



3 August 2020

(20-5367)

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Original: English

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

**COMMUNICATION FROM THE PHILIPPINES**

The following communication, dated 30 July 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 29 July 2020 regarding Item 12 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. At the outset, allow me to thank you for your time and effort in holding, since our last DSB meeting, three virtual meetings as part of Chair-led efforts to assist the Philippines and Thailand resolve these important and urgent concerns that have systemic implications to the rights of Members, under the Dispute Settlement Understanding (DSU).
2. At our 3<sup>rd</sup> meeting last 24<sup>th</sup> of July, and further to our 9 March letter, the Philippines presented legal examples and a range of constructive options that could fill the void that has resulted from the AB's formal letter advice of 10 December 2019 of their cessation of operations. A copy of [this letter is annexed for reference, along with] a non-exhaustive list of various alternative arrangements that WTO Members have utilized in the past, both recent and not so recent.
3. Thailand has not, as of yet, responded to the ideas contained in our letter of 09 March 2020, and we understand from the 24 July meeting, that Thailand is still reviewing our 24 July and 9 March letters on potential ways forward.
4. While the Philippines has always been open to a constructive solution to the issue at hand, the Philippines has been consistent in asserting that it is fully within its rights to seek Recourse under Article 22.2 of the DSU.
5. 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 . . . 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".
6. 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.
7. At this meeting of the DSB, the Philippines asks once again that the DSB grant the Philippines the authority it seeks.

8. Thank you, Mr. Chairman.

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**NON-EXHAUSTIVE EXAMPLES:  
ALTERNATIVE ARRANGEMENTS IN WTO DISPUTE SETTLEMENT**

<b>Tab No.</b>	<b>Date</b>	<b>Description</b>
1	10 December 2020	<b>Appellate Body letter</b> to Parties with pending appeals, in which the Division has decided to suspend its work
2	03 August 2001	<b>Article 25 Agreement</b> US – Section 110(5) Copyright Act Document WT/DS160/15
3	16 October 2002	<b>Request for Mediation</b> By Philippines, Thailand, & European Communities Document WT/GC/66
4	27 March 2019	<b>Non-Appeal Understanding</b> Indonesia – Safeguard on Certain Iron or Steel products Document WT/DS496/14
5	25 July 2019	<b>Article 25 Agreement</b> Between EU & Canada (No official WTO number)
6	21 October 2019	<b>Article 25 Agreement</b> Between EU & Norway (No official WTO number)
7	04 December 2019	<b>Decision to Withdraw Appeal</b> Morocco – Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey Document WT/DS513/7
8	10 February 2020	<b>Non-Appeal Understanding</b> US – Antidumping Measures on Certain Oil Country Tubular Goods from Korea Document WT/DS488/16
9	03 June 2020	<b>Advance Agreement on Recourse to Article 25 (Plurilateral)</b> Canada – Commercial Aircraft Document WT/DS522/20
10	29 June 2020	<b>Recourse to Article 22.6 of the DSU</b> United States – Countervailing Measures on Supercalendered Paper from Canada Document WT/DS505/14
11	15 July 2020	<b>Advance Agreement on Recourse to Article 25 (Plurilateral)</b> Colombia – Anti-Dumping Duties on Frozen Fries from Belgium, Germany, and the Netherlands Document WT/DS591/3

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