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

COMMUNICATION FROM THAILAND

The following communication, dated 3 July 2020, was received from the delegation of Thailand with the request that it be circulated to the Dispute Settlement Body (DSB).

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

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Thailand sets forth below the content of its statement at the DSB meeting of 29 June 2020 regarding Item 11 of the agenda concerning the dispute *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines* (DS371).

1. Mr. Chairman, I would like to thank you for your involvement in the consultations with the parties in the dispute *Thailand – Cigarettes*, and for the opportunity to make a statement at today's meeting.
  2. Thailand refers to its previous statement at the DSB meeting on 5 March 2020.
  3. For the purpose of today's meeting, Thailand wishes to reiterate, once again, that any request for suspension of concessions under Article 22.2 of the DSU in this dispute would be improper as the two compliance proceedings under Article 21.5 have not concluded. The two reports issued by the panel in these 21.5 proceedings have not been adopted by the DSB and the appeals of these reports by Thailand are still ongoing before the Appellate Body.
  4. The sequencing agreement signed by the Parties in this dispute states that the Philippines could request retaliation only after the completion of proceedings under Article 21.5, which includes proceedings before the Appellate Body in case of an appeal. Given that Thailand's appeals have not been completed, the Philippines cannot, at this stage, request the suspension of concessions or other obligations under Article 22.2 of the DSU.
  5. Thailand also wishes to reiterate that, should the Philippines, for whatever reason, take the position that the rules contained in the sequencing agreement are no longer applicable, this would release Thailand of its commitment to not object to the Philippines' request as being outside the 30-day deadline under Article 22.6 of the DSU. According to this provision, 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 for authorizing the suspension of concessions expired on 15 June 2012.
  6. The Philippines has indicated that, according to the sequencing agreement, the Parties are under an obligation to find a prompt solution regarding any "procedural aspect" that arises concerning the procedures established in that agreement. Thailand disagrees with the Philippines' position that the Appellate Body's suspension of its work in both appeals constitutes a "procedural aspect" of the sequencing agreement. Rather, as the Philippines has previously acknowledged, for example in its communication in document WT/DS371/32 dated 12 February 2020, the Appellate Body suspended its work due to "institutional constraints" as a result of insufficient number of Appellate Body Members. Thailand has supported, and continues to support, efforts to resolve these institutional constraints and encourages all WTO Members, including the Philippines, to do likewise.
  7. As we all know, the real issue here is the Appellate Body crisis, not any individual dispute. The Appellate Body crisis has imposed significant challenges on the rules-based system, including with respect to all pending appeals. The Philippines' previous request for suspension of concessions underlines the urgency of resolving the problems affecting the Appellate Body as a matter of priority so as to avoid unilateral actions that are contrary to Article 23 of the DSU. As we will discuss on the agenda item 15 for today's meeting, Thailand fully supports the Appellate Body process and urges Members to move ahead with the process of selecting new Appellate Body members.
  8. Finally, as indicated during previous exchanges with the Philippines, Thailand remains open to a bilateral dialogue with an aim to identify a possible solution to the substantive issues in this WTO dispute that is mutually acceptable to both parties.
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