

Original: English

**PHILIPPINES - MEASURES AFFECTING TRADE AND INVESTMENT
IN THE MOTOR VEHICLE SECTOR**

Communication from the Philippines

The following communication, dated 6 November 2000, addressed to the Chairman of the Dispute Settlement Body, has been received from the Permanent Mission of the Philippines with the request that it be circulated to DSB Members.

We are writing in response to the U.S. request for the establishment of a panel, made at the Dispute Settlement Body (DSB) meeting of 23 October 2000, concerning the Philippine request for an extension of trade-related investment measures (TRIMs) in accordance with Article 5.3 of the TRIMs Agreement.

The Philippines believes that the establishment of a panel on this matter violates WTO decision-making processes and therefore must be rejected. In particular, we believe that such establishment would render the process mandated under Article 5.3 of the TRIMs Agreement a nullity and contravenes the General Council Decision on TRIMs of 8 May 2000 (May 8 Decision).

We present below our arguments against the establishment of a panel in accordance with the U.S. request.

Article 5.3 of the TRIMs Agreement and the May 8 Decision have not been satisfied

At meetings of the Council for Trade in Goods (CTG) convened since the filing of its request, the Philippines had consistently and repeatedly requested for a discussion on the merits of its request, as provided under Article 5.3 of the TRIMs Agreement, and as reiterated by the May 8 Decision. Such discussion on the merits has never taken place. No Member, particularly the United States, has come forward to address the merits of the Philippine request in the multilateral process.

Although the Philippines and the United States have held bilateral consultations, these consultations have been confined to the conditions which the United States seeks to impose in exchange for its consent to the Philippine request. The United States has never addressed the merits of the Philippine request even in those bilateral consultations. In any event, such bilateral consultations, which are intended to facilitate the mandated multilateral process, are not a substitute for the multilateral process itself.

The Philippines believes that the requirements of Article 5.3 of the TRIMs Agreement must be addressed before the matter can be considered by the DSB. In addition, the May 8 Decision requires that the request of the Philippines and other WTO members be given "positive consideration". The May 8 Decision mandates that members "preserve the multilateral character of

this process" and that the requested extensions "shall be examined in accordance with the rights and obligations of Members under Article 5.3 of the TRIMs Agreement".

Thus, establishment of a panel under these circumstances would nullify the rights of the Philippines and developing country members as provided in TRIMs Article 5.3, as reiterated in the May 8 Decision, and would make the CTG process itself a nullity.

The DSB is the General Council itself

Pursuant to Article IV.3 of the WTO Agreement, the DSB *is* the General Council discharging the responsibilities of the DSB provided for in the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

Through the May 8 Decision, the General Council, and hence, in effect, the DSB, has acknowledge that the CTG is considering the Philippine request. In so acknowledging, the General Council has authoritatively determined the course of action that should be taken relative to the Philippine request and similar requests. Thus, the establishment of a panel at the request of any Member, including the United States, would be in contradiction with the May 8 Decision. The panel establishment would infringe upon the examination of the Philippine request and is clearly contrary to the mandate of the May 8 Decision to give such requests "positive consideration".

The DSB, being the General Council itself, cannot contradict what in effect is also its own decision. A panel could be validly established only if the General Council first repeals the May 8 Decision.

Furthermore, if a panel request is granted and its findings contravene the May 8 Decision, such a situation would violate the "security and predictability" provided by Article 3.2 of the DSU.

The Philippines has engaged in bilateral consultations in good faith

The Philippines has engaged in negotiations with the United States in good faith.

In fact, the Philippines has demonstrated considerable flexibility since its original extension request under Article 5.3. In a letter from the Philippines to the United States dated 14 July 2000 (one of the latest in a series of letters sent by the Philippines to the United States), the Philippines manifested: (i) its willingness to accept a shorter time frame, from five (5) years to three and one-half years; and (ii) a phase-out plan.

The Philippines is committed to establishing a liberal trade and investment regime for the automotive industry and has manifested its flexibility. A multilateral solution however requires not only the flexibility of the Philippines.

The Philippines believes that U.S. demands are targeted at the preferential tariffs arising out of the Philippine Motor Vehicle Development Programme (MVDP). The U.S. panel request of 13 October 2000 makes such a specific reference to preferential tariffs. If this is indeed the case, then the U.S. panel request is an inappropriate leverage on tariffs by means of a dispute ostensibly on trade-related investment measures.

Please circulate this letter to all Members for consideration by the DSB in the course of its deliberations on this matter. Thank you.
