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UNITED STATES - TAXES ON AUTOMOBILES

Request for the Establishment of a Panel under Article XXIII:2 by the European Economic Community

The following communication, dated 11 March 1993, has been received from the Permanent Delegation of the Commission of the European Communities, with the request that it be circulated to contracting parties and inscribed on the Agenda of the Council meeting on 24 March 1993.

The United States maintains three taxes or charges which are levied on the sales of cars in the United States and which have in common a particular, more than proportional, incidence on the sale of imported cars.

These three taxes or charges are:

- (a) The Corporate Average Fuel Efficiency (CAFE) payment;
- (b) The so-called gas-guzzler tax;
- (c) The luxury tax, as it applies to cars.

The so-called CAFE payment is a civil penalty payment which must be paid by a car manufacturer or importer, if the sales-weighted average of all model type fuel economies of cars produced by that manufacturer fall below a certain level (presently 27.5 mpg).

It is obvious that, since CAFE is calculated over the full car production of a manufacturer, it favours large, integrated, full-line car makers and works to the disadvantage of limited-line car producers, who concentrate on the top of the car market, such as many of the European car makers which export to the US. Furthermore, the method of calculating CAFE for domestic and foreign fleets may also permit discrimination.

There is discrimination between imported products and like domestic products. Not only are individual imported cars treated differently from domestic cars, but a disproportionate amount of CAFE is paid by foreign manufacturers of cars. This is contrary to Article III:2 of the GATT. In addition it is clear that such internal charges are contrary to

Article III:2, combined with paragraph 1, since they also serve to afford protection to domestic production of directly competitive or substitutable products.

The so-called gas-guzzler tax is an excise tax levied on the sale or use by the manufacturer or the importer of automobiles of a model type that does not meet fuel economy standards set by EPA. The threshold fuel economy standard presently is 22.5 mpg. The tax is \$1,000 for model types with a fuel economy between 21.5 and 22.5 mpg, and goes progressively up to \$7,700 for model types with a fuel economy of below 12.5 mpg.

The fuel economy cut-off point of 22.5 mpg is not founded on any reasonable or objective criterion and leads to discrimination against imported cars.

The objective of Article III of the GATT is to ensure equal treatment of imported products with domestic products, after clearing customs.

The incidence of the tax falls overwhelmingly on imported vehicles. Since Article III is concerned not with non-discriminatory intentions, but with discriminatory effects resulting from internal taxes and charges, the gas guzzler-tax is clearly contrary to Article III:2 and Article III:1 of the GATT.

The luxury tax is an excise tax imposed on the retail sale of certain so-called luxury items, boats, furs, jewelry and cars exceeding a certain price.

Insofar as it concerns automobiles, the luxury tax has a disproportionately higher incidence on imported cars than on US-produced cars: in 1990, its year of introduction, over 80 per cent of automobiles subject to the tax would have been imported and almost 50 per cent of all cars imported from Europe would have been struck by it. The best calculations available indicate that in 1991 an even higher percentage of the tax was paid on imported vehicles.

The cut-off point of \$30,000 for the imposition of the tax is capricious and the distinction between luxury and non-luxury cars is irrelevant for GATT purposes. The goal of Article III of the GATT is to ensure equal treatment of imported products with like domestic products, after clearing customs. For customs purpose all passenger cars are treated equally by the US (2.5 per cent duty); the distinction between luxury and "ordinary" cars is not used. Cars above and below \$30,000 are "like" products and, in any case, are in competition with each other. If a tax of this kind falls disproportionately on imported products, it means that there is discrimination between imported and like domestic products, or, at the least, protection of domestic production of competitive products, and hence, an infringement of Article III:2 and/or Article III:1 of the GATT.

Very high proportions of gas-guzzler taxes, luxury taxes and CAFE payments fall on imported cars. In addition, the luxury tax is levied on the negotiated price of the car which often already includes the gas guzzler tax and the producers' allowance for CAFE. Therefore, the three taxes individually and collectively have a discriminatory incidence on car imports.

The European Community has held consultations under Article XXIII:1 with the United States on the above-mentioned taxes and charges on 15 July 1992 and on 20 September 1992. Information has been exchanged between the two parties, but on the fundamental legal questions no agreement between the parties proved possible. The Community therefore requests the CONTRACTING PARTIES to establish a panel under Article XXIII:2 of the GATT in order to consider the question whether the US gas-guzzler and luxury taxes and the Corporate Average Fuel Efficiency payments and their incidence on imported cars, in particular cars imported from the European Community, are contrary to Articles III:1 and III:2 of the GATT, severally and jointly.