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

COMMUNICATION FROM THAILAND

The following communication, dated 27 October 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 26 October 2020 regarding Item 7 of the agenda concerning the dispute *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines* (DS371).

1. Mr. Chairman, I take this opportunity to once again express Thailand's appreciation for your active engagement in assisting Thailand and the Philippines in finding a way forward in this dispute. The ongoing consultations under your leadership are permitting a constructive dialogue between the Parties. Thailand remains committed to continuing these consultations.

2. As Thailand has explained in its prior statements at the DSB meetings of 5 March, 29 June, 29 July, 28 August and 28 September, there is no possible interpretation of the DSU or the Sequencing Agreement between the parties that would permit the Philippines to seek authority to retaliate at this point in the proceedings. The Philippines' retaliation request is without legal foundation because it was made long after the expiry of the 30-day deadline in Article 22.6 of the DSU. Indeed, it is undisputed that the Philippines did not file any retaliation request by 14 June 2012, which is when the 30-day deadline expired in this dispute.

3. Additionally, the Philippines' retaliation request is contrary to the Sequencing Agreement concluded by both Parties, which states that the Philippines must first complete Article 21.5 proceedings, and only thereafter, if non-compliance is determined, the Philippines can request retaliation under Article 22. Thailand is therefore disappointed that the Philippines now attempts to disavow the Sequencing Agreement that both Parties concluded precisely to avoid these types of procedural problems. Thailand is also surprised that the Philippines considers that Thailand remains bound by the Sequencing Agreement, but that the Philippines itself is not.

4. It is obvious that the real problem here is not the DSU or the Sequencing Agreement, but the Appellate Body crisis. It is imperative that a solution be found to this crisis.

5. Thailand urges all WTO Members to focus on resolving this crisis. We have seen, in other disputes, that parties have continued to file appeals before the Appellate Body notwithstanding the current crisis. This highlights the importance placed by Members on having a two-tier system in order to ensure the quality and legitimacy of the WTO dispute settlement. Thailand looks forward to continuing the multilateral efforts to solve the Appellate Body impasse with a view to preserving the two-tier dispute settlement system of the WTO.

6. In the meantime, Thailand remains committed to participating in good faith in the consultations organized by the DSB Chairman with the aim of finding a way forward in light of the present circumstances. As Members will understand, our preference is very much for a solution that is not simply an *ad hoc* way of disposing of this case, but one that encompasses all pending appeals and, ideally, gets the multilaterally-approved DSU system back on track.

7. Thailand thanks the DSB Chairman for the opportunity to make a statement at today's DSB meeting and we thank our colleagues from the Philippines for their ongoing engagement. Thailand looks forward to the next steps in the consultations facilitated by the DSB Chairman in this dispute.
