

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

RESTRICTED

L/6114

27 January 1987

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Original: Spanish/
English

UNITED STATES - TAX ON IMPORTED PETROLEUM AND PETROLEUM PRODUCTS

Request by Mexico for the Good Offices of the Director-General

The following communication, dated 13 January 1987, has been received by the Director-General from the Permanent Mission of Mexico.

With reference to the tax imposed by the Government of the United States on imports of petroleum and petroleum products to finance the so-called "Superfund", I would request you to intercede in order to facilitate a solution in conformity with Article XXIII of the General Agreement on the basis of the procedure laid down in the Decision adopted by the CONTRACTING PARTIES on 5 April 1966.

This request is due to the fact that it proved impossible, as would have been desirable, to reach a satisfactory settlement through the multilateral consultations held on 21 November 1986 in accordance with the provisions of paragraph 1 of Article XXII of the General Agreement. The relevant legislation entered into force on 1 January 1987.

In this connection I should like to recall that, from 16 November 1960, the CONTRACTING PARTIES have considered that consultations under Article XXII of the General Agreement satisfy the conditions laid down in paragraph 1 of Article XXIII of that instrument, and it was such consultations that my Government requested of the United States in its communication No. 102736 of 10 November 1986.¹

I have taken the liberty of enclosing a document that provides the background to the decision adopted by the United States Congress, as well as the text of a note of the same date transmitted to the representative of the United States.

¹See L/6093.

SUPERFUND LEGISLATION ADOPTED BY THE UNITED STATES GOVERNMENT
ON 17 OCTOBER 1986.

- I. From 1980 to 1985 an excise tax of 0.79 cent per barrel was imposed on crude oil received at a United States refinery; and petroleum products (including crude oil, natural and refined gasoline, refined and residual oil, and certain other liquid hydrocarbon products) imported into the United States for consumption, use, or warehousing. Revenues equivalent to the tax were deposited in the Superfund.
- II. In 1986, the 99th Congress considered the extension and funding level of the Superfund.
- III. The bill presented by the House of Representatives provided that:

"The petroleum tax is re-imposed at a rate of 11.9 cents per barrel and extended through September 30, 1990."

The Senate proposed amendment stated:

"The petroleum tax is extended at its prior-law rate."
- IV. As there were two different proposals a Conference between the two Houses of Congress was held. Under the Conference Agreement, the petroleum tax is re-imposed at a rate of 8.2 cents per barrel for domestic crude oil, and 11.7 cents per barrel for imported petroleum products (including imported crude oil). Revenues equivalent to the tax are to be deposited in the Superfund (Annex 1).
- V. The Superfund Amendments and Reauthorization Act of 1986 entered into force on January 1, 1987.
- VI. As provided by title V Section 512 of the Act (increase in tax on petroleum) the tax imposed discriminates against imported petroleum products (Annex 2).
- VII. In the view of the Mexican Government this legislation is incompatible, among others, with Article III of the General Agreement.

ANNEX 1

CONFERENCE AGREEMENT

99th Congress, 2d session, HOUSE OF REPRESENTATIVES,
Report 99-962, "SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT
OF 1986", October 3, 1986 (Excerpts).

"2. PETROLEUM TAX"
"Prior Law" (page 321)

"An excise tax of 0.79 cent per barrel was imposed on (1) crude oil received at a United States refinery; and (2) petroleum products (including crude oil, natural and refined gasoline, refined and residual oil, and certain other liquid hydrocarbon products) imported into the United States for consumption, use, or warehousing. Revenues equivalent to the tax were deposited in the Superfund."

"House Bill" (page 322)

"The petroleum tax is reimposed at a rate of 11.9 cents per barrel, and extended through September 30, 1990."

"Senate Amendment" (page 322)

"The petroleum tax is extended at its prior-law rate. The tax generally expires after September 30, 1990."

"Conference Agreement" (page 322)

"Reimposition of petroleum tax"

"Under the conference agreement, the petroleum tax is reimposed at a rate of 8.2 cents per barrel for domestic crude oil, and 11.7 cents per barrel for imported petroleum products (including imported crude oil). Revenues equivalent to the tax are to be deposited in the Superfund."

"The petroleum tax generally expires on December 31, 1991."

"Effective Date" (page 323)

"These provisions are effective on January 1, 1987."

ANNEX 2

LEGISLATION

99th Congress, 2d session, HOUSE OF REPRESENTATIVES
Report 99-962, "SUPERFUND AMENDMENTS AND REAUTHORIZATION
ACT OF 1986", October 3, 1986. (Excerpts).

"Title V. - Amendments of the Internal Revenue Code of 1986."

"PART I - SUPERFUND AND ITS REVENUE SOURCES"

"Sec. 512. Increase in Tax on Petroleum." (page 157)

"(a) IN GENERAL. - Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1986 (relating to environmental tax on petroleum) are each amended by striking out "of 0.79 cent a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)"."

"(b) INCREASE IN TAX. - Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RATE OF TAX.-

"(1) IN GENERAL.- Except as provided in paragraph (2), the rate of the taxes imposed by this section is 8.2 cents a barrel.

"(2) IMPORTED PETROLEUM PRODUCTS.- The rate of the tax imposed by subsection (a) (2) shall be 11.7 cents a barrel."

PERMANENT MISSION OF MEXICO

Geneva, 13 January 1987

Sir,

I should like to refer to your communication of 8 December 1986 in which you expressed the view that you did not consider it necessary to hold additional bilateral consultations on the tax imposed by your country on imports on petroleum and petroleum products to finance the "Superfund".

As you know, it was not possible, as would have been desirable, to reach a satisfactory settlement through the multilateral consultations which were held on 21 November 1986 in accordance with paragraph 1 of Article XXII of the General Agreement.

As the relevant legislation entered into force on 1 January 1987, the Government of Mexico has reached the conclusion that the matter should be referred to the Director-General of GATT who, in his official capacity, can use his good offices to facilitate a solution in accordance with the decision adopted by the CONTRACTING PARTIES on 5 April 1966 on the basis of the procedure provided for in Article XXIII of the General Agreement.

My Government's decision takes due account of the fact that, since 16 November 1960, the CONTRACTING PARTIES have considered that consultations held under Article XXII of the General Agreement satisfy the conditions laid down in paragraph 1 of Article XXIII of that instrument, and it is such consultations that my Government requested in its communication No. 102736 of 10 November 1986.

With a view to initiating the procedure referred to in the previous paragraph, I have today sent the enclosed communication to the Director-General of GATT.

Accept, Mr. Ambassador, the assurances of my highest consideration.

Manuel Tello
Ambassador
Permanent Representative

H.E. Mr. Michael A. Samuels
Ambassador of the United States
of America to GATT
Geneva