I. GRIEVANCE «^« *^«er i 2

[Grievant], a Foreign Service [ ] Officer, [Rank], now retired, filed a grievance with the Foreign Service Grievance Board on [date]. He claims that the United States Embassy in [Post] has wrongfully deprived him of the full proceeds due him from the sale of his personal automobile.

The [ ] Agency contends that its regulations, and Embassy instructions in implementation thereof, prohibit the taking of any profit from such automobile sales.

As relief the grievant requests reimbursement to him of the [amount] by which the sale of his automobile exceeded its purchase price.

A Record of Proceedings containing relevant documents was compiled under the direction of the Board and closed with the concurrence of the parties. The Board, under authority of Section 906 of its regulations, subsequently met on [date] to consider all aspects of the grievance.

I- BACKGROUND

While assigned at the American Embassy, [Post], the grievant purchased on {date] a new automobile of [country] manufacture [Brand and model number] for the total price of [amount], equivalent to [dollars] at the then prevailing rate of exchange. That price represented an exemption from the payment of manufacturing and purchase taxes of about 40% levied on locally manufactured automobiles. The grievant sold the automobile on [date] for the sum of [amount in local currency] (equivalent to [dollars] at the then prevailing rate of exchange), representing an amount above the purchase price of [amount].

Embassy procedures for disposal of personal property, upon departure from post, required the grievant to dispose of the profit from the sale of his automobile as provided in Foreign Affairs Manual Circular (FAHC) No. 378, dated February 1, 1966. Section 8 of this regulation provides four options for disposing of such profits.

Under protest, he chose the option of having the profit designated for donation to a United States charity. In converting the (local currency] received.

the Embassy issued two Treasury checks: one in the amount of [dollar amount] payable to the grievant representing the purchase price for the automobile; and one in the amount of [amount] payable to the [charity]. The grievant has retained this latter check pending the outcome of this grievance. III. STATEMENT OF THE ISSUE

Does Embassy [Post] have the authority under applicable regulation to prevent the grievant from retaining the profit from the sale in [Post] of his locally purchased and manufactured automobile?

A. Grievant's Position

Grievant contends that the Embassy has no such authority, either by regulation or statute. Grievant further contends that the Embassy justifies its actions by citing PAMC No. 378. He interprets this regulation to apply "explicitly and exclusively [to] the importation and sale of automobiles and other personal property." (the grievant's underlining).

Grievant argues, however, that FAMC No. 378 "cannot be applied to the sale of an automobile, manufactured, purchased and sold in a foreign country." He sees the Embassy denial to him of this profit as flowing from an erroneous interpretation of the Code of Federal Regulations (CFR). Grievant says that because his diplomatic status exempted him from payment of local manufacturing and purchase taxes, the Embassy presumably concluded he should be denied a profit from the sale. He contends that such denial is authorized in the relevant CFR "only in the case of imported items of personal property." (grievant's underlining) Moreover, in accordance with [country] government regulations, he contends he was permitted to sell the automobile to any buyer, free of any tax liability, after one year of ownership.

B. Agency's Position

The Agency contends that the Embassy's interpretation of the relevant regulations is correct and proper, and rightly precludes the grievant from being entitled to the profit from the sale of the locally manufactured vehicle. The clear intent of these regulations, the Agency maintains, is to prevent profiteering from the sale of property acquired or imported free of duties and/or local taxes by reason of diplomatic status.

IV. DISCUSSION AND FINDINGS

The Board is here being asked to decide whether Embassy [Post] interpretation of FAMC No. 378 is correct and proper and rightly precludes the grievant from being entitled to the profit realized from the sale of his vehicle.

The Embassy's interpretation of the FAMC, set forth in its Instruction No. [#], is titled "Sale of Personal Property (including automobiles)". Under the heading of "Policy", Item (e) thereof, which is pertinent to the issue of this case, reads:

> e. United States employees who elect to sell rather than export their automobiles or other personal property may not retain an amount in excess of acquisition cost.

The above statement expands the meaning of the original FAMC in that it fails to distinguish between automobiles imported duty-free and those manufactured and purchased in [country] tax-free. The Board assumes Item (e) to include both categories of automobile since the author of the instruction suggests his awareness of this distinction in the very next paragraph. In it he goes on to note that: "Disposition of automobiles imported duty free or purchased in [country] tax-free is subject to regulations promulgated by the Ministry of Foreign Affairs pursuant to [country] law.^

While the legality of the grievant's automobile sale explicitly has not been at issue, the Board requested the Agency on [date] to confirm that the transfer had been in accordance with [country] law. The Agency's response on [date] was in the form of documents which give no indication of whether duties or fees were paid to the [country] government by the purchaser of the grievant's vehicle. Grievant responded to this request on [date] by identifying the purchaser as one without "diplomatic or other privileged status" who was nevertheless "fully authorized under [country] law, as administered by the Ministry of Foreign Relations, to purchase the vehicle." The grievant further affirmed that the vehicle was exempt from taxation.

Based on the above undisputed statements of the grievant, the Board can only conclude that the transaction was in conformity with [country] law. Parenthetically, the Embassy's authorization of the sale and its subsequent conversion of [local currency] to dollars further attests to the legality of the sale.

While the Embassy action in respect to the proceeds from the automobile sale is understandable in light of the Instruction, the correctness of this action is less clear when the relevant FAMC is examined. For indeed there is reason to believe that the FAMC, at the time it was issued, was not intended to include the kind of property transfer involved here.

FAMC No. 378 cites as its "Purpose" "to prohibit the sale of personal automobiles, and other personal property of United States employees abroad at prices producing profits to them which result primarily from import privileges derived from their official status as employees of the United States Government." The "Policy" section of this regulation is pertinent to this grievance and is quoted in its entirety: "2. Policy

> a. Personal property, including automobiles, imported by United States employees into foreign countries to which they are assigned

must be exported unless sold or otherwise disposed of in accordance with this Circular and such regulations as have been or may be promulgated. (Underlining added).

b. The importation, sale or export of personal property, including automobiles, of United States employees must be in accordance with the laws, regulations and conventions of the host country. (Underlining added).

c. Personal property, including automobiles, imported into countries by United States employees must be for their bona fide personal use or that of their dependents, and not imported solely with intent of sale or transfer. {Underlining added).

d. Automobiles purchased for shipment to new posts of assignment should be unostentatious in appearance and modestly equipped. (Underlining added).

e. United States employees who elect to sell rather than export their automobiles or other personal property may not retain an amount in excess of acquisition cost as defined in section 14. In certain circumstances the employee may be allowed to retain an amount compar able to any Federal income taxes incurred as a result of the sale (see section 9) . "

In short, nowhere in the "Policy" statement is there mention of locally manufactured tax-free vehicles. The statement refers solely to imported ones. The Board thus is led to conclude that locally manufactured tax free vehicles were not intended to be included within the scope of the regulation.

The Board is persuaded that the focus of FAMC No. 378 is on personal property acquired outside the host country and imported duty-free rather than that acquired locally tax-free. Hence, the Board finds that the Embassy's Instruction broadens Department policy to a degree not contemplated by the framers of the controlling regulation. V. ORDER

The Board orders that the Treasury Check No. [#] dated [date], issued by the American Embassy, [Post] and payable to the [charity] in the amount of [amount], be cancelled, and instead, that a new check be issued by the Embassy, payable to the grievant in the amount of [amount].

We, the undersigned members of the Foreign Service Grievance Board, hereby submit for action to the [Appropriate agency official] our findings and directives in the grievance case of (grievant) an employee of the [ ] Agency.

This remedial order to the [ ] Agency is made under the authority granted to the Foreign Service Grievance Board by the Foreign Service Act of 1946, as amended, and by the regulations established thereunder.

Signatures