



21 December 2020

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

COMMUNICATION FROM THE CHAIRPERSON OF THE DSB CONCERNING THE  
"UNDERSTANDING BETWEEN THE PHILIPPINES AND THAILAND TO PURSUE  
FACILITATOR-ASSISTED DISCUSSIONS AIMED AT PROGRESSING AND  
RESOLVING OUTSTANDING ISSUES IN REGARD TO DS371"

The attached communication, from the delegation of the Philippines and the delegation of Thailand dated 18 December 2020, containing an "Understanding between the Philippines and Thailand to Pursue Facilitator-assisted discussions aimed at progressing and resolving outstanding issues in regard to DS371" has been forwarded to me in my capacity as Chairperson of the Dispute Settlement Body, with a request that it be circulated to Members.

I welcome the fact that the two delegations have reached an Understanding aimed at resolving their outstanding differences in regard to DS371, which builds on the consultative process that I have been pursuing with the parties over recent months. In this regard, I am also pleased to confirm that Ambassador George Mina has confirmed his agreement to take on the role of Facilitator and has advised that he will be meeting with the parties in the period ahead to take forward the process of further Facilitator-assisted consultations.

H.E. Ambassador Dacio Castillo  
Chair of the Dispute Settlement Body

cc H.E. Ambassador George Mina

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**Understanding between the Philippines and Thailand to Pursue Facilitator-assisted discussions aimed at progressing and resolving outstanding issues in regard to DS 371**

The Dispute Settlement Body ("DSB") adopted its recommendations and rulings in the dispute Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines (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.

In a communication of 1 June 2012, the Philippines and Thailand notified the Dispute Settlement Body of an "Understanding between the Philippines and Thailand Regarding Procedures Under Article 21 and 22 of the DSU" (WT/DS371/16 of 7 June 2012). The Philippines initiated two compliance proceedings under Article 21.5 of the DSU on 4 May 2016 and 4 July 2017, respectively. The compliance panel issued its report in the first compliance proceedings on 12 November 2018, which Thailand appealed on 9 January 2019. The compliance panel issued its report in the second compliance proceedings on 12 July 2019, which Thailand appealed on 9 September 2019.

As a result of the impasse that continues to be faced in the filling of Appellate Body vacancies, the two appeals from Article 21.5 panel proceedings submitted to the Appellate Body in relation to DS371 have not been completed.

On 12 February 2020, the Philippines requested authority to suspend concessions under DSU Article 22.2 (WT/DS371/32 of 14 February 2020). Following on from this situation, the Philippines and Thailand have expressed different views on how the outstanding issues in relation to the Article 21.5 appeals and Article 22 procedures can be resolved.

Since February 2020 the Chairperson of the DSB has been consulting with the two parties to seek to identify ways of progressing and resolving their differences of views in this area. These consultations, which are of a confidential nature, have been helpful in clarifying the respective positions of the parties on the relevant issues, but have not, to date, managed to resolve the outstanding differences between them.

With the support and encouragement of Ambassador Castillo, the current Chairperson of the DSB, the Philippines and Thailand now wish to further deepen this process of consultations, through the additional assistance of a Facilitator nominated by Ambassador Castillo to assist them in this process, which the Philippines and Thailand agree should respect the following parameters.

1 While it is acknowledged that the current unresolved issues in DS 371 are linked to the wider impasse impacting on the operations of the Appellate Body, the Facilitator's role will be limited to assisting the parties in identifying appropriate ways forward to resolve the outstanding differences between them in the specific context of the DS371 dispute.

2 In this regard, the parties agree, based on the nomination of the Chairperson of the DSB, to Ambassador George Mina serving as Facilitator. The Facilitator, building on the clarification process initiated by the current DSB Chair, will seek to identify and make recommendations to the parties on ways and means of resolving the relevant outstanding issues, which will include both procedural and/or substantive approaches, including a potential comprehensive settlement, subject to the parties agreement. The Facilitator shall be provided with full access to the records of the clarification process undertaken by the current DSB Chair. The Facilitator-assisted consultations shall remain of a confidential nature.

3 The Philippines and Thailand undertake to participate in good faith in the Facilitator-assisted consultations to progress the issues under consideration, and, in this context, will seek to avoid taking new measures that may militate against further progress or resolution of the issues between them.

4 The parties to the dispute agree that participation in the Facilitator-assisted process is without prejudice to their WTO rights and obligations. Either party may terminate the Facilitator-assisted consultations at any time, with notice to the DSB Chair, the Facilitator and the other party.

5 The Facilitator shall, in consultation with the Chairperson of the DSB and the parties, report back to the DSB on the outcome of the further consultative process and on any steps that parties may agree to take to progress or resolve the issues between them. The Facilitator should provide such a report back to the DSB on the 31st of March 2021, without prejudice to the Facilitator recommending continuation of the process up to but no later than 31 July 2021, unless the parties agree otherwise.

For the Philippines

For Thailand

(H.E. Mr Manuel A.J. Teehankee)  
Ambassador and Permanent Representative to  
the WTO

(H.E. Ms Sunanta Kangvalkulkij)  
Ambassador and Permanent Representative to  
the WTO

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