

1. UNITED STATES - MEASURES AFFECTING THE PRODUCTION AND SALE OF CLOVE CIGARETTES

A. RECOURSE TO ARTICLE 22.2 OF THE DSU BY INDONESIA (WT/DS406/12)

- Mr. Chairman, as you have noted, yesterday the United States submitted an objection to Indonesia's request for authorization to suspend the application to the United States of concessions or other obligations.
- Therefore, by operation of Article 22.6 of the DSU, this matter has already been referred to arbitration.
- In this circumstance, there was no need for today's DSB meeting as there is no action the DSB may take with respect to Indonesia's request. However, in light of the fact that today's meeting has not been canceled, we have no objection to the DSB agreeing that the matter has been referred to arbitration.
- Turning briefly to the U.S. objection, the United States has both objected to the proposed level of the suspension of concessions and claimed that the principles and procedures in DSU Article 22.3 have not been followed.
- The United States would further note two types of substantial concerns with Indonesia's request for authorization.
- First, as the United States notified the DSB at the July 23 meeting, the United States has complied with the recommendations and rulings in this dispute. In these circumstances, we do not see a basis for Indonesia to request authorization to suspend concessions – at any level.
- Second, we are concerned by the erratic behavior of Indonesia in relation to whether to sequence proceedings under Article 21.5 and Article 22 of the DSU.
- Indeed, Indonesia itself initially proposed a sequencing agreement to the United States, with which the United States agreed in principle. Subsequently, however, Indonesia stated it was no longer interested in entering into a sequencing agreement and proceeded to file its request for authorization to suspend concessions.
- There appears to be no question that the parties disagree whether the United States has brought its measure into conformity with the DSB's recommendations and rulings. The issue is whether there will be agreement between the parties on the procedures to be followed to resolve that disagreement. It would appear that Indonesia is of the view that sequencing is not required under the DSU and that issues of compliance may be resolved as part of the Article 22 arbitration. WTO Members and reports adopted by the DSB appear to have reached disparate views on this issue.

- Regardless, the United States considers that the parties had agreed in principle to procedures to govern any questions relating to compliance. We would therefore expect Indonesia to revert to its original proposal to first obtain a DSB ruling on the issue of compliance before engaging in and completing an Article 22.6 arbitration. Even at this juncture, it is open to the parties to enter into an agreement to suspend the Article 22.6 arbitration during the pendency of an Article 21.5 compliance proceeding.
- As the United States has reported to the DSB, U.S. authorities have conferred with interested parties and have worked to implement the recommendations and rulings of the DSB in a manner that is appropriate from the perspective of public health.
- The United States recalls that in this dispute the DSB found that the challenged U.S. measure reflects the overwhelming view of the scientific community that banning clove and other flavored cigarettes benefits the public health by reducing the likelihood that youth will enter into a lifetime of cigarette addiction. At the same time, the DSB also found that the U.S. measure provided less favorable treatment to clove cigarettes imported from Indonesia than to menthol cigarettes that were made in the United States.
- To come into compliance with the DSB's recommendations and rulings, the United States has taken and is taking a number of actions in relation to menthol cigarettes.
- First, the U.S. Food and Drug Administration is publishing an Advanced Notice of Proposed Rule Making concerning menthol cigarettes. The Notice initiates a process to receive public comment on potential regulatory options that the Food and Drug Administration might consider and seeks additional information. The Notice will be published in the U.S. Federal Register.
- Second, the U.S. Food and Drug Administration is releasing its Preliminary Scientific Evaluation on the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes. The Preliminary Scientific Evaluation addresses the association between menthol cigarettes and various outcomes, including initiation, addiction, and cessation. The Preliminary Evaluation includes a finding that the presence of menthol in cigarettes negatively affects cessation and attempts of smokers to quit smoking. The Preliminary Evaluation will be available for public comment.
- Third, the U.S. Food and Drug Administration is announcing the development of a youth education campaign that is designed to prevent and reduce demand for tobacco products and menthol cigarettes.
- Fourth, the U.S. Department of Health and Human Services is sharing information through the U.S. online hub for tobacco information and cessation tools, called BeTobaccoFree.gov, which was initially launched in November 2012. This online hub provides information on the health risks posed by menthol cigarettes to raise awareness of those risks.
- Fifth, the National Cancer Institute is educating the public on the health risks posed by menthol cigarettes through its website designed to help persons quit smoking, which is

SmokeFree.gov.

- The health risks posed by using tobacco are well-documented, and the public health challenges posed by menthol cigarettes in particular are significant. In the United States, approximately 30 percent of adult smokers and 40 percent of all youth smokers report smoking menthol cigarettes. Raising awareness and educating about the health risks of tobacco can be an important means to discourage its use.
- In light of the significant public health challenges posed by menthol cigarettes, these actions by U.S. health authorities bring the United States into compliance with the DSB's recommendations and rulings in this dispute within the reasonable period of time for compliance, which expires on July 24.
- We look forward to continuing to confer with Indonesia regarding these compliance actions.