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BRAZIL - CERTAIN MEASURES AFFECTING TRADE AND INVESTMENT  
IN THE AUTOMOTIVE SECTOR

Request for Consultations by the European Communities

The following communication, dated 7 May 1997, from the Permanent Delegation of the European Commission to the Permanent Mission of Brazil and to the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

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On behalf of the European Communities, I hereby request consultations with Brazil pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), Article 8 of the Agreement on Trade-Related Investment Measures (TRIMS Agreement) and Articles 4, 7 and 30 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement), regarding certain measures affecting trade and investment in the automotive sector implemented by Brazil since December 1995, including, in particular, Law No 9440 of 14 March 1997, Law No 9449 of 14 March 1997 and Decree No 1987 of 20 August 1996 as well as any measures consolidated or confirmed therein and any implementing measures adopted thereunder.

The measures at issue provide, *inter alia*, for the following:

- benefits to manufacturers of motor vehicles and parts, in the form of a reduction in duties on their imports of certain products, conditional on compliance with certain requirements regarding the purchase or use of domestic products, and with trade balancing requirements and other criteria which may be imposed by the Ministry of Industry, Trade and Tourism;
- tariff and other benefits to manufacturers of motor vehicles and parts established in certain regions of Brazil which comply with similar requirements; and
- the opening of a tariff quota for the importation of motor vehicles manufactured by certain foreign producers and originating in certain countries.

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The European Communities wish to express their concern with the apparent lack of conformity of these measures with Brazil's obligations under the WTO Agreement, including, in particular, the GATT 1994, the SCM Agreement and the TRIMS Agreement. More specifically, the European Communities consider that the measures at issue may violate, *inter alia*, Articles I:1, III:4, X and XIII of GATT 1994, Articles 3 and 27.4 of the SCM Agreement and Article 2 of the TRIMS Agreement. The European Communities also consider that the measures may nullify or impair benefits accruing to the European Communities directly or indirectly under the GATT 1994 within the meaning of Article XXIII:1(b) of GATT 1994 and may cause adverse effects to the interests of the European Communities within the meaning of Article 5 of the SCM Agreement.

With respect to the first two measures mentioned above, the European Communities consider that such tariff and other benefits granted to manufacturers of motor vehicles and parts in Brazil constitute specific subsidies within the meaning of Articles 1 and 2 of the SCM Agreement, consisting of a financial contribution by the Brazilian Government (in the form of revenue foregone) which confers on the manufacturers of motor vehicles and parts the benefit of a reduction in costs and consequently the possibility of offering a lower price to users or final consumers. As these subsidies are contingent upon compliance with trade balancing requirements and requirements regarding the purchase or use of domestic products, they fulfil the criteria of Article 3.1 of the SCM Agreement.

Indeed, these subsidies would be prohibited altogether by Article 3.2 of the SCM Agreement and would thus be subject to the provisions of Article 4 of the Agreement, were it not for Brazil's status as a developing country member and the consequent possibility to invoke the provisions of Article 27 of the Agreement. In this respect, the consultations should address the question whether the introduction of subsidies contingent on trade balancing requirements constitutes a breach of Article 27.4 of the SCM Agreement by increasing the level of Brazil's export subsidies and whether the use of such subsidies is consistent with the development needs of Brazil within the meaning of the same provision.

In any case, the European Communities consider that these subsidies have caused adverse effects to their interests within the meaning of Article 5 of the SCM Agreement by reducing imports of EC vehicles into the Brazilian market, by displacing exports of EC vehicles from other third country markets and by creating price undercutting, price suppression, price depression and loss of sales for EC vehicles in the Brazilian market.

Lastly, the European Communities consider that the provisions concerning the extension of the subsidies granted to certain regions, which are contingent upon trade balancing and local content requirements, for a period longer than eight and five years respectively after the entering into force of the WTO Agreement constitutes a further breach of Articles 3 and 27 of the SCM Agreement; in accordance with the latter provision the extension of the local content exemption is not possible after the expiry of the five year period while the extension of the export subsidy exemption is only possible following consultations with and the authorization of the Subsidies Committee.

I look forward to receiving your reply to this request from the European Communities and setting a mutually convenient date for these consultations.