

INDONESIA - CERTAIN MEASURES AFFECTING THE
AUTOMOBILE INDUSTRY

Request for the Establishment of a Panel by the European Communities

The following communication, dated 12 May 1997, from the Permanent Delegation of the European Commission to the Chairman of the Dispute Settlement Body, is circulated at the request of that delegation.

On 3 October 1996, the European Communities requested consultations with Indonesia pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT), Article 8 of the Agreement on Trade Related Investment Measures (TRIMs Agreement) and Articles 7 and 30 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) with respect to certain measures affecting the automobile industry (WT/DS54/1).

Pursuant to the above-mentioned request, consultations were held in Geneva on 6 November 1996 and on 5 December 1996 with a view to reaching a mutually satisfactory solution. Unfortunately, these consultations failed to settle the dispute.

The European Communities hereby request that a Panel be established at the next meeting of the Dispute Settlement Body pursuant to Article 6 of the DSU, Article XXIII:2 of GATT, Article 8 of the TRIMs Agreement (to the extent that it incorporates by reference Article XXIII of GATT) and Articles 7.4 and 30 of the SCM Agreement (to the extent that Article 30 incorporates by reference Article XXIII of GATT).

The European Communities further request that the Dispute Settlement Body initiate the procedure provided in Annex V of the SCM Agreement pursuant to point 2 of that Annex. The European Communities reserve the right to put forward more specific suggestions as to the information which should be sought under this procedure once the panel is established and the Government of Indonesia has complied with the provisions of paragraph 1 of Annex V.

The measures concerned by this request are the following:

- (a) import duty relief to parts and components used for the assembling in Indonesia of motor vehicles, and parts and components thereof, which meet certain local content requirements;
- (b) exemption of import duty of parts and components used for the assembling in Indonesia of "national motor vehicles" by "Pioneer companies";

- (c) exemption from the Luxury tax of certain categories of motor vehicles which are assembled in Indonesia and/or comply with certain local content requirements;
- (d) exemption from the Luxury tax of “national motor vehicles” assembled in Indonesia by “Pioneer companies”;
- (e) exemption from import duty of “national motor vehicles” assembled in third countries by “Pioneer companies”;
- (f) exemption from Luxury tax of “national motor vehicles” assembled in third countries by “Pioneer companies”.

The decrees and other regulations through which the Government of Indonesia has implemented the above measures include, in particular, the ones specified in the annex to this request, as well as any provisions consolidated therein and any implementing measures taken thereunder.

The European Communities consider that the above measures are inconsistent with Indonesia's obligations under the GATT and the TRIMs Agreement. In particular, the Communities claim that:

- (i) the measures described under points (a), (b), (c) and (d) favour the use and/or purchase of domestic parts and components over imported like ones and are, for this reason, inconsistent with Article III:4 of GATT as well as with Article 2 of the TRIMs Agreement in conjunction with Item 1(a) of the Illustrative List Annexed to that Agreement;
- (ii) the measures described under points (c), (d) and (f) result in the imposition of internal taxes on imported products in excess of the taxes imposed, directly or indirectly, on like domestic products, thereby infringing Article III:2 of GATT;
- (iii) the measures described under points (a), (b), (c) and (f) do not provide unconditionally the same benefits with respect to the imposition of import duties and internal taxes to motor vehicles, and to parts and components thereof, originating in the European Communities than to like products originating in other countries and are, therefore, inconsistent with Article I:1 of GATT.

The European Communities also consider that the above measures constitute “specific subsidies” within the meaning of Articles 1 and 2 of the SCM Agreement which cause “serious prejudice” to the Communities' interests in the sense of Article 6 of that Agreement, in particular by displacing or impeding imports of Community 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 Community exports in that market.

ANNEX

Decrees and other regulations referred to in the request for the establishment of a Panel

Decree of the Minister of Finance No 645/KMK.01/1993

Decree of the Ministry of Industry No 114/M/sk/61993

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

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 dated 5 June 1996.