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ENVIRONMENTALLY FRIENDLY AUTOMOBILE INCENTIVE PROGRAMS

China and Germany

This report concerns incentive programs under German and Chinese law.

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CHINA

VEHICLE SCRAPPAGE PROGRAM

Executive Summary

Under China's vehicle scrappage program, the state grants subsidies to encourage scrapping buses, semi-trailers and cargos, but not passenger cars. Generally, the vehicle owners are not required to buy new vehicles in order to get the subsidy. Where a new purchase is required, no government provision could be located requiring that the new vehicle be domestically made or assembled. A newly launched "automobile to the countryside" plan encouraging the farmers to purchase motorcycles, minivans and light trucks, appears to more favor domestic products.

I. Legislation and Policy Framework

In 2001, The State Council (cabinet) of China promulgated the Administrative Regulations on the Recovery of Scrapped Automobiles¹. It was established in the Regulations that the state encourages scrapping vehicles in order to improve the road traffic safety and to protect the environment². The State Economy and Trade Commission (currently the Ministry of Commerce) and the Ministry of Finance are authorized to formulate the detailed stimulus policy³.

In 2002, the two ministries jointly circulated the Interim Measures on the Subsidies Provided to Vehicle Scrappage and Renewal (Scrappage Measures),⁴ which provided that the state would grant subsidies to vehicle owners who scrap certain types of old vehicles. A list of eligible vehicles and the standards for the subsidies will be formulated and published once each year.⁵

2009 Subsidy Scope and Standards

¹ State Council Order No. 307 (June 16, 2001), *available at* the Central People's Government Official Website, http://www1.www.gov.cn/zw/gk/2005-06/06/content_4234.htm (in Chinese).

² *Id.* art. 1.

³ *Id.* art. 4.

⁴ Ministry of Finance (MOF) and Ministry of Commerce (MOFCOM), [2009] No. 20, April 13, 2009, *available at* government official news agency Xinhuanet, http://news.xinhuanet.com/zhengfu/2003-03/04/content_757068.htm (in Chinese).

⁵ *Id.* art. 4.

The 2009 Scope and Standards of the Subsidies for Scrapping Vehicles and Renewal was published on the central government official website on April 21, 2009⁶ (2009 Standards). The subsidies provided under the 2009 Standards are specified as follows:

- Scrapping a rural area passenger bus registered in 2001-2005: RMB10,000 (approximately USD1429);
- Scrapping a 7-9 years old (registered in 2000-2002) bus, semi-trailer and cargo vehicles above standard size or weight: RMB5000 (approximately USD714); and,
- Scrapping a 7-9 years old city bus, and buying within the same year a city bus complying with certain state emission standards: RMB10,000-15,000 (approximately USD1429-2143).⁷

The purposes of the program, as indicated by the government statement with regard to the 2009 Standards, are first to accelerate the scrappage of old vehicles and therefore boost the country's manufacture and consumption of automobiles; and second, to reduce the pollution to the environment. As part of the country's new automobile industry plan for 2009-2011, in 2009, the state prepares a total of RMB1 billion (approximately USD146 million) for the old vehicle scrappage program, up from RMB600 million (approximately USD87.6 million) of 2008.⁸

II. Key Findings

Based on the above-mentioned rules and regulations, the key findings of China's vehicle scrappage program are as follows:

1. No passenger cars are receiving the government subsidy under this program. As shown in the 2009 Standards, the vehicles eligible to receive government subsidies for their scrappage are buses, semi-trailers and cargo vehicles, most of which are for public use. Though being long expected by private car owners, subsidies for scrapping passenger cars have not yet been listed.
2. The emphasis of this program appears to be to encourage the scrappage of old vehicles, and therefore accelerate the rate of replacement of old vehicles with new vehicles, rather than directly encouraging purchasing new vehicles. As a general rule, the subsidies are paid upon the showing of a certificate of the recovery of the scrapped vehicle and the owner's identification document.⁹ As indicated in the

⁶ MOF and MOFCOM, [2009] No. 20, April 13, 2009, *available at* Central People's Government Official Website, http://www.gov.cn/gzdt/2009-04/21/content_1292108.htm (in Chinese).

⁷ *Id.*

⁸ Qiche Chanye Tiaozheng he Zhenxing Guihua [Automobile Industry Adjustment and Promotion Plan] (State Council, March 30, 2009) *available at*, http://www.gov.cn/zwgk/2009-03/20/content_1264324.htm (in Chinese).

⁹ Scrappage Measures, art. 6, Xinhuanet, *available at* http://news.xinhuanet.com/zhengfu/2003-03/04/content_757068.htm (in Chinese).

2009 Standards, only city buses are required to be substituted with new ones in order to obtain a higher subsidy; subsidies for scrappage of all other types of vehicles do not require a new purchase.

3. Even where buying new vehicles is required to get a higher subsidy, the new vehicles are not required to be domestically made or assembled, according to the government openly published rules and regulations available to the author.

China's vehicle scrappage program does not appear to be identically comparable to the "cash for clunkers" car exchange program proposed in the United States. While conducting research during the course of preparing this report, we did not locate any complaints on China's vehicle scrappage program filed with the World Trade Organization (WTO).

III. Automobiles to the Countryside Plan

It is worth noting that a RMB5 billion (approximately USD714 million) plan the Chinese government is launching to encourage the sale of motorcycles, minivans and light trucks in the countryside appears to favor domestic products, as these types of vehicles are primarily produced by domestic manufactures. In March, 2009, seven central government departments jointly issued the Action Plan of Cars and Motorcycles to the Countryside, which is a part of the country's stimulus plan to counter the current economic crisis.¹⁰ The plan was designed to boost automobile sales in the countryside and thereby to promote the automobile industry. Under the plan, the state reimburses up to RMB5,000 (approximately USD714) of farmer's purchase of minivans and light trucks in addition to the subsidies on the scrappage of old vehicles, and up to RMB650 (approximately USD93) on the purchase of a motorcycle, effective between March 1 to December 31, 2009. Again, passenger cars are not covered by this plan.

Under this plan, subsidies are to be granted only on the purchases of government-designated motorcycles, minivans and light trucks produced by designated manufactures. The Ministry of Finance publishes the list of designated manufactures and products and may update it from time to time.¹¹ It seems that on the first list published on April 15, 2009, most of the manufactures, if not all, were domestic enterprises, which may include foreign invested joint ventures.

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¹⁰ Qiche Motuoche Xiaxiang Shishi Fang'an [Action Plan of Cars and Motorcycles to the Countryside] (CJ [2009] No. 104), published on Gov.cn on Mar. 16, 2009, available at http://www.gov.cn/gzdt/2009-03/16/content_1260172.htm (in Chinese).

¹¹ Guanyu Yinfa Diyipi Qiche Motuoche Xiaxiang Shengchan Qiye Mingdan ji Chanpin Mulu de Tongzhi [Circular on the First List of Cars and Motorcycles to the Countryside Plan Manufactures and Products] (CJ [2009] No. 153, April 15, 2009), MOF official website, available at http://www.mof.gov.cn/jinijijianshesi/zhengwuxinxi/zhengcefagui/200904/t20090417_134224.html (in Chinese).

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GERMANY

SUBSIDY FOR ENVIRONMENTALLY FAVORABLE NEW CAR PURCHASES

Executive Summary

From January 14 through December 31, 2009, Germany is giving a bonus of €2,500 (about US\$3370) to any purchaser or lessee of a passenger car that lives up to the currently applicable emissions standard, provided the new car is registered in Germany and the purchaser (lessee) trades it in for an at least nine-year-old passenger car that is still registered in Germany. The old car must be scrapped. Due to the environmental orientation of the program and the absence of any domestic content requirements for the newly-purchased automobile, the program does not violate World Trade Organization (WTO) standards of non-discrimination. Instead, the German program has been copied in a dozen European countries.

I. Development of the Program

On January 14, 2009, the German Cabinet (the executive branch of government) resolved to enact a second stimulus package for the ailing economy following the banking crisis that commenced in 2008.¹ One of the thirteen measures introduced in this stimulus package was an incentive program for the purchase of new passenger cars. The measure was implemented through the issuance of a Directive that was last amended on March, 17, 2009.²

The program became effective on March 3, 2009, after the Federal Diet passed an Act for the Creation and Amortization of an Investment Fund,³ a budgetary law for various items on the stimulus plan. This Act creates and endows a separate fund that, in later years, is to be paid off with profits of the Deutsche Bundesbank, the German Central Bank. In this budgetary law, 1.5 billion Euros⁴ were allotted for the car purchase subsidy that aims at stimulating the economy while also serving environmental purposes. However, currently a proposal is pending in the legislature that would increase the allotted amount by another 3.5 billion Euros, to a total of 5

¹ Bundesministerium für Wirtschaft und Technologie, Konjunkturpaket II, <http://www.bmwi.de/BMWi/Navigation/Wirtschaft/Konjunktur/konjunkturpaket-2.did=287898.html> (click on “Beschluss Ziffer 7, Stärkung der PKW Nachfrage”).

² Richtlinie zur Förderung des Absatzes von Personenkraftwagen, Feb. 20, 2009, amended and repromulgated March 17, 2009, BUNDESANZEIGER 835.

³ Gesetz zur Errichtung eines Sondervermögens “Investitions- und Tilgungsfonds” art. 6 of Gesetz zur Errichtung eines Sondervermögens Gesetz zur Sicherung der Beschäftigung und Stabilität in Deutschland, Mar. 2, 2009, BUNDESGESETZBLATT (official law gazette of the Federal Republic of Germany) I at 416.

⁴ The Euro (€) is currently valued at US\$1.35.

billion Euros, in response to the large demand.⁵ The program is available for qualifying transactions between January 14, 2009, and December 31, 2009.

II. Conditions for the Subsidy

The program allows any owner or lessee of a privately used and at least nine-year-old passenger car with up to eight seats that is registered in Germany to apply for a cash grant of €2,500 if he has the old car wrecked and at the same time purchases (or leases) and registers in Germany for his private use a passenger car that lives up to the European emissions standard Euro 4, which has been required for new vehicles since January 1, 2005.⁶ The replacement car must either be new or, if a used car is acquired, it may not be older than one year and it also must live up to the Euro 4 emissions standard. The newly acquired car may be manufactured anywhere; the program does not specify any domestic manufacture or content preferences.

III. Domestic Impact of the Program

The environmental bonus (Umweltprämie), as the old-for-new car program is officially called, has been very successful in Germany. As of May 19, 2009, a total of 1,467,166 applications have been submitted, out of a total of 2 million applications that the expected budgetary funds can accommodate, thus leaving room only for another 538,834 applications until the end of the year.⁷ The surge in car purchases, with a 38 percent increase in March 2009 over March 2008, has been beneficial for car dealerships.⁸

Although the largest beneficiary of the German subsidy has been the German automobile manufacturer Volkswagen, non-German carmakers have also sold many vehicles in Germany. Among the major sellers were Skoda (Czech), Fiat (Italian), Peugeot (French), and Toyota (Japanese).⁹

IV. International Impact of the Program

Due to the careful drafting of the German program and its insistence on environmental purposes for the stimulus measure combined with the total absence of any domestic preferences

⁵ Bundesamt für Wirtschaft und Ausfuhrkontrolle, Fördermittelübersicht, <http://www.bafa.de/bafa/de/wirtschaftsfoerderung/umweltpraemie/foerdermittel/index.html>.

⁶ As specified by Directive 98/69/EC, relating to measures to be taken against air pollution by emissions from motor vehicles and amending Council Directive 70/220/EEC, OFFICIAL JOURNAL OF THE EUROPEAN UNION 1998 (L 350)1. For passenger cars with gasoline engines, the Euro 4 standard imposes limits on carbon monoxide (1000 milligrams per kilometer (mg/km)), for hydrocarbons and nitrogen oxides combined (300 mg/km), for nitrogen oxides by themselves (250 mg/km), and for fine particles (25 mg/km); no limits for carbon dioxide are given.

⁷ Bundesamt für Wirtschaft und Ausfuhrkontrolle, Fördermittelübersicht, <http://www.bafa.de/bafa/de/wirtschaftsfoerderung/umweltpraemie/foerdermittel/index.html>.

⁸ *Die Neuzulassungen im Monat März 2009*, FRANKFURTER ALLGEMEINE ZEITUNG [FAZ], Apr. 25, 2009, at T 5.

⁹ *Id.*

for German manufacturers, no questions on the compatibility of the environmental bonus program with WTO requirements have arisen.¹⁰ In fact, many countries have begun to imitate the German program.¹¹ Among them is France, which grants a bonus of €1,000 for the wreckage of an at least ten-year-old car if the newly purchased car emits less carbon dioxide than the old car, and if this emission of the new car is below 160 grams per kilometer. Environmental bonuses for scrapping an old car and buying a new one are also granted, under various different conditions, in Austria, Greece, Italy, the Netherlands, Romania, Portugal, Slovakia, Spain, Sweden, and the United Kingdom.¹²

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¹⁰ At least, no claims have been submitted to date, according to the WTO dispute settlement webpage, http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm.

¹¹ *Das Abwrackfieber grassiert in ganz Europa*, FAZ, Apr. 27, 2009, at 18.

¹² *Id.*