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

COMMUNICATION FROM THE PHILIPPINES

The following communication, dated 28 February 2020, was received from the delegation of the Philippines with the request that it be circulated to the Dispute Settlement Body (DSB).

1. The Philippines is disappointed by Thailand's efforts to block the DSB from conducting its regular work at today's regular meeting. This is a transparent attempt to prevent the Philippines from exercising its rights under Article 22 of the DSU to seek the DSB's authorization to suspend concessions in *Thailand – Cigarettes* ("DS371").

2. The Philippines initiated this dispute on 07 February 2008, 4,388 days ago from today. The Panel Report in this dispute was issued on 15 November 2010, and the Appellate Body issued its report on 17 June 2011. On 15 July 2011, this august body, the Dispute Settlement Body, formally adopted the recommendations of the Panel Report, as amended by the Appellate Body report. Thereafter, the reasonable period of time for Thailand to comply with the recommendations of the DSB was set for 15 May 2012. At that point, the Philippines' DSU Article 22 rights were established, as well as its parallel DSU Article 21.5 rights, in order to address any future compliance issues.

3. In good faith, the Philippines pursued its parallel Article 21.5 compliance proceedings, and the first compliance Panel Report was issued on 12 March 2018. The Philippines also obtained a second compliance Panel Report on 23 July 2019. Under the Sequencing Understanding between the two parties, all appeals was to be mandatorily resolved within 90 days from their initiation. The 90-day period for the first and second compliance appeals have well expired since 2019. The current DSU Article 22.2 request is therefore fully within the Philippines' rights, and Thailand expressly committed to respect these Article 22 rights.

4. Thailand's request that the DSB Chair remove the Philippines' Article 22.2 request from the agenda should be rejected. According to the past practice of the DSB, where a Member has a right to request a specific decision from the DSB, another Member cannot remove that request from the DSB's agenda, unless there is consensus at the DSB to do so.

5. As Members will recall, in *EC – Bananas III*, two Members sought the removal from the DSB's agenda of a request by the United States under Article 22.2 of the DSU. As recorded in the minutes of the meeting, the DSB Chair explained that "[t]he Rules of Procedure for meetings of WTO bodies should not modify the rights and obligations of Members under the WTO Agreement".¹ In particular, the Rules of Procedure "should not be so interpreted as to block meetings in cases where a Member had the right to request a specific decision unless there was consensus against such request".² At the time, the Philippines agreed with the DSB Chair that "the Rules of Procedure would not prevail over the substantive rights of Members under the DSU".³ Twenty years later, the Philippines continues to hold that view.

¹ Minutes of the DSB meeting dated 25 January – 1 February 1999, WT/DSB/M/54, p. 9.

² Minutes of the DSB meeting dated 25 January – 1 February 1999, WT/DSB/M/54, p. 9.

³ Minutes of the DSB meeting dated 25 January – 1 February 1999, WT/DSB/M/54, p. 10.

6. The Philippines trusts that this Body can continue, today, to address the important items that figure on the proposed agenda. The Philippines affirms its right to seek authorization to suspend concessions under Article 22 of the DSU and looks forward to the DSB routinely authorizing its request in accordance with the rules.

7. These issues have been subject as well of the exchange of letters between Thailand and the Philippines, which have been circulated to the Members in WT/DS371/33 and WT/DS371/34, for their consideration. The Philippines respects and appreciates Thailand's position, and both parties are indeed counting on the rules-based multilateral trading system and this august body to address these issues in accordance with the rules and past practice.

8. The Philippines confirms its Article 22.2 request for authorization and requests the Chair to rule on the procedural Point of Order raised by Thailand, and therefore to allow the agenda of the DSB meeting to be adopted, and for the meeting to proceed.

DATES	No. of DAYS (cumulative)	No. of DAYS (as of previous date)	ORIGINAL PROCEEDINGS	
7 February 2008	Day 1		Consultations request	
15 November 2010	1,012	1,012	Panel Report Issued	
22 February 2011	1,111	99	Thailand Filing of Appeal	
17 June 2011	1,226	115	Appellate Body Report Issued	
<u>15 July 2011</u>	<u>1,254</u>	<u>28</u>	<u>DSB Adoption of Findings of Panel Report as amended by AB</u>	
15 May 2012	1,559	305	Expiry of Mutually Agreed Reasonable Period of Time (RPT)	
<u>14 June 2012</u>	<u>1,589</u>	<u>30</u>	<u>30 days from RPT – Trigger for Compliance Remedies</u>	
			Article 22 Remedies	Art 21.5 Remedies
12 May 2016	3,017	1,428	Philippines' rights preserved Thailand commits not to object Thailand Waiver of 30 days per para. 7 of the sequencing understanding	Consultations request first compliance proceedings
6 July 2017	3,437	420		Consultations request second compliance proceedings
12 March 2018	3,686	249		First comp. Panel Report issued to parties
9 January 2019	3,989	303 [414 days ago]		Thailand's first appeal
9 April 2019	4,079	90		Expiry of 90-day deadline for 1 st compliance appeal (para. 5 of sequencing understanding)
23 July 2019	4,184	105		Second comp. Panel Report issued to parties
9 September 2019	4,232	48 [171 days ago]		Thailand's second appeal
9 December 2019	4,323	90		Expiry of 90-day deadline for 2 nd compliance appeal (para. 5 of sequencing understanding)
12 February 2020	4,388	65	Philippines' Article 22.2 request for authorization to suspend concessions (Thailand expressly committed to respect the Philippines' right to request authorization to suspend concessions)	