

THE DISPUTE OVER THE INDONESIAN NATIONAL CAR PROGRAM

Case B

Simulations and Questions for Students

Part I

Simulation I

Options/Decision Paper

Assume that it is early June of 1997 and that you are one of the officials listed below. Japan and the EU have already requested the formation of a WTO dispute settlement panel regarding the National Car Program. 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:

What are my options for dealing with the National Car Program at this point in time?

Should I try to negotiate a settlement, and, if so, what are the benefits and costs of pursuing this course? Under what constraints will I be operating? If I engage in negotiations, what should be my negotiating objectives? What should be my bottom line?

What are the benefits and costs of engaging in international dispute settlement litigation? What do you think are the strengths and weaknesses of my opponents' case? How long could dispute settlement take and what bearing should this have on my decision?

Finally, what are the domestic political considerations I must take into account? What are the views of the different groups with an economic interest in the outcome of the negotiations?

B. Assistant U.S. Trade Representative for Asia (other than Japan and China)

The U.S. Trade Representative Charlene Barshefsky has asked you to prepare an option memo regarding the Indonesian National Car Program in light of the decision of Japan and the EU to request the formation of a WTO dispute settlement panel.

What options are available to the United States at this point? What are the benefits and costs of each option?

Simulation II

Bilateral Negotiations

Assume that it is early June of 1997. The Indonesian Minister of Industry and Trade, Tungky Ariwibowo, and the Acting U.S. Trade Representative, Charlene Barshefsky, have agreed that officials from the United States and Indonesia should meet one last time to try to negotiate a resolution of the dispute over the National Car Program before the United States requests the establishment of a WTO dispute settlement panel.

A. Indonesia's Chief Trade Negotiator

As Indonesia's Chief Trade Negotiator, you will lead your government's team. Prepare your negotiating instructions for approval by the Minister, assemble a team, and then conduct the negotiations. The negotiating instructions should be based on the options paper prepared above. The instructions should address your negotiating objectives and the scope of your authority, including when you should seek further instructions from Jakarta. Prepare talking points for the key issues to be addressed in the negotiations.

B. Assistant U.S. Trade Representative for Asia

Prepare your negotiating instructions for approval by the relevant interagency staff committee, assemble a team, and then conduct the negotiations. The negotiating instructions should be based on the options paper prepared above. The instructions should address what should be your negotiating objectives and the scope of your authority, including when you should seek further instructions from Washington. Prepare talking points for the key issues to be addressed in the negotiations.

Part II

Simulation I

Draft Panel Report

Assume that you are on the panel regarding measures affecting Indonesian autos. Outline the decisions you would make on the various GATT non-subsidy claims identified in the panel proceeding. How would you handle the procedural issues raised by the parties?

Questions for students who do not engage in simulations

In June of 1997 what options do Indonesian trade officials have? Should Indonesia make concessions and, if so, what concessions should it make to settle the case quickly? Should Indonesia stonewall and take its chances with a WTO proceeding?

From the US, EU and Japanese perspective: What options does each country have? Give pros and cons for each. Students should consider: Should the country push for inclusion of its firms in the National Car Program while allowing WTO violations to continue? Should you fight WTO violations, even if it excludes your companies from the market? How were the WTO dispute settlement process and the US Section 301 provisions used to set up a resolution of the case?

In July of 1998, how would you answer the following questions: What would have been the outcome of the case if the WTO dispute settlement panel procedures didn't exist? What if the arbitration procedures for implementation didn't exist? What role did the financial crisis and the IMF have in the resolution of the case? What are the advantages and disadvantages of coordinating with other countries in a trade dispute? What impact might the Indonesian auto case have on other developing countries that want to develop an auto industry? Why didn't Japan file a complaint against the 1993 National Car Program? Why was Indonesia prepared to concede that the incentive and national car programs were subsidy programs covered by the SCM Agreement? After the panel proceedings, is Indonesia still able to fulfill its objectives to develop a national car industry?