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

COMMUNICATION FROM THE PHILIPPINES

The following communication, dated 26 October 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 26 October 2020 regarding Item 7 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 for your report. The Philippines reiterates its sincere appreciation for the Chair's ongoing efforts.
2. Further to our statements that were delivered in the past four (4) DSB meetings in June, July, August, and September 2020, we thank the Chair and the DSB Secretariat for the additional set of questions sent to us on 30 September 2020, which are aimed at seeking to further explore possible pathways to resolving the parties' differences, concerning the way forward with Thailand's pending Article 21.5 appeals and the Philippines' request under Article 22 of the DSU, to which both parties sent their responses on 21 October. The Philippines and Thailand will also be given the opportunity to comment on each other's responses by 28 October, one week from today.
3. We hope that this supplemental exchange can finally provide the much-needed clarity to allow us to move forward with the Philippines' Article 22.2 request, while protecting Thailand's right to appeal. We trust that the latest responses have not only been helpful in confirming our respective positions on the issues before us, but also in shedding a bright light on the emerging means to resolve the *impasse* at hand.
4. Once again, the Philippines wishes to recall that in the spirit of cooperation and on the Chair's suggestion, we had presented for consideration a non-exhaustive list of alternative arrangements, contained in WT/DS371/40 (3 August 2020) that could allow the parties to fashion a constructive solution that would permit the completion of Thailand's appeals, which were suspended as a result of the non-functioning Appellate Body. Any such alternative arrangements should not in any way prejudice the parallel rights of the Philippines under the DSU to seek automatic and mandatory authorization to suspend concessions.
5. As we have set out in our previous statements under this agenda item, as well as in the consultations with the DSB Chair, the Philippines has remained open, ready, and willing to engage constructively with Thailand. However, it should also become clearer to the Chair, and to the DSB, that Thailand, as the losing party in duly-adopted Panel and AB reports, is utterly not be able to constructively engage in a solution. We reiterate, therefore, that the burden of applying the automatic and mandatory rules-based provisions of the DSU will be the duty and responsibility of the DSB.

6. At this meeting of the DSB, therefore, the Philippines once again asks the DSB to grant the Philippines the authority it seeks.
 7. 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".
 8. 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.
 9. Thank you, Mr. Chairman.
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