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**UNITED STATES – MEASURES AFFECTING THE PRODUCTION
AND SALE OF CLOVE CIGARETTES**

RECOURSE TO ARTICLE 22.2 OF THE DSU BY INDONESIA

The following communication, dated 12 August 2013, from the delegation of Indonesia to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

Indonesia respectfully requests that a special meeting of the Dispute Settlement Body ("DSB") be held on or before 23 August 2013 to consider the following agenda item:

*United States - Measures Affecting the Production and Sale of Clove Cigarettes:
Recourse by Indonesia to Article 22.2 of the Understanding on Rules and Procedures
Governing the Settlement of Disputes (DS406)*

On 20 July 2010 the DSB established a panel at the request of Indonesia to examine the United States' ban on certain flavored cigarettes, including clove cigarettes produced in Indonesia. The Panel found that Section 907(a)(1)(A) of the *Federal Food, Drug and Cosmetic Act* was inconsistent with the United States' obligations under Articles 2.1, 2.9.2, and 2.12 of the Agreement on Technical Barriers to Trade ("TBT Agreement"). The United States appealed the Panel's findings with respect to Articles 2.1 and 2.12. On 4 April 2012 the Appellate Body affirmed the Panel's findings, although on other grounds. On 24 April 2012 the DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report. In particular, the DSB recommended that the United States bring its measure into conformity with its obligations under the TBT Agreement (WT/DS406/AB/R, para. 299; WT/DS406/R, para. 8.6).

Pursuant to Article 21.3 of the Understanding on the Rules and Procedures Governing the Settlement of Disputes ("DSU"), Indonesia and the United States agreed that the "reasonable period of time" for the United States to implement the DSB recommendations and rulings would expire on 24 July 2013 (WT/DS406/10). The United States failed to implement the recommendations and rulings of the DSB with respect to Section 907(a)(1)(A) by the end of the reasonable period of time, and no mutually acceptable arrangement for compensation has been reached. Therefore, Indonesia is entitled to redress under Article 22 of the DSU.

Pursuant to Article 22.2 of the DSU, Indonesia requests the authorization of the DSB to suspend the application to the United States of tariff concessions and related obligations. In considering what concessions or obligations to suspend, Indonesia has followed the principles and procedures set forth in Article 22.3(a) of the DSU. As required by Article 22.4 of the DSU, the level of suspension proposed is equivalent on an annual basis to the nullification or impairment of benefits accruing to Indonesia resulting from the United States' failure to bring its ban on flavored cigarettes into compliance, by 24 July 2013, with the TBT Agreement or to otherwise comply with the recommendations and rulings of the DSB in *"United States - Measures Affecting the Production and Sale of Clove Cigarettes."* The suspension of concessions and other obligations would consist of one or more of the following:

- (1) suspension of tariff concessions and other related obligations under the General Agreement on Tariffs and Trade 1994 on a list of U.S. products to be established in due course;

- (2) suspension of concessions and other obligations under the TBT Agreement; and,
- (3) suspension of concessions and other obligations under the Agreement on Import Licensing.

Indonesia is a developing country. The production and sale of clove cigarettes is important to Indonesia's economy. Clove cigarettes have a long history in Indonesia and are part of its culture. When the U.S. banned the sale of certain flavored cigarettes, the burden of that measure fell almost entirely on Indonesia. As a result of the contested measure, Indonesia's exports of clove cigarettes to the United States fell to zero. The Indonesian people are following this dispute closely. They want to know if the rules-based trading system promised by the WTO is real or a mere illusion.
