

# GENERAL AGREEMENT ON

RESTRICTED

## TARIFFS AND TRADE

DS10/2

8 February 1990

Limited Distribution

COUNCIL

Original: English

### THAILAND - RESTRICTIONS ON IMPORTATION OF AND INTERNAL TAXES ON CIGARETTES

#### Request for the Establishment of a Panel under Article XXIII:2 by the United States

The following communication, dated 7 February 1990, has been received from the United States Trade Representative in Geneva with the request that the matter be inscribed on the agenda of the Council meeting on 20 February 1990.

Pursuant to the request of the United States, consultations under Article XXIII:1 of the General Agreement were held on February 5, 1990, between the United States and Thailand regarding restrictions maintained by Thailand on the import of, and the internal taxes on, cigarettes. These consultations, and two previous bilateral consultations, did not result in a satisfactory adjustment of the matter. Therefore, the United States requests the formation of a dispute settlement panel under Article XXIII:2 of the General Agreement to examine the matter.

The Thai Government has a stated policy of not permitting importation of foreign cigarettes. With the exception of one shipment in 1980, the Thai Government has not permitted imports of U.S. cigarettes into that country since 1976. The United States believes that the restriction on imports of cigarettes is in clear contravention of Thailand's obligations under the General Agreement, inter alia, of Article XI.

The United States also believes that Thailand's laws and practices relating to the taxation of cigarettes are inconsistent with Article III of the GATT. We believe that each of these tax provisions are susceptible of being applied to imported products so as to afford protection to domestic production. First, since only the Thai cigarette monopoly is exempted from application of the business tax, imported cigarettes are subject to a different level of taxation than domestically produced cigarettes. Second, the ceiling on the Tobacco Stamp Rate, as stated in the Annex to the Tobacco Act BE 2509, as amended (the excise tax), is significantly higher for imported cigarettes than that provided for domestic cigarettes. Moreover, the applied rate for this excise tax is tied to the amount of Thai tobacco contained in the manufactured cigarette. This provision inherently discriminates against imported products and would result in the application of taxes to imported products in excess of those applied to like domestic products.

./.

Thailand has recognized that the incidence of business and excise taxes on imported and domestically produced articles, including cigarettes, results in disparate treatment within the meaning of Article III of the General Agreement. (See paragraph 3 of Thailand's Protocol of Accession. BISD 29th Supplement at page 3, L/5403). The GATT CONTRACTING PARTIES granted Thailand an extension of the waiver of its obligations under Article III, with respect to the incidence of business and excise taxes on cigarettes. (BISD 34th Supplement at 28, L/6190). The basis for that extension in 1987 was that Thailand was in the process of introducing a value-added tax system. That extension will expire in June of this year and the issue will be reviewed at that time.

The United States believes that the requested dispute settlement panel should find that in the event that Thailand decided to permit imports of cigarettes, the treatment accorded to such imports must be no less favorable than that accorded to like products of Thai origin, as required by Article III. This obligation covers all laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of the product. Imported cigarettes must be provided effective equality of opportunities to compete in the market.

The United States believes the above-described restrictions on importation and discriminatory internal taxation are inconsistent with Thailand's obligations under various provisions of the General Agreement, including Articles III and XI, and are not justified by any of the exceptions provided in the General Agreement. These laws and practices nullify or impair benefits accruing to the United States within the meaning of Article XXIII:1.