

US – GASOLINE¹

(DS2)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	<i>Brazil Venezuela</i>	<i>GATT Arts. III and XX</i>	Establishment of Panel	<i>10 April 1995 (Venezuela) 31 May 1995 (Brazil)</i>
			Circulation of Final Report	<i>29 January 1996</i>
Respondent	<i>United States</i>		Circulation of AB Report	<i>29 April 1996</i>
			Adoption	<i>20 May 1996</i>

1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: The "Gasoline Rule" under the US Clean Air Act that set out the rules for establishing baseline figures for gasoline sold on the US market (different methods for domestic and imported gasoline), with the purpose of regulating the composition and emission effects of gasoline to prevent air pollution.
- Product at issue: Imported gasoline and domestic gasoline.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- GATT Art. III:4 (national treatment): The Panel found that the measure treated imported gasoline "less favourably" than domestic gasoline in violation of Art. III:4, as imported gasoline effectively experienced less favourable sales conditions than those afforded to domestic gasoline. In particular, under the regulation, importers had to adapt to an average standard, i.e. "statutory baseline", that had no connection to the particular gasoline imported, while refiners of domestic gasoline had only to meet a standard linked to their own product in 1990, i.e. individual refinery baseline.
- GATT Art. XX(g) (exceptions clause): In respect of the US defence under Art. XX(g), the Appellate Body modified the Panel's reasoning and found that the measure was "related to" (i.e. "primarily aimed at") the "conservation of exhaustible natural resources," and thus fell within the scope of Art. XX(g). However, the measure was still not justified by Art. XX because the discriminatory aspect of the measure constituted "unjustifiable discrimination" and a "disguised restriction on international trade" under the chapeau of Art. XX.

3. OTHER ISSUES²

- GATT Art. III:1: The Panel considered it unnecessary to examine the consistency of the Gasoline Rule with Art. III:1 (general provision), given that a finding of violation of Art III:4 (i.e. more specific provision than Art. III:1) had already been made.
- Appeal of an issue: The Appellate Body held that participants can appeal an issue only through the filing of a Notice of Appeal and an "appellant's" submission, but not through an "appellee's" submission.
- VCLT (general rule of interpretation): The Appellate Body stated that general rule of interpretation under VCLT Art. 31 has attained the status of a rule of customary or general international law and thus forms part of the "customary rules of interpretation of public international law" which the Appellate Body has been directed, by DSU Art. 3(2), to apply in seeking to clarify the provisions of the General Agreement and the other "covered agreements" of the "WTO Agreement". It also said that one of the corollaries of the "general rule of interpretation" in VCLT Art. 31 is that "interpretation must give meaning and effect to all the terms of a treaty" and an interpreter may not adopt a reading that would result in reducing whole clauses or paragraphs of a treaty to redundancy or inutility.

¹ *United States – Standards for Reformulated and Conventional Gasoline*

² Other issues addressed in this case: ceased measure; terms of reference.