

INDONESIA - CERTAIN MEASURES AFFECTING THE  
AUTOMOBILE INDUSTRY

Request for the Establishment of a Panel by Japan

The following communication, dated 17 April 1997, from the Permanent Mission of Japan to the Chairman of the Dispute Settlement Body, is circulated at the request of that delegation.

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On 4 October 1996, the Government of Japan ("GOJ") requested consultations with the Government of Indonesia ("GOI") pursuant to Article 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") and Article 8 of the Agreement on Trade-Related Investment Measures (the "TRIMs Agreement") regarding certain measures affecting the automotive industry ("the Measures") of Indonesia (i.e. so-called National Car Program). (WT/DS55/1)

On 29 November 1996, the GOJ requested additional consultations with the GOI regarding the Measures under Articles 1 and 4 of the DSU, Article XXII:1 of GATT 1994 and Articles 7 and 30 of the Agreement on Subsidies and Countervailing Measures (the "SCM Agreement"). (WT/DS64/1)

On 5 November and 3 December 1996, the GOJ and the GOI held in Geneva the consultations requested on 4 October 1996. On 3 December 1996 at the same venue, both Governments held the consultations requested on 29 November 1996. Unfortunately, the consultations failed to settle the dispute on this matter.

The GOJ hereby requests that a panel be established at the next meeting of the Dispute Settlement Body ("DSB") pursuant to Article XXIII:2 of GATT 1994, Articles 4.7 and 6.1 of the DSU, Article 8 of the TRIMs Agreement and Article 30 of the SCM Agreement, with a standard terms of reference provided for in Article 7.1 of the DSU.

**Measures at Issue**

The measures were introduced by the GOI on 19 February 1996 by promulgating its Presidential Decree No. 2 and all of the implementing regulations and decrees (e.g. Government Regulation No. 20/1996, Decree of the Minister of Industry and Trade No. 31/MPP/SK/2/1996, Decree of the Minister of Finance No. 82/KMK.01/1996) and modified on 4 June through its Presidential Decree No. 42 and all of the implementing regulations and decrees (e.g. Government Regulation No. 36/1996, Decree of the Minister of Industry and Trade No. 142/MPP/KEP/6/1996 and Decree of the Minister of Finance No. 404/KMK.01/1996).

The thrust of the Measures and their administration is:

- to provide an Indonesian company with "Pioneer Status", where the designation is conditional on compliance with certain requirements, including the usage of an Indonesian original brand name (Decree No. 01/SK/1996 of 27 February 1996),
- to exempt the specific automobiles imported or produced by the company with "Pioneer Status" (so-called "National Car") from the luxury sales tax on certain conditions including compliance with local content requirements,
- to exempt the completed automobiles produced overseas and imported by the company with "Pioneer Status" from customs tariff during the one year period beginning on 1 July 1996, on condition that the overseas automobile producer concerned purchases, in the framework of "counter purchase", a certain value of automotive components produced in Indonesia, and
- to exempt the automotive components imported by the company with "Pioneer Status" from customs tariff after the commencement of automobile assembly/production in Indonesia on certain conditions including compliance with local content requirements.

In February 1996, the GOI designated "PT Timor Putra Nasional" ("TPN", an Indonesian company supported by Kia Motor Corp. of the Republic of Korea) as the single Indonesian company with "Pioneer Status". In August 1996, the GOI started granting customs tariff exemption solely to the import of the "Timor" produced by Kia Motors and imported by the TPN. In October 1996, the GOI started granting luxury sales tax exemption to the sale of the "Timor". As of early April 1997, around 19,000 Timors had been imported and, among them, around 12,000 units had been distributed to consumers. Reportedly, Kia Timor Motor Corp. (a TPN-related joint venture with the participation of Kia Motor Corp.) has been preparing for the projected domestic production in west Java, which will benefit from the customs tariff exemption for automotive components.

### **Legal Basis of the Complaint**

In the view of the GOJ:

- the Measures implemented by the GOI are inconsistent with the WTO Agreement, in that:
  - the exemption from customs tariff and luxury sales tax granted solely to the completed automobiles originating in the Republic of Korea is inconsistent with Article I:1 of GATT 1994, since the exemption is not accorded to the like product originating in other Members including Japan,
  - the Measures were not promptly published and have not been administered in a uniform, impartial and reasonable manner, thus being inconsistent with Articles X:1 and X:3(a) of GATT 1994, and

- the GOI has extended the scope of existing subsidies<sup>1</sup> inconsistent with the SCM Agreement, thus being inconsistent with Articles 3.1(b) and 28.2 of the SCM Agreement (see G/SCM/N/16/IDN);
- the Measures, other than the above, stipulated in the relevant degrees and regulations are inconsistent with the WTO Agreement, in that:
  - the customs tariff exemption with regard to the import of automotive components pertaining to the Measures is inconsistent with Article I:1 of GATT 1994, since the exemption is not accorded to the like product originating in all other Members including Japan,
  - the luxury sales tax exemption with regard to domestically produced National Cars pertaining to the Measures is inconsistent with Article III:2 of GATT 1994, since imported automobiles are subject to luxury sales tax in excess of that applied to the like domestic products (i.e. National Car),
  - the local content requirements with regard to domestically produced National Cars pertaining to the Measures are inconsistent with Article III:4 of GATT 1994, since the requirements accord to products imported from Japan treatment less favourable than that accorded to like products of national origin, and
  - the local content requirements combined with the exemption of customs tariff and luxury sales tax pertaining to the Measures correspond to the trade related investment measures stipulated in paragraph 1(a) of the Illustrative List annexed to the TRIMs Agreement, thus being inconsistent with Article 2 of the TRIMs Agreement.

The GOJ considers that the subsidies granted under the Measures cause serious prejudice to the interests of Japan as provided for in Articles 5 and 6 of the SCM Agreement. In this regard, the GOJ reserves the right to request the establishment of a Panel pursuant to Article 7.4 of the SCM Agreement.

The GOJ asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body scheduled to be held on 30 April 1997.

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<sup>1</sup>As already stated in document WT/DS64/1, the GOJ considers that the exemption from customs tariff and luxury sales tax granted by the Measures constitutes subsidies and that these subsidies are "prohibited subsidies" contingent upon the use of domestic over imported goods.