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Contents

I *Acts whose publication is obligatory*

- ★ Council Regulation (EC) No 3697/93 of 20 December 1993 withdrawing tariff concessions in accordance with Article 23 (2) and Article 27 (3) (a) of the Free Trade Agreement between the Community and Austria (General Motors Austria) 1

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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 3697/93

of 20 December 1993

withdrawing tariff concessions in accordance with Article 23 (2) and Article 27 (3) (a) of the Free Trade Agreement between the Community and Austria (General Motors Austria)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard of the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas a Free Trade Agreement between the European Economic Community and the Republic of Austria, hereinafter referred to as 'the Agreement', was signed at Brussels on 22 July 1972 ⁽¹⁾;

Whereas the Agreement eliminated customs duties in trade between the Community and Austria in respect of industrial products originating in the Contracting Parties within meaning of Protocol 3 to the Agreement;

Whereas the Agreement requires the Contracting Parties to provide fair conditions of competition for trade;

Whereas Article 23 (1) (III) of the said Agreement stipulates that any public aid affecting trade between the Community and Austria which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the proper functioning of the Agreement;

Whereas, in a declaration published at the same time as the Agreement, the Community stated that it would assess any practices contrary to the abovementioned Article on the basis of criteria arising from the application of Article 92 of the Treaty;

Whereas in March 1991 the Commission learned that the Austrian federal and regional authorities intended to grant official aid of 15% to General Motors Austria (GMA) for its investment to expand component productions of gearboxes, camshafts and cylinder heads

at its plant in Aspern/Vienna, with the gearboxes being imported into the Community to assemble them into General Motors cars and the engine components exported to Hungary for assembly into General Motors engines;

Whereas Council Regulation (EEC) No 2837/72 of 19 December 1972 on safeguard measures provided for in the Agreement between the European Economic Community and the Republic of Austria ⁽²⁾ provides that in such cases the Commission must assess the case, either on its own initiative or at the request of a Member State, and give its opinion on whether or not the practices in question are compatible with the Agreement;

Whereas the aided investment programme was intended to rationalize production and expand output in the Vienna plant;

Whereas the contract with the federal authorities granting 10% aid up to a ceiling of 450 million Austrian schillings for investment totalling 4 471 million Austrian schillings was signed by the parties in question on 21 July 1992 and there also exists a similar contract with the regional authorities granting 5% aid up to a ceiling of 225 million Austrian schillings for the same investment;

Whereas further information requested by the Commission was sent by the Austrian Government in January 1993;

Whereas after a detailed assessment of the case and further contacts with the Austrian authorities in February 1993, the GMA case was officially referred to the Joint Committee on 25 February 1993, in accordance with Article 27 (2) and (3) (a) of the Agreement specified above, where a further list of demands for clarification was handed over to the Austrian authorities;

⁽¹⁾ OJ No L 300, 31. 12. 1972, p. 2.

⁽²⁾ OJ No L 300, 31. 12. 1972, p. 1. Regulation as last amended by Regulation (EEC) No 638/90 (OJ No L 74, 20. 3. 1990, p. 1).

Whereas the Commission informed the Austrian authorities at the Joint Committee meeting that, on the basis of the information available at that stage, the Commission considered the State aid in question to be incompatible with Article 23 of the Agreement and that on the basis of the criteria incorporated in the method adopted by the Commission for the application of Article 92 (3) (a) and (c) of the EEC Treaty to regional aid, and on the basis of the Community framework for the motor vehicle sector, the investment project in question at Aspern/Vienna would not be eligible for regional aid;

Whereas the Joint Committee agreed that there would be expert talks with a view to seeking a mutually acceptable solution, in accordance with Article 27 (2) and (3), and that the Commission requested that such solution be found before Easter 1993;

Whereas no mutually acceptable solution was arrived at within the timespan set by the Commission;

Whereas in further technical meetings, the Austrian authorities have provided some additional technical information confirming that capacity would indeed be increased by the revised investment plan to the numbers quoted in March 1991 and that the budget has also been revised upwards to 4 718 million Austrian schillings. Including other expenditure on product development, plant engineering, interest during construction and training, the overall project cost has now risen to 5 380 million Austrian schillings bringing the aid intensity down to 12,5%. A legal memorandum dated 15 April 1993 has been transmitted by Austria to the Commission;

Whereas the first F15 gearboxes originating in Austria and benefiting from tariff preferences under the Agreement have been imported into the Community in the first half of 1993;

Whereas General Motors can deliver these gearboxes to its assembly plants in the Community at prices that are lower than they would have been if the company had not received such a level of aid;

Whereas in the sensitive automobile sector in which Community producers are active in the same market, an unjustified State aid distorts competition by favouring a given company, especially since companies located in the Community would in a similar position not have received such aid and, given that a larger part of the products in question are destined for the Community, affects trade between the Community and Austria;

Whereas the gearbox constitutes a high value component of the small or medium car model of the GM Group, which form part of segments of the car market where the fiercest price competition can be observed, and large aid

to such component represents a significant proportion of the value added of the car generated by the company, so that the aid poses a real risk of distortion of the car trade in Europe;

Whereas, contrary to what has been argued by General Motors, trade distortions do not only arise at the level of the final product. Various alternative non-GM producers could have produced the components at competitive prices. Among the six alternative gearbox producers mentioned by General Motors in its legal memorandum, four have plants located in the European Community. As such, the aid may have been a decisive element in choosing for in-house component production and may as such have distorted trade in the component sector;

Whereas Article 27 (3) of the Agreement stipulates that if a Contracting Party fails to put and end to the practice objected to within the period fixed by the Joint Committee or, in the absence of agreement in the Joint Committee, within three months of the matter being referred to it, the other Contracting Party may adopt any safeguard measures it considers necessary to deal with the serious difficulties resulting from the practices in question; in particular it may withdraw tariff concessions;

Whereas aid for the gearbox manufacturing by General Motors at a time when the entire automotive industry is facing serious overcapacity problems in Western Europe in circumstances where aid would not be granted in the Community, causes serious difficulties;

Whereas the safeguard measure which appears the best adapted to remedy the distortion of competition and the effect on trade which arises out of the existence of the aid is the introduction of duties at a level equal to the level of customs duties which would have prevailed if the Agreement had not entered into force as long as the aid has such distorting effects;

Whereas the foreseeable period during which the aid can have those effects is the average fiscal depreciation of the aided investments;

Whereas therefore a duty of 4,9% should be applied on the abovementioned period or until such earlier time as the Council concludes that the aids in questions are no longer having a distortive effect on competition and trade,

HAS ADOPTED THIS REGULATION:

Article 1

A 4,9% duty is hereby reintroduced for F15 car gearboxes produced by General Motors Austria falling within ex CN code 8708 40 10 (Taric additional code 8996; other: Taric additional code 8997) and

originating in Austria within the meaning of Protocol 3 to the Free Trade Agreement between the Community and Austria.

longer having a distortive effect on competition and trade.

This 4,9 % duty shall apply for a period equivalent to the average fiscal depreciation period or until such earlier time as the Council, on the basis of a Commission proposal, concludes that the aids in question are no

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

This Regulation is binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 December 1993.

For the Council

The President

W. CLAES
