

[BILLING CODE 3190-W0-P]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR-2010-0013]

WTO Dispute Settlement Proceeding Regarding United States – Measures Affecting the Production and Sale of Clove Cigarettes

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (“USTR”) is providing notice that on June 10, 2010, the United States received a request from the Republic of Indonesia (“Indonesia”) for the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* (“WTO Agreement”) regarding a provision of the Family Smoking Prevention and Tobacco Control Act (P. L. 111-31). That request may be found at www.wto.org in a document designated as WT/DS406/2. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before **<insert date that is 30 days after date of publication>** to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to www.regulations.gov, docket number USTR-2010-0013. If you are unable to provide submissions by www.regulations.gov, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential

information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395-3640.

FOR FURTHER INFORMATION CONTACT: Richard Chriss, Chief Agriculture Counsel, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508, (202) 395-5962.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 2527(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that Indonesia has requested the establishment of a dispute settlement panel pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”). The panel was established pursuant to the DSU on July 20, 2010, and is expected to hold its meetings in Geneva, Switzerland, and to issue a report on its findings and recommendations within nine months after the date of its establishment.

Major Issues Raised by Indonesia

In its request for establishment of a panel, Indonesia challenges a provision of the Family Smoking Prevention and Tobacco Control Act (P. L. 111-31) (the “Act”). Among other things, the Act amends the Federal Food, Drug, and Cosmetic Act by adding a new Section 907. Section 907 bans sales of all flavored cigarettes, other than tobacco or menthol flavors, wherever

they are produced, beginning 90 days after the legislation was signed into law (September 20, 2009). Indonesia states that it considers Section 907 to be inconsistent with the obligations of the United States under Article III:4 and Article XX of *the General Agreement on Tariffs and Trade 1994*, and Articles 2.1, 2.2, 2.5, 2.8, 2.9, 2.10, 2.12, and 12.3 of the *Agreement on Technical Barriers to Trade*. Indonesia further states that if the United States should assert that the measure at issue is an SPS measure, then it is Indonesia's view that the measure is inconsistent with Articles 2, 3, 5, and 7 of the *Agreement on the Application of Sanitary and Phytosanitary Measures*.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to www.regulations.gov docket number USTR-2010-0013. If you are unable to provide submissions by www.regulations.gov, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

To submit comments via www.regulations.gov, enter docket number USTR-2010-0013 on the home page and click "search". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Submit a Comment." (For further information on using the www.regulations.gov website,

please consult the resources provided on the website by clicking on “How to Use This Site” on the left side of the home page.)

The www.regulations.gov site provides the option of providing comments by filling in a “Type Comment and Upload File” field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type “See attached” in the “Type Comment and Upload File” field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked “BUSINESS CONFIDENTIAL” at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395-3640. A non-confidential summary of the confidential information must be submitted to www.regulations.gov. The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. § 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter –

- (1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as “SUBMITTED IN CONFIDENCE”

at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to www.regulations.gov. The non-confidential summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on this dispute settlement proceeding accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR’s website at www.ustr.gov, and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the website of the World Trade Organization, www.wto.org.

Comments will be placed in the docket and open to public inspection pursuant to 15 C.F.R. § 2006.13, except confidential business information exempt from public inspection in accordance

with 15 C.F.R. § 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. § 2155(g)(2). Comments open to public inspection may be viewed on the www.regulations.gov website.

Steven F. Fabry,

Assistant United States Trade Representative

for Monitoring and Enforcement

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