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Page: 1/3

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**THAILAND – CUSTOMS AND FISCAL MEASURES ON CIGARETTES FROM THE PHILIPPINES
SECOND 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 UNDER RULE 20 OF THE WORKING PROCEDURES
FOR APPELLATE REVIEW**

The following communication, dated 9 September 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 (Second recourse to Article 21.5 of the DSU by the Philippines)* (WT/DS371/RW2 and WT/DS371/RW2/Add.1), which was circulated on 12 July 2019 (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 and its Appellant's Submission 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 applicability 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 filed by the Public Prosecutor against Philip Morris (Thailand) Limited (PMTL) and one of its former employees on 26 January 2017, in respect of 780 entries of cigarettes imported over the period 2002-2003 (the "2002-2003 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 or set aside the Panel's findings in paragraphs 7.252 – 7.337 of the Panel Report.

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 2002-2003 Charges to find that this measure was covered by the CVA.³ Thailand, therefore, requests the Appellate Body to reverse or set aside the Panel's

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 7.252 – 7.337 of the Panel Report.

³ These findings are contained in paragraphs 7.252 – 7.337 of the Panel Report.

conclusions and the Panel's legal interpretations contained in paragraphs 7.252 – 7.337 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 relating to:

- Article 1.1 and/or Article 1.2(a), second sentence, of the CVA in paragraphs 7.359, 7.362, 7.376 – 7.377 and 8.1(a) of the Panel Report;
- Article 6.1 and/or Article 7.1 of the CVA in paragraphs 7.368, 7.375, 7.376 – 7.377 and 8.1(b) of the Panel Report; and
- The obligation to apply sequentially the customs valuation methods in Articles 2 through 7 of the CVA in paragraphs 7.398 and 8.1(c) of the Panel Report.

b. 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 2002-2003 Charges.⁴

Thailand, therefore, requests the Appellate Body to reverse or set aside the Panel's conclusions and the Panel's legal interpretations contained in paragraphs 7.440 – 7.456 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 relating to:

- Article 1.1 and/or Article 1.2(a), second sentence, of the CVA in paragraphs 7.359, 7.362, 7.376 – 7.377 and 8.1(a) of the Panel Report;
- Article 6.1 and/or Article 7.1 of the CVA in paragraphs 7.368, 7.375, 7.376 – 7.377 and 8.1(b) of the Panel Report; and
- The obligation to apply sequentially the customs valuation methods in Articles 2 through 7 of the CVA in paragraphs 7.398 and 8.1(c) of the Panel Report.

c. Findings regarding the insufficient information to make an objective assessment

The Panel erred in law in its interpretation and application of its obligation under Article 11 of the DSU to consider whether there was sufficient information available concerning the 2002-2003 Charges to enable it to make an objective assessment of the matter and allowed the Philippines to make a *prima facie* case under the CVA.

Thus, Thailand requests the Appellate Body to find that the Panel acted inconsistently with its obligation under Article 11 of the DSU to "make an objective assessment of the matter" by conducting a *de novo* review that is impermissible under the standard of review contained in this provision.⁵

Thailand, therefore, also requests the Appellate Body to reverse or set aside the Panel's conclusions and the Panel's legal interpretations contained in paragraphs 7.209 – 7.240 of the Panel Report. Consequently, Thailand requests the Appellate Body to declare moot and of no legal effect the Panel's conclusions and findings relating to:

- Article 1.1 and/or Article 1.2(a), second sentence, of the CVA in paragraphs 7.359, 7.362, 7.376 – 7.377 and 8.1(a) of the Panel Report;

⁴ These findings are contained in paragraphs 7.440 – 7.456 of the Panel Report.

⁵ These findings are contained in paragraphs 7.209 – 7.240 of the Panel Report.

- Article 6.1 and/or Article 7.1 of the CVA in paragraphs 7.368, 7.375, 7.376 - 7.377 and 8.1(b) of the Panel Report; and
- The obligation to apply sequentially the customs valuation methods in Articles 2 through 7 of the CVA in paragraphs 7.398 and 8.1(c) of the Panel Report.

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