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PERSPECTIVE

The curious case of exporting cars

By Jonathan Michaels

The number is staggering, really: $438 billion. That is the amount the federal government spent in excess of revenue it collected in 2015. Pundits will tussle over who is responsible for the deficit — particularly in an election year — with Republicans and Democrats alike apportioning blame to one another with adolescent fervor. But the larger question is how can a nation that is capable of so much, fall so short in balancing a federal budget, year after year.

Run like a business, the country would seek to maximize its revenues and trim its expenses, all in an effort to yield a sustainable profit. But the country is not a business, of course, saddled with scores of societal expenditures that are necessary for the good of the country. It is the question of which expenditures should be made, and where the revenue should come from, that stirs national debate.

Regardless of whether a particular public spending gains popular attraction, all can agree that government spending is to be made by the people, for the people. Given this, and considering the enormous federal deficit our country faces, many would be surprised to learn that the federal government has committed substantial resources to addressing an issue that has little, if anything, to do with protecting public welfare.

At issue is the practice of exporting new luxury vehicles out of the country. Auto manufactures who sell in the U.S. have had a long standing policy prohibiting new car dealers from exporting new cars to foreign countries. The policy makes sense to a degree, or at least to the automakers, as manufacturers price cars differently in different countries.

To understand the price differential, consider the BMW X6 that has a starting price of $61,900 in U.S. dealerships. In China, that MSRP is $171,000. Part of the difference in pricing is tariffs imposed by the foreign country, but much of it is just automakers exploiting market forces in differing lands. That gain, manufacturers argue, should be reserved for the automakers themselves who have chosen to maximize the capitalistic model.

Given the significant price disparity in many countries, a cottage industry has emerged where profit seekers buy cars in the U.S., and export them to foreign lands, paying the local tariffs and realizing the substantial profits above them. While dealers are prohibited by their manufacturers from engaging in such conduct, ordinary citizens are

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A Mercedes Benz on a street in Beijing.

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Manufacturers hate the practice, because it cuts into the profits they would prefer to keep for themselves, but in truth there is little they can do about it. Or at least, that has been the case until now.

Recently, the federal government has elected to weigh in on the conversation, seeking to stomp out the practice of ordinary citizens exporting cars for profit. Using public funds to fuel their cause, the government has begun a practice of seizing cars and freezing bank accounts of individuals and businesses attempting to export luxury cars out of the U.S. Such was the case with Efans Trading Corp., who is said to have exported 2,000 high-end vehicles to China, valued at some $80 million. In 2013, the government seized $7 million in cash and 47 vehicles from Efans, and then sued them in U.S. district court for forfeiture.

The government claims that such conduct is "contrary to law," yet it has not been able to articulate which law it is contrary to. Vaguely, the government has stated that the practice constitutes wire fraud — a law designed to prevent artifices to defraud — but who is being defrauded remains a mystery. And at least one federal judge agrees.

In 2013, the Secret Service seized vehicles and money belonging to Automotive Consultants of Hollywood, and then sued the company for forfeiture, also claiming that the company's actions were contrary to law and tantamount to wire fraud.

In ruling on a motion to dismiss, the U.S. district court noted that the government does not allege that the company engaged in an illegal export scheme, or that it was smuggling automobiles out of the country. Rather, the government rested its case on the premise that "luxury vehicle manufacturers do not want their dealerships to sell new vehicles to a purchaser who intends to export the car."

The court noted that all of the company's dealings when buying the cars — which were fully paid for — were with the dealer, not the manufacturer. Because the company never made any statements to the manufacturer, the court reasoned that it could not have engaged in an artifice to defraud it.

Resting on these "significant due process concerns," and noting that the U.S. had failed to demonstrate that the company had broken any laws, the court ordered that the vehicles and funds be immediately returned to the company. As Judge Sandra Bechwith wrote, "it appears to the court that the primary concern of the manufacturers is guarding their foreign market profits from competition."

The practice of exporting cars to foreign lands is undoubtedly frustrating to manufacturers. It is estimated that 35,000 new luxury vehicles are purchased in the U.S. and shipped out of the country each year, costing the automakers millions. An economist hired by BMW estimates the losses for that manufacturer alone are over $200 million per year.

Automakers argue that there are legitimate reasons for prohibiting practice, such as difficulty issuing recalls on cars that are exported abroad. But the truth is that manufacturers are merely seeking to protect their profit from competitive erosion. Such a goal is perfectly defensible, but when public resources are used to protect that goal, the line has been crossed. Government effort should not — and cannot — be used to preserve private sector profits, when no law is being broken and no citizen is put at risk. Should Congress choose to regulate the practice, so be it. But until the time, this public market should be free of unwarranted intrusion.

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