursuant to Article 17.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), which states that, as a general rule, the Appellate Body will circulate its Report no later than 60 days after the appellant has formally notified the Dispute Settlement Body (DSB) of its decision to appeal. Article 17.5 further states that when the Appellate Body considers that it cannot provide its Report within 60 days, "it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its Report. In no case shall the proceedings exceed 90 days."

Thailand notified the DSB on 9 January 2019 of its decision to appeal certain issues of law covered in the Panel Report and legal interpretations developed by the Panel in this case. As a result, the 60-day period expires on 8 March 2019. The Appellate Body is not able to circulate its Report by that date.

It will also not be possible to circulate the Appellate Body report within the 90-day timeframe provided for in the last sentence of Article 17.5 of the DSU. In this respect, we refer to the size of the Panel record and the complex issues appealed. We further note the backlog of appeals pending with the Appellate Body at present, and the fact that Divisions for all appeals filed since 1 October 2018 are composed of the same three remaining Appellate Body Members. In addition, as has been noted in the letter communicating the filing dates for submissions to the participants, it will not be possible to staff this appeal for some time. The Appellate Body regrets that these delays are necessary and appreciates the Parties' understanding.

As soon as we know more precisely when the Division can schedule the hearing in this appeal, we will inform the participants.
