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INDONESIA - CERTAIN MEASURES AFFECTING THE
AUTOMOBILE INDUSTRY

Request for the Establishment of a Panel by the United States

The following communication, dated 12 June 1997, from the Permanent Mission of the United States to the Chairman of the Dispute Settlement Body, is circulated at the request of that delegation.

On 8 October 1996, the United States requested consultations with Indonesia pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), Article 8 of the Agreement on Trade-Related Investment Measures (TRIMs Agreement) (to the extent it incorporates by reference Article XXII of the GATT 1994), Articles 7 and 30 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) (to the extent Article 30 incorporates by reference Article XXII of the GATT 1994), and Article 64 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (to the extent it incorporates by reference Article XXII of the GATT 1994) regarding certain measures affecting trade and investment in the motor vehicle sector (WT/DS59/1).

Pursuant to the above-mentioned request, the United States consulted with Indonesia in Geneva on 4 November 1996 and 4 December 1996, in an attempt to reach a mutually satisfactory solution. Additional informal consultations have been and will be held toward the same end. Unfortunately, the consultations held to date have failed to settle the matter.

The United States therefore respectfully requests that a Panel be established pursuant to Article 6 of the DSU, Article XXIII:2 of the GATT 1994, Article 8 of the TRIMs Agreement (to the extent it incorporates by reference Article XXIII of the GATT 1994), Articles 7.4 and 30 of the SCM Agreement (to the extent Article 30 incorporates by reference Article XXIII of the GATT 1994), and Article 64 of the TRIPS Agreement (to the extent it incorporates Article XXIII of the GATT 1994).

The United States requests that the Dispute Settlement Body (DSB) initiate the procedure provided for in Annex V of the SCM Agreement pursuant to paragraph 2 of that Annex. The United States notes that this procedure has already been invoked in the context of a parallel request for the formation of a Panel by the European Community dated 12 May 1997, and that the DSB has today chosen a representative to carry out this work. The United States requests that the information-gathering process on the United States and European Community claims be combined into a single exercise. The United States would like to begin immediately to participate in the process of identifying the information which should be sought under this procedure, and the procedures by which that information should be collected and considered.

The Measures at Issue

The Measures at issue in this request include:

- the grant of import duty relief to parts and components used in the assembly of motor vehicles in Indonesia based on the finished vehicles, and under some circumstances the finished parts and components, meeting certain local content requirements;
- the effective reduction or elimination of the luxury sales tax on vehicles in Indonesia based on the finished vehicles meeting certain local content requirements;
- the exemption of import duties for parts and components used for the assembly of "national motor vehicles" assembled in Indonesia and meeting certain local content obligations;
- the effective exemption from the luxury sales tax on "national motor vehicles" assembled in Indonesia and meeting certain local content obligations;
- the grant of "national motor vehicle" tariff and luxury sales tax benefits to a single company that imports such vehicles from Korea; and
- defining "national motor vehicles" as including only those motor vehicles bearing unique Indonesian trademarks owned by Indonesian nationals.

The Government of Indonesia has implemented these Measures through the following acts (as well as through, *inter alia*, subsidiary decrees, regulations, instructions and implementing measures):

- Decree of the Minister of Industry No. 114/M/SK/6/1993, dated 9 June 1993
- Decree of Minister of Finance No. 645/KMK.01/1993, dated 10 June 1993
- Decree of Minister of Finance No. 647/KMK.04/1993, dated 10 June 1993
- Decree of Minister of Finance No. 223/KMK.01/1995, dated 23 May 1995
- Presidential Instruction No. 2/1996, dated 19 February 1996
- Government Regulation No. 20/1996, dated 19 February 1996
- Decree of the Ministry of Industry and Trade No. 31/MPP/SK/2/1996, dated 19 February 1996
- Decree of Minister of Finance No. 82/KMK.01/1996, dated 19 February 1996
- Decree of the Minister of Industry No. 01/SK/1996, dated 27 February 1996
- Government Regulation No. 36/1996, dated 4 June 1996
- Presidential Decree No. 42/1996, dated 4 June 1996
- Decree of the Ministry of Industry and Trade No. 142/MPP/Kep/6/1996

The Legal Basis for the Complaint

The United States believes that the Measures noted above are inconsistent with several agreements of the World Trade Organization, including:

- the grant of tax and tariff benefits under the "national motor vehicle" program to finished cars imported into Indonesia from a sole supplier in Korea is inconsistent with Article I:1 and III:7 of the GATT 1994;
- the grant of benefits tied to percentage local content under the 1993 program and the "national motor vehicle" program is inconsistent with Article III:4 of the GATT 1994 and Article 2 of the TRIMs Agreement (in view of Item 1(a) of the Illustrative List Annexed to that Agreement);
- the effective imposition of a lower tax on domestic motor vehicle parts and components than on imported parts and components is inconsistent with Article III:2 of the GATT 1994;
- the grant of luxury tax free treatment to "national motor vehicles" that is not granted to imported finished vehicles is inconsistent with Article III:2 of the GATT 1994;
- the grant of national car benefits only to those cars bearing a unique Indonesian trademark owned by Indonesian nationals discriminates against foreign owned trademarks and their owners in a manner inconsistent with Articles 3, 20 and 65 of the TRIPs Agreement;
- the grant of tax and tariff benefits in the above-referenced measures constitute specific subsidies within the meaning of Articles 1 and 2 of the SCM Agreement, which subsidies cause "serious prejudice" to the interests of the United States in view of Articles 6 and 27 of the SCM Agreement, in particular by displacing or impeding imports of U.S. motor vehicles, and of parts and components thereof, into the Indonesian market and/or by creating significant price undercutting, price suppression, price depression and/or loss of sales for U.S. exporters to that market; and
- the adoption of the "national car program" in 1996 had the effect of extending the scope of tax and tariff-based subsidies in a manner inconsistent with the provisions of Article 28.2 of the SCM Agreement.

Accordingly, the United States requests the establishment of a panel to examine this matter and find that Indonesia's motor vehicle regime is inconsistent with the above-referenced provisions of the WTO agreements, and that it nullifies or impairs benefits accruing directly or indirectly to the United States under those agreements. The United States asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body scheduled to be held on 25 June 1997, and that the panel be established with standard terms of reference as set out in Article 7 of the DSU.