

# **THE DISPUTE OVER THE INDONESIAN NATIONAL CAR PROGRAM**

## **Case A**

### **Simulations and Questions for Students**

#### **Simulation I**

##### **Options/Decision Paper**

Assume that the time is late June 1996 and that you are one of the officials listed below. Prepare an options/decision paper which addresses the questions posed to you.

##### **A. Senior advisor to the Indonesian Minister of Industry and Trade, Tungky Ariwibowo**

The Minister asks you to prepare an options paper with recommendations that address the following questions: In light of Indonesia's actions in the last four months to introduce the National Car Program (NCP), and the subsequent reaction of foreign governments to date, what are my options for proceeding with the NCP? What actions are our trading partners likely to take and what are my options for responding to them? What will be the legal basis for their response? How much time will I have to accomplish our objectives and what should those objectives be?

##### **B. Senior advisor to either (a) the Japanese Minister for International Trade and Industry (MITI), (b) the EU Commissioner for External Affairs, Sir Leone Brittan, or (c) the Acting U.S. Trade Representative Charlene Barshefsky**

The senior official listed above asks you to prepare an options paper with recommendations that address the following questions: In light of what you know about Indonesia's programs for its auto industry and its actions in recent months, how are we affected (i.e., how do the actions affect our national interests)? What options do we have for protecting our interests? What international trade-law principles are relevant to this matter? In looking at options, please distinguish between those that arise from provisions in domestic law and those that arise from rights and obligations in international agreements. Please indicate how your answer might be different if you were advising one of the other officials listed in B.

#### **Simulation II**

##### **Bilateral Consultations**

Assume that it is late June of 1996. In an effort to deal with pressing matters before taking their August vacation, (a) the Japanese Minister for International Trade and Industry (MITI), (b) the EU Commissioner for External Affairs, Sir Leone Brittan, and (c) the Acting U.S. Trade Representative, Charlene Barshefsky ask for bilateral consultations with Tungky Ariwibowo, the Indonesian Minister of Industry and Trade. The consultations are scheduled for mid-July on separate days.

Team A will play the role of Indonesia and Team B will play successively the role of Japan, the EU and the US. For each consultation, Team A and B must decide (a) what officials should form its delegation, (b) who will play those roles, and (c) what issues their side should raise and what issues the other side will raise. Each team should then prepare position papers with talking points regarding each issue. (If the class has prepared the option papers in Simulation I, then the talking points could be an appendix to that paper. If the class did not prepare the options paper, then the position paper will have to cover much of the same material as in the option paper). The teams should then hold the consultations and afterwards prepare a report for their government on the results of the consultations.

Note regarding Team B: The consultations can be held in one meeting with Team B deciding whether Japan, the EU or the US is the primary trading partner holding the consultation. Team B can then hold mini-consultations in which only issues specific to the other two trading partners are raised.

### **Questions for students who do not engage in the simulations:**

Questions for students in light of the situation in mid-1996:

From the perspective of the Indonesian government: What would you do in light of the frustration with the slow development of an Indonesian auto industry and signs of more rapid development in neighboring markets?

From the perspective of the Indonesian auto industry: How should you react to the National Car Program announcement and the opposition from developed countries?

From the perspective of the Indonesia trade officials: How should you respond to the strong opposition from developed country car manufacturers and their governments?

What is the relevance of the following to your analysis of this case?

- A. Domestic economic and political situations in Indonesia
- B. Views of Indonesian government officials and local business people
- C. Views of developed country car manufacturers
- D. Views of US, EU and Japanese governments

What options were available to each of the parties at this time?

From the perspective of developed country's automakers: Why did auto companies in Japan, the EU and US come together on this case when they usually tend to work alone?

From the perspective of US, Japanese and EU trade officials: How should you respond to national car program and opposition from domestic automakers?

Questions regarding the Subsidies Agreement:

1. What is subsidy?

2. What is a specific subsidy?
3. What types of subsidies are prohibited by the SCM Agreement?
4. Why are such subsidies prohibited?
5. What is an “actionable” subsidy in the context of the SCM Agreement?
6. What criteria determine whether a subsidy is actionable or not? What are the three categories of potentially actionable subsidies?
7. What does the term “nullification and impairment” mean?
8. What does the phrase “serious prejudice” mean?
9. Under what circumstances is “serious prejudice” presumed to exist?
10. How are the standards in the SCM Agreement different for developing countries than for developed countries, specifically regarding the determination of serious prejudice?