

## INDONESIA - CERTAIN MEASURES AFFECTING THE AUTOMOBILE INDUSTRY

### Request for Consultations by the European Communities

The following communication, dated 3 October 1996, from the Permanent Delegation of the European Commission to the Permanent Mission of Indonesia and the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

On behalf of the European Community, I hereby request consultations with Indonesia 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), 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) concerning the Presidential Decree Number 42 of 1996 with regard to Manufacturing of National Cars; Presidential Decree Number 54 of 1993 concerning a List of Sectors that are Closed for Capital Investment; Decree of the Ministry of Industry and Trade N . 31/1996 concerning National Motor Vehicles; Decree of the Minister of Industry Number 114 of 1993 concerning determination of local content rates of domestically made motor vehicles or components; Decree of the Minister of Finance No 645/1993 concerning the Granting of Import Duty Relief to Certain Parts and Components of Motor Vehicles for the Assembly and/or Manufacture of Motor Vehicles; Regulation Number 36 of 1996 Relating to the Value-Added Tax on Goods and Services and Sales Tax on Luxury Goods; and Presidential Instruction No 2/1996 on the Development of the National Automobile Industry; other legislative provisions consolidated therein; and any implementing measures taken thereunder.

The European Community wishes to express its concern with the apparent lack of conformity of the above measures with the obligations of Indonesia under GATT 1994 and the TRIMs Agreement. In particular, the Community's concerns relate to the following:

- the exemption from customs duties and from the luxury tax provided for in favour of so-called "national vehicles" assembled outside Indonesia by the so-called "pioneer companies" amounts to conditional most-favoured-nation treatment and discriminates against imports of like products originating in the European Community thus infringing Article 1 of GATT 1994;
- the exemption from the luxury tax provided for in respect of sales of "national vehicles" and of other vehicles assembled in Indonesia by manufacturers which meet certain local content requirements discriminates between these vehicles and the like products imported

from the European Community, thereby violating Article III:2 of GATT. Furthermore this exemption favours the purchase of domestic over imported parts and components and is therefore contrary to Article III of GATT as well as to Article 2 of TRIMs in conjunction with Item 1(a) of the Illustrative List Annexed to that Agreement.

- the exemption from customs duties on imports of parts and components made by "pioneer companies" and by other vehicle manufacturers which comply with certain local content requirements has the same effect of favouring the purchase of domestic parts and components and, therefore, is also contrary to Article III:4 of GATT 1994 as well as to Article 2 of TRIMs in conjunction with Item 1(a) of the Illustrative List Annexed to that Agreement.
- In addition, this last exemption when granted to the "pioneer companies" leads to a de facto discrimination against imports of parts and components originating in the European Community thereby violating Article 1 of GATT 1994.

The European Community also considers that the granting of an exemption from customs duties on imported parts and components expressly conditional upon such producers meeting certain local content requirements is a specific subsidy within the meaning of Articles 1 and 2 of the SCM Agreement. Likewise the European Community considers that the exemption from the sales luxury tax expressly granted upon the vehicle meeting certain local content requirements is a specific subsidy within the meaning of the above-mentioned provisions of the SCM Agreement, as it consists of a financial contribution by the Indonesian Government (in the form of tax revenue foregone) which confers on the manufacturers of those vehicles the benefit of a lower price to the final consumer than what is possible for manufacturers of other vehicles subject to the tax.

Indeed, both these subsidy schemes would be prohibited altogether by Article 3.1(b) of the SCM Agreement and thus subject to the provisions of Article 4 of such Agreement, were it not for Indonesia's status as a developing country Member and the consequent possibility to invoke the provision of Article 27.3 of the SCM Agreement. Nevertheless, the European Community considers that such subsidies are liable to cause serious prejudice to its interests within the meaning of Article 6 of the SCM Agreement by impeding imports of European Community vehicles into the Indonesian Market displacing exports of European Community vehicles from other third country markets, and creating significant price undercutting in the Indonesian market which is liable to cause significant price suppression, price depression and loss of sales for European Community vehicle manufacturers in the Indonesian market.

Furthermore, the European Community wishes to discuss whether the exemption from customs duties on imports of "national vehicles" assembled outside Indonesia by the "Pioneer companies" also constitutes a subsidy subject to the disciplines of the SCM Agreement.

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