

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

Understanding between the Philippines and Thailand  
Regarding Procedures under Articles 21 and 22 of the DSU

The following communication, dated 1 June 2012, from the delegation of the Philippines and the delegation of Thailand to the Chairperson of the Dispute Settlement Body, is circulated at the request of these delegations.

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The Philippines and Thailand would like to inform the Dispute Settlement Body of the attached "Agreed Procedures under Articles 21 and 22 of the *Dispute Settlement Understanding*" between the Philippines and Thailand with respect to the dispute *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines* (WT/DS371).

We request that you please circulate the attached agreement to the Members of the Dispute Settlement Body.

**Understanding between the Philippines and Thailand on Sequencing**

The Dispute Settlement Body ("DSB") adopted its recommendations and rulings in the dispute *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines* (WT/DS371) on 15 July 2011.

Pursuant to Article 21.3(b) of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") the Philippines and Thailand agreed that the reasonable period of time to implement the DSB's recommendations and rulings regarding paragraphs 8.1, 8.2, 8.3(a) and 8.4 of the panel report would be 10 months, expiring on 15 May 2012.

The Philippines and Thailand hereby agree on the following procedures for the exclusive purpose of sequencing proceedings under Articles 21.5 and 22.6 of the DSU regarding Thai measures taken to comply, if any, with respect to the recommendations and rulings in the aforementioned paragraphs of the panel report:

1. Should the Philippines consider that the situation described in Article 21.5 of the DSU exists, the Philippines may at any time request consultations, which the parties to the dispute will hold within 15 days from the date of circulation of such request. After this 15-day period has elapsed, the Philippines may request the establishment of a panel pursuant to Article 21.5 of the DSU at any time.
2. In the event that the Philippines requests the establishment of an Article 21.5 panel, Thailand shall not object to the establishment of that panel at the first DSB meeting at which the request appears on the agenda.
3. The parties to the dispute shall cooperate to enable the Article 21.5 panel to circulate its report within 90 days of the panel's establishment, excluding any such time during which the panel's work may be suspended pursuant to Article 12.12 of the DSU.
4. Either party to the dispute may request the DSB to adopt the report of the Article 21.5 panel at a DSB meeting held at least 20 days after the circulation of the report to the Members, unless either party appeals the report.
5. In the event of an appeal against the Article 21.5 panel report, the parties to the dispute shall cooperate to enable the Appellate Body to circulate its report to the Members within no more than 90 days from the date of notification of the appeal to the DSB.
6. In the event of an appeal, either party to the dispute may request the DSB to adopt the reports of the Appellate Body and the Article 21.5 panel (as modified by the Appellate Body report) at a DSB meeting held within 30 days of the circulation of the Appellate Body report to the Members.
7. The Philippines may request authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU in the event that the DSB rules, as a result of a proceeding under Article 21.5 of the DSU, that a measure taken to comply does not exist or is inconsistent with a covered agreement. Thailand shall not assert that the Philippines is precluded from obtaining such DSB authorization because its request was made outside the time period specified in the first sentence of Article 22.6 of the DSU. This is without prejudice to Thailand's right to have the matter referred to arbitration in accordance with Article 22.6 of the DSU.

8. If the Philippines requests authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU, Thailand shall have the right to object under Article 22.6 of the DSU to the level of suspension of concessions or other obligations and/or claim that the principles and procedures set forth in Article 22.3 of the DSU have not been followed. In the event of such objection, the matter will be referred to arbitration pursuant to Article 22.6 of the DSU.
9. The parties to the dispute agree that this agreement addresses only the sequencing of proceedings under Articles 21.5 and 22.6 of the DSU and does not otherwise affect the rights and obligations of either party under Articles 21 and 22 of the DSU.
10. The parties to the dispute will cooperate to enable the arbitrator under Article 22.6 of the DSU to circulate its decision within 60 days of the referral to arbitration.
11. If any of the original panelists is not available for either the Article 21.5 panel or the Article 22.6 arbitration (or both), or any person serving in either such proceeding becomes unavailable to serve, the parties to the dispute will promptly consult on a replacement, and either party may request the Director-General of the WTO to appoint, within ten days of being so requested, a replacement for the proceeding in which a replacement is required. If an original panelist is unavailable to serve in the Article 21.5 proceeding, or a person serving in that proceeding becomes unavailable to serve, the parties to the dispute will further request that, in making this appointment, the Director-General seek a person who will be available to act in both the Article 21.5 and Article 22.6 proceedings.
12. The parties to this dispute will continue to cooperate in all matters related to these agreed procedures and agree not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the parties to the dispute consider that a procedural aspect has not been properly addressed in these procedures, they will endeavor to find a solution within the shortest time possible that will not affect the other aspects and steps agreed herein.

For the Philippines

For Thailand

(Signed)

José Victor Chan-Gonzaga  
*Chargé d’Affaires, a.i.*

(Signed)

Nisa Srisuworanant  
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