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

COMMUNICATION FROM THAILAND

The following communication, dated 30 July 2020, was received from the delegation of Thailand with the request that it be circulated to the Dispute Settlement Body (DSB).

Thailand sets forth below the content of its statement at the DSB meeting of 29 July 2020 regarding Item 12 of the agenda concerning the dispute *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines* (DS371).

1. Mr. Chairman, thank you for the opportunity to make a statement at today's meeting.
2. Thailand refers to its previous statements at the DSB meetings on 5 March 2020 and 29 June 2020.
3. The circumstances of this dispute have not changed since the last DSB meeting. As previously explained by Thailand, the appeals filed by Thailand in the two compliance proceedings under Article 21.5 of the DSU have not been completed due to the Appellate Body impasse. Consequently, Thailand's position also remains the same as that expressed in previous DSB meetings, which is 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. As these appeals are ongoing, the DSB has not adopted any panel or Appellate Body report that could serve as the basis for the Philippines' request for suspension of concessions.
4. The Philippines' request for suspension of concessions is also contrary to the sequencing agreement signed by the Parties in this dispute. The sequencing agreement 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. Furthermore, should the Philippines, for whatever reason, take the position that the rules contained in the sequencing agreement are no longer applicable, this would release Thailand from its commitment to not object to the Philippines' request as being outside the 30-day deadline under Article 22.6 of the DSU. As acknowledged by the Philippines in its intervention at the DSB meeting on 29 June 2020, it is clear from Article 22.6 of the DSU that any request for suspension of concessions must be authorized by the DSB "within 30 days of the expiry of the reasonable period of time".¹ 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. As Thailand has also indicated, Thailand disagrees with the Philippines' opinion that the current Appellate Body crisis constitutes a "procedural aspect" related to the procedures established in the sequencing agreement. As the Philippines itself has recognized, *inter alia* in its communication in document WT/DS371/32 of 12 February 2020, the Appellate Body suspended its work due to

¹ Communication from the Philippines, WT/DS371/38, dated 2 July 2020, paragraph 5.

"institutional constraints" as a result of insufficient number of Appellate Body Members. Without prejudice to Thailand's position, however, my delegation has entered into discussions in a constructive spirit as requested by the Philippines in its letter dated 9 March 2020. We stand ready to continue these discussions with the DSB Chair and the Philippines with an aim to find a means of resolving these institutional constraints, including how to move forward the process of selecting new Appellate Body members.

7. Chair, Thailand takes this opportunity to remind WTO Members of the urgency of resolving the problems affecting the Appellate Body. The Appellate Body crisis has imposed significant challenges on the rules-based system, including with respect to all pending appeals. Resolving the Appellate Body crisis is a matter of priority so as to avoid unilateral actions that are contrary to Article 23 of the DSU.

8. Finally, as indicated during previous interventions 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.
