

[BILLING CODE 3190-W0-P]

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

[Docket No. WTO/DS403]

**WTO Dispute Settlement Proceeding Regarding Philippines – Taxes on Distilled Spirits**

**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 March 29, 2010, the United States requested establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* (“WTO Agreement”) with respect to the taxation of imported distilled spirits in the Philippines. That request may be found at [www.wto.org](http://www.wto.org) in a document designated as WT/DS403/4. The panel was established by the World Trade Organization (“WTO”) Dispute Settlement Body on April 20, 2010. 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 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](http://www.regulations.gov), docket number USTR-2010-0005. If you are unable to provide submissions by [www.regulations.gov](http://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:** Courtney E. Smothers, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508, (202) 395-5657.

**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 establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that it requested a panel and the panel has been established pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”). The panel will hold its meetings in Geneva, Switzerland, and would be expected to issue a report on its findings and recommendations within nine months after it is established.

### **Major Issues Raised by the United States**

The United States has raised concerns with the Philippines over taxation of distilled spirits many times over the past several years, both bilaterally and in WTO forums. On January 14, 2010, the United States requested consultations regarding this issue. The Philippines taxes distilled spirits at rates that differ depending on the product from which the spirit is distilled. The Philippines taxes distilled spirits made from certain materials that are typically produced in the Philippines,

such as cane sugar and palm, at a low rate (e.g. 13.59 pesos per proof liter in 2009). Other distilled spirits are taxed at significantly higher rates (from approximately ten to forty times higher) than the low rate applied to domestic products. The Philippines' taxes on distilled spirits appear not to tax similarly imported distilled spirits as compared to directly competitive or substitutable domestic distilled spirits. The taxes appear to be applied in a way that affords protection to the domestic products. In addition, the taxes appear to subject imported distilled spirits to internal taxes in excess of those applied to like domestic products. Accordingly, the tax treatment of distilled spirits in the Philippines appears to be inconsistent with Article III:2 of the GATT 1994.

On January 14, 2010, the United States requested consultations with the Philippines. That request may be found at [www.wto.org](http://www.wto.org) contained in a document designated as WT/DS403/1. Consultations were held in Geneva on February 23, 2010, but did not resolve the concerns with respect to the Philippine taxes.

### **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](http://www.regulations.gov) docket number USTR-2010-0005. If you are unable to provide submissions by [www.regulations.gov](http://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](http://www.regulations.gov), enter docket number USTR-2009-0035 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](http://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](http://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](http://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](http://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](http://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](http://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](http://www.regulations.gov) website.

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**Steven F. Fabry,**

**Assistant United States Trade Representative**

**for Monitoring and Enforcement**

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