

Exercise 13: Safe Cars

Since 2008, Nana Motors, Newland's largest car manufacturer, has been manufacturing and selling the 'Tato', a four-passenger, rear-engined city car. In January 2012, the cheapest Tato costed around €2,000. The Tato is currently without any doubt the cheapest car in the world. While until recently sales of the Tato were almost exclusively on Newland's domestic market and exports were small, Nana Motors is convinced that there is also a market for its Tato in other countries, and in particular in Richland. It has therefore developed an export version of the Tato, the 'Tato Plus'. Upgraded to meet, *inter alia*, Richland's safety and emission standards (as applicable in January 2010), the Tato Plus is more expensive, heavier and less fuel efficient than the standard Tato, but, at around €3,000 (retail price in January 2012), it is still priced well below the price of other city cars such as the 'Taif 500' (a front-engined city car), produced by Taif Inc. of Richland, which sells at around €6,000 (retail price in January 2012).

In response to the rapidly increasing sales of the Tato on the market of Richland, Taif turned to the Government of Richland for 'help'. According to Taif, any further increase in imports of the cheap Tato would do great damage to Richland's car industry and give rise to massive unemployment among car workers in Richland. The Richland Trade Union Confederation (RTUC) immediately joined Taif's call for decisive government action.

Referring to its obligations under the WTO agreements, the Government of Richland rejected a proposal to impose an additional €200 specific customs duty per car on city cars. It also refused to impose a special crisis tax of 20 per cent (to be added to the VAT) on rear-engined city cars. Likewise, the Government of Richland refused to deny Nana Motors permission to establish a chain of car dealerships to sell the Tato in Richland.

After years of debate and consultations with interested parties both at home and abroad, the Parliament of Richland adopted in May 2011 an amendment to its car safety legislation requiring that rear-engined city cars, such as the Tato Plus, be equipped with side airbags (in addition to frontal airbags). Note that front-engined city cars (such as the Taif 500) do not have to be equipped with side airbags. The Tato Plus has no side airbags but could at a cost of €300 per car be equipped with such airbags. In justification of the requirement of side airbags for rear-engined city cars, it is argued that rear-engined cars (as opposed to front-engined cars) pose a greater risk to the safety of their driver and passengers. As already mentioned above, crash tests and other scientific evidence confirm that front-engined cars are safer than rear-engined cars (at least in case of a head-on collision (which is a relatively rare event)). A recent survey showed that people in Richland generally consider front-engined cars to be much safer than rear-engined cars, although that does not seem to stop them from buying rear-engined cars. Nana Motors questions whether the increased safety, if any, resulting from side airbags is proportionate to the significant additional cost

(i.e. 10 per cent of the price of the car) imposed on rear-engined city cars. The side airbag requirement entered into force two months after its publication in the Official Gazette of Richland. Note that rear-engined city cars produced in, and imported from, Rockland will be exempted from the side airbag requirement for a period of two years. This should allow RockCar SA, Rockland's struggling manufacturer of city cars, to adapt to this new requirement. Under the terms of the Richland-Rockland Free Trade Agreement, such grace period of two years is mandatory.

Contemporaneous with the adoption of the amendment to Richland's car safety legislation, the Richland Committee for Standardisation, a non-governmental standardising body approved a new standard, Standard No. 412 on 'Side Impact Protection-Rear-Engined City Cars'. This standard specifies performance requirements for protection of occupants of city cars in side impact crashes. The purpose of this standard is to reduce the risk of serious and fatal injury to occupants of rear-engined city cars. While Standard No. 412 is not mandatory, Nana Motors is very concerned about this standard, as the Tato Plus would currently not meet performance requirements set out therein. Nana Motors points out that the performance requirements set out in Standard No. 412 are much higher than the performance requirements set out in the standard approved by the International Car Manufacturers' Association (ICMA) in 1970.

Recently, the Members of Parliament of Richland's New Freedom Party, which is closely associated with the Richland Trade Union Confederation (RTUC), have proposed draft legislation for the introduction of a quality label that domestic and foreign car manufacturers would be allowed to use on cars produced in countries which (unlike Newland) enforce the minimum labour standards set out in the relevant ILO Conventions.

The CEO of Nana Motors has requested a meeting with Newland's Minister of Trade to discuss possible action by Newland against Richland in the context of the WTO. You are a senior lawyer working at the Ministry of Trade of Newland and you have been instructed to write a note for the Minister on the consistency with the obligations of the *TBT Agreement* of the measures, set out above, affecting the interests of Nana Motors. Time allowing, you will also consider the consistency of these measures with the obligations of the GATT 1994.