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Page: 1/3

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

RECOURSE TO ARTICLE 21.5 OF THE DSU BY THE PHILIPPINES

**NOTIFICATION OF AN APPEAL BY THAILAND UNDER ARTICLES 16.4 AND 17 OF THE
UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF
DISPUTES (DSU), AND RULE 20 OF THE WORKING PROCEDURES
FOR APPELLATE REVIEW**

The following communication, dated 9 January 2019, from the delegation of Thailand, is being circulated to Members.

Pursuant to Articles 16.4 and 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Rule 20 of the Working Procedures for Appellate Review, Thailand hereby notifies the Dispute Settlement Body of its decision to appeal to the Appellate Body certain issues of law and legal interpretation covered in the Article 21.5 Panel Report entitled *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines (Recourse to Article 21.5 of the DSU by the Philippines)* (WT/DS371/RW), which was circulated on 12 November 2018 (the "Panel Report"). Pursuant to Rules 20(1) and 21(1) of the Working Procedures for Appellate Review, Thailand is simultaneously filing this Notice of Appeal with the Appellate Body Secretariat.

For the reasons to be further elaborated in its submission to the Appellate Body, Thailand appeals, and requests the Appellate Body to modify or reverse legal interpretations leading to the legal findings and conclusions of the Panel, with respect to the following errors contained in the Panel Report.¹

A. FINDINGS REGARDING THE SCOPE AND APPLICATION OF THE CUSTOMS VALUATION AGREEMENT

The Panel erred in law in its interpretation of Article 15.1(a) of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (the "CVA"), and of the CVA generally, in finding that the scope of the CVA covered criminal enforcement matters such as the criminal charges challenged by the Philippines in this proceeding. In particular, the Panel erred in determining the scope of application of the CVA as going beyond the determination of customs value "for the purpose of levying *ad valorem* customs duties".² Thailand, therefore, requests the Appellate Body to reverse the Panel's findings in paragraphs 7.619 – 7.684 of the Panel Report (including, in particular, paragraphs 7.669, 7.684 and footnote 1409).

The Panel also erred in law in its application of its interpretation of the CVA and, in particular, Article 15.1(a) of the CVA to the criminal charges at issue in this case to find that the criminal charges at issue in this case were covered by the CVA.³ Thailand, therefore, requests the

¹ Pursuant to Rule 20(2)(d)(iii) of the Working Procedures for Appellate Review, this Notice of Appeal includes an indicative list of the paragraphs of the Panel Report containing the alleged errors, without prejudice to Thailand's right to refer to other paragraphs of the Panel Report in the context of its appeal.

² These findings are contained in paragraphs 7.619 – 7.684 of the Panel Report (including, in particular, paragraphs 7.669, 7.684 and footnote 1409).

³ These findings are contained in paragraphs 7.619 – 7.684 of the Panel Report.

Appellate Body to reverse the Panel's conclusions and the Panel's legal interpretations contained in paragraphs 7.619 – 7.684 of the Panel Report.

Consequently, Thailand also requests the Appellate Body to declare moot and of no legal effect the Panel's conclusions and findings under:

- Articles 1.1 and 1.2(a) of the CVA in paragraphs 7.722 and 8.2(a) of the Panel Report; and
- Article 2.1(a) and (b), or in the alternative, Article 3.1(a) and (b) of the CVA in paragraphs 7.730 and 8.2(b) of the Panel Report.

B. FINDINGS REGARDING "RIPENESS"

The Panel erred in law in its interpretation and application of its obligation under Article 11 of the DSU to consider whether, based on the evidence before it, certain measures challenged by the Philippines were "ripe" for resolution by the Panel.⁴

Thailand, therefore, requests the Appellate Body to reverse the Panel's conclusions and the Panel's legal interpretations contained in paragraphs 7.566 – 7.606 of the Panel Report. Consequently, Thailand also requests the Appellate Body to declare moot and of no legal effect the Panel's conclusions and findings under:

- Articles 1.1 and 1.2(a) of the CVA in paragraphs 7.722 and 8.2(a) of the Panel Report; and
- Article 2.1(a) and (b), or in the alternative, Article 3.1(a) and (b) of the CVA in paragraphs 7.730 and 8.2(b) of the Panel Report.

C. FINDINGS REGARDING THE APPLICATION OF THE EXCEPTIONS IN ARTICLE XX OF THE GATT 1994 TO THE CVA

The Panel erred in law in finding that the exceptions of Article XX of the GATT 1994 do not apply to actions taken to enforce customs laws that may be inconsistent with the provisions of the CVA, including, in particular, with respect the criminal charges at issue in this dispute.⁵

Thailand, therefore, requests the Appellate Body to reverse the Panel's conclusions and the Panel's legal interpretations contained in paragraphs 7.741 – 7.761 of the Panel Report. Consequently, Thailand also requests the Appellate Body to declare moot and of no legal effect the Panel's conclusions and findings under:

- Articles 1.1 and 1.2(a) of the CVA in paragraphs 7.722 and 8.2(a) of the Panel Report; and
- Article 2.1(a) and (b), or in the alternative, Article 3.1(a) and (b) of the CVA in paragraphs 7.730 and 8.2(b) of the Panel Report.

D. FINDINGS REGARDING ARTICLE 5 OF THE CVA

The Panel erred in law in finding that Article 5.1(a)(iv) of the CVA imposes procedural requirements regarding the manner in which customs value is determined under Article 5, including, in particular, by reading into Article 5.1(a)(iv) a requirement to undertake a "consultative process" with the importer.⁶ The Panel also erred in using this interpretation to find that Thailand's Customs Board of Appeals acted inconsistently with Article 5.1(a)(iv) with respect to the determination of an

⁴ These findings are contained in paragraphs 7.566 – 7.606 of the Panel Report.

⁵ These findings are contained in paragraphs 7.741 – 7.761 of the Panel Report.

⁶ These findings are contained in paragraphs 7.327 – 7.370 and 8.1(b)(iii) of the Panel Report (including, in particular, paragraphs 7.337 and 7.367 – 7.370).

adjustment for provincial taxes under that provision in re-calculating the dutiable value of certain entries under Article 5 of the CVA.

Thailand, therefore, requests the Appellate Body to reverse the Panel's conclusions and the Panel's legal interpretations contained in paragraphs 7.327 – 7.370 and 8.1(b)(iii) of the Panel Report (including, in particular, paragraphs 7.337 and 7.367 – 7.370).

E. FINDINGS REGARDING THE REQUIREMENTS OF THAILAND'S VAT SYSTEM

The Panel erred in law in finding that Thailand's Revenue Department had adopted an "administrative ruling" within the meaning of Article X:1 of the GATT 1994 regarding notifications of the tax base to be used to determine the VAT on cigarettes sold in Thailand.⁷

Thailand, therefore, requests the Appellate Body to reverse the Panel's conclusions and the Panel's legal interpretations contained in paragraphs 7.866 – 7.896 and 8.3(a) of the Panel Report (including, in particular, paragraphs 7.874 – 7.895).

In addition, Thailand notes that the above grounds of appeal are without prejudice to the arguments developed in Thailand's Appellant's Submission.

⁷ These findings are contained in paragraphs 7.866 – 7.896 and 8.3(a) of the Panel Report.