

UNITED STATES - STANDARDS FOR REFORMULATED
AND CONVENTIONAL GASOLINE

Addendum

The following statement, made by Venezuela in Washington in the context of Article XXII:1 consultations with the United States, is circulated to Members at the request of the delegation of Venezuela:

1. The Government of the Republic of Venezuela considers that the final decision adopted on 15 December 1993 by the United States Environmental Protection Agency, Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline, codified at 40, Code of Federal Regulations, Part 80 (hereinafter called "Gasoline Regulation") violates the obligations of the United States under the Agreement Establishing the World Trade Organization (WTO Agreement), including the General Agreement on Tariffs and Trade 1994 ("GATT") and the Agreement on Technical Barriers to Trade. Similarly, the Regulation nullifies and impairs Venezuela's rights under the WTO Agreement.

2. Venezuela objects to the Gasoline Regulation because the Regulation contains provisions less favourable to Venezuelan gasoline than to United States-produced gasoline. The application of these less favourable provisions has an adverse effect on the conditions of competition for Venezuelan gasoline in the United States.

3. For the purposes of these consultations, Venezuela will base them on the violations of Articles III and I of the GATT and Article 2 of the Agreement on Technical Barriers to Trade and will make certain observations regarding Article 12 of that Agreement. Furthermore, Venezuela reserves the right to invoke any other provisions of the WTO Agreement applicable in this case.

4. Venezuela is taking part in these consultations in a true spirit of cooperation for the purpose of reaching a mutually satisfactory solution to this matter. Venezuela considers, however, that in addressing the problem it is important to respect the fundamental principles that govern the multilateral trading system. In fact, rule compliance is a critical aspect of the WTO Agreement. Accordingly, if no satisfactory solution is reached within the prescribed consultation time-frame, Venezuela will request the establishment of a panel to examine this matter.

5. In addition to considering the specific issues related to the GATT and the Agreement on Technical Barriers to Trade, it would be wise in these consultations to indicate the implications of the Gasoline Regulation for the ongoing debate over trade and the environment, particularly as it unfolds in the WTO Committee which considers this topic, as well as in other forums. A large number of countries have expressed concern about the use of environmental measures as disguised barriers to international

trade. In the matter under discussion, such improper use might well be found to exist. Venezuela is simply seeking equal regulatory treatment for its gasoline. This is not a case in which a WTO Member seeks special treatment in order to escape United States legislation.

6. Venezuela is not seeking unnecessary confrontation on this matter, but it cannot stand by idly in the face of unfair treatment, associated with such factors as misinformation and manipulation of the facts.

GATT, Article III

7. The Gasoline Regulation is inconsistent with the principle of national treatment set forth in Article III:1, and discriminates against imported gasoline in violation of Article III:4. The Regulation accords less favourable treatment to imported gasoline than to United States gasoline. This differential treatment results in a competitive disadvantage for imported gasoline.

8. Specifically, the methodology for establishing the 1990 baseline, against which compliance with the pollution control requirements applicable to current and future sales of gasoline is measured, discriminates against imported gasoline. The discriminatory aspects of the Regulation apply to both reformulated and conventional gasoline.

9. The Gasoline Regulation provides that, from 1995 through 1997 gasoline produced by a refiner in the United States can be certified for sale as "reformulated"¹ if the gasoline's levels of sulphur, olefins and T-90 do not exceed the levels of these parameters in gasoline produced by that refiner in 1990 (the refiner's "individual 1990 baseline"). Accordingly, no United States refiner need modify the levels of sulphur, olefins and T-90 in its gasoline during 1995-1997 period, compared to its 1990 production. In contrast, during the same period, imported gasoline may not be certified as reformulated in accordance with the foreign refiner's levels of sulphur, olefins and T-90, since these parameters must conform to the levels stipulated by the statutory baseline. Therefore, from 1995 to 1997, reformulated gasoline from a foreign refinery, whose gasoline exported to the United States in 1990 had levels of sulphur, T-90 and olefins above the statutory baseline may not be sold in the United States market without substantially increased costs. Such costs are associated with changes in such foreign refinery's methods of production or with the use of inputs from other sources in order to meet the statutory baseline criteria.

10. The differential treatment between the use of an individual baseline and a statutory baseline also has a major effect on conventional (non-reformulated) gasoline. From 1995 onwards, a United States refiner's conventional gasoline must meet certain performance parameters which are calculated as a percentage of the values of that refiner's individual 1990 baseline. These parameters cover, *inter alia*, the average annual levels of sulphur, olefins and T-90. For imported conventional gasoline, however, the levels of these parameters must be calculated as a percentage of the values of the statutory baseline. Therefore, in order to be sold in the United States, imported conventional gasoline must bear the costs associated with changes in the refinery's methods of production or with the need to use other inputs, so as to meet the statutory baseline criteria.

11. The inability to use an individual baseline for the purposes of certifying imported gasoline, both reformulated and conventional, adversely affects the conditions of trade for imported gasoline in the United States market. Thus, the current Gasoline Regulation creates less favourable conditions of competition for imported gasoline (reformulated gasoline from 1995 to 1997 and conventional gasoline from 1995 onwards) than for gasoline produced and sold in the United States.

¹The sale of gasoline not certified as reformulated is prohibited in any "covered area". "The covered areas" comprise a significant segment of the United States gasoline market.

GATT, Article 1

12. The Gasoline Regulation is inconsistent with the obligation of the United States under Article I:1 of the GATT to grant most-favoured-nation treatment to Venezuela. Specifically, the Gasoline Regulation grants less favourable treatment to gasoline imported by an importer which is in turn a refiner outside the United States and, in 1990, imported into the United States not less than 75 per cent of the gasoline produced at its refinery, as opposed to the treatment granted to gasoline of Venezuelan origin. The latter, i.e. Venezuelan gasoline, is measured against the statutory baseline, whereas other gasoline is measured against the foreign refinery's individual 1990 baseline. This differential treatment effectively affords an advantage, for example, the cost-saving associated with the ability to use an individual baseline for gasoline from a particular source, which is not accorded to like product originating in other WTO Members. Indeed, because eligibility hinges on historical facts the universe of eligible countries is fixed. In fact, in prior consultations on this subject, the United States identified only one single eligible country.

Agreement on Technical Barriers to TradeArticle 2

13. Under the Agreement on Technical Barriers to Trade, the Gasoline Regulation's 1990 baseline determination methodology has to be considered as a "technical regulation", with significant implications for Venezuela's trade. The 1990 baseline determination methodology of the Gasoline Rule violates Article 2.1 of the Agreement in question because it accords less favourable treatment to Venezuelan gasoline than to United States-produced gasoline and to gasoline produced in certain third countries (those that can benefit from the "75 per cent" provision).

14. The methodology also violates Article 2.2 of the Agreement because it creates "unnecessary obstacles to international trade" and because it is "more trade-restrictive than necessary" to fulfil a "legitimate objective" of the Regulation, taking account of the risks non-fulfilment would create.

15. The United States violates Article 2.3 of the Agreement on Technical Barriers to Trade because the objective of the Gasoline Regulation "can be addressed in a less-trade restrictive manner" than by discriminatory application of the Regulation's baseline determination methodology. The United States could, without sacrificing the expected environmental benefits of the Regulation, allow imported gasoline, like United States-produced gasoline, to be measured against individual refinery 1990 baselines. In fact, the United States Environmental Protection Agency has recognized that Venezuelan refineries have the data necessary to establish their baselines. The United States is aware, therefore, that there are less trade-restrictive means of implementing the Gasoline Regulation.

16. Venezuela requests that, in accordance with Article 2.5 of the Agreement, the United States provide a written explanation of the justification for the reasons for the discriminatory treatment between imported gasoline and United States gasoline, in the light of the provisions of paragraphs 2 and 3 of Article 2 of the Agreement on Technical Barriers to Trade.

Agreement on Technical Barriers to TradeArticle 12

17. The United States has certain obligations with respect to the developing countries under Article 12 of the Agreement on Technical Barriers to Trade. It should be clear that Venezuela is in no way seeking special treatment with regard to the Gasoline Regulation. On the contrary, Venezuela asks for its gasoline

to receive the same treatment as United States gasoline. However, the Gasoline Regulation establishes more stringent requirements for Venezuelan gasoline than for United States gasoline.

18. The Gasoline Regulation nullifies and impairs Venezuela's rights under the WTO Agreement. First, the violations mentioned above constitute *prima facie* nullification and impairment. Second, the substantial economic injury that the Regulation inflicts on Venezuela, as compared with Venezuela's reasonable expectations for trade in gasoline with the United States, also constitutes nullification and impairment.

19. As a result of this Regulation, Venezuela anticipates that the value of its gasoline exports to the United States will be significantly reduced. Furthermore, its share of the market will fall, causing additional economic injury and there will also be a reduction in the economic benefits associated with more than US\$1 billion investment programme that Venezuela has undertaken in order to produce reformulated and conventional gasoline for the United States market.

20. Venezuela urges the United States to comply with its WTO Agreement obligations by granting equal treatment to gasoline imports from Venezuela.

21. Venezuela trusts that the points raised above will be useful in resolving the matter that is the subject of these consultations.