

UNITED STATES - STANDARDS FOR REFORMULATED
AND CONVENTIONAL GASOLINE

Status Report by the United States

The following communication, dated 9 January 1997, from the Permanent Mission of the United States to the Permanent Missions of Brazil and Venezuela and to the Dispute Settlement Body is circulated at the request of the United States.

Status Report Regarding Implementation of the Recommendations and Rulings in
the Dispute Regarding *United States - Standards for Reformulated and Conventional Gasoline*
Panel report (WT/DS2/R) and Appellate Body report (WT/DS2/AB/R)

On 19 June 1996, the United States informed the Dispute Settlement Body ("DSB") of its intention to meet its obligations under the WTO with respect to this dispute. At that time, the United States also advised the DSB that a "reasonable period of time" would be required to complete the rulemaking process and that we would be meeting with Venezuela and Brazil to discuss this matter further. Since that time meetings have been held with both parties on numerous occasions to explain the rule making process and the time periods involved. In July 1996, the United States and the Government of Venezuela reached agreement on 15 months as a reasonable period for implementation. Therefore, as provided for in Article 21:6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, this first report on the status of our implementation is being presented.

The U.S. Environmental Protection Agency (EPA) has initiated a process which will examine any and all options for compliance. This examination has been and will continue to be an open process. In evaluating options, a key criterion will be fully protecting public health and the environment.

To begin the implementation process, the U.S. Environmental Protection Agency issued a notice, that was signed on 20 June 1996 and published in our Federal Register on 28 June 1996, offering all interested parties an opportunity for input and setting out the considerations that will guide them and the issues that must be addressed. In particular, parties were invited to propose implementation options and to provide information relevant to the assessment of options. A copy of the notice is attached.

The closing date for comments in response to EPA's invitation for comment was 26 September 1996. A broad range of responses was received from interested parties, including foreign refiners, domestic refiners, gasoline marketers, service station dealers, an agricultural association and regional air management associations. These submissions are available for public inspection at EPA's headquarters in Washington, D.C.. After the submissions were received, EPA staff synopsized the

various responses and briefed senior management. The next step in the process was for various units within EPA to review and assess all the submissions.

At present EPA is continuing its assessment of submissions and is evaluating options for compliance. These deliberations are a multi-step process, involving several different parts of EPA as well as review and consideration by a number of management levels.

Attachment

ENVIRONMENTAL PROTECTION AGENCY (EPA)

40 CFR Part 80

[FRL-5528-2]

World Trade Organization (WTO) Decision on Gasoline Rule (Reformulated and Conventional Gasoline)
61 FR 33703

DATE: Friday, June 28, 1996

ACTION: Invitation for Public Comment.

SUMMARY: EPA is initiating a process to identify and evaluate any and all options available to meet U.S. international obligations, in response to a recent decision by the World Trade Organization (WTO). The WTO decision concerns one aspect of rules issued under the Clean Air Act for conventional and reformulated gasoline. In particular it relates to the baseline used in these programs to determine the requirements for imported gasoline. EPA's goal is to identify any and all feasible options consistent with EPA's commitment to fully protect public health and the environment. Comments are invited from all interested parties on these matters.

DATES: Comments must be received on or before September 26, 1996.

ADDRESSES: Interested parties may submit written comments (in triplicate if possible) for EPA consideration. The comments are to be addressed to: EPA Air and Radiation Docket, Attention: Docket No. A-96-33, Room M-1500, Mailcode 6102, U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m. Monday through Friday, except on governmental holidays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying docket materials. Should a commenter wish to provide confidential business information to EPA, such information should not be included with the information sent to the docket. Materials sent to the docket should, however, indicate that confidential business information was provided to EPA.

FOR FURTHER INFORMATION CONTACT: Karen Smith, U.S. EPA, 401 M Street, S.W. (Mailcode 6406J), Washington, D.C. 20460, telephone (202) 233-9674.

SUPPLEMENTARY INFORMATION: The World Trade Organization recently adopted the report of its Appellate Body concerning one aspect of rules issued under the Clean Air Act for conventional and reformulated gasoline. The dispute initiated by Venezuela and Brazil involves the baseline used to set the emissions requirements in these programs for imported gasoline. The WTO concluded that EPA's rules in this matter were inconsistent with U.S. obligations under the General Agreement on Tariffs and Trade (GATT) because they unjustifiably discriminated against imported gasoline. It is important to note that the Clean Air Act was not at issue in this dispute.

The U.S. Government is disappointed with the results of this decision, but is gratified that it fully recognized a country's right to adopt appropriate measures to protect public health and the environment. In addition, the WTO decision clearly recognizes that clean air is an exhaustible natural resource, and that conservation of this resource is covered by the provisions of Article XX(g) of the GATT.

EPA is initiating a process to identify and evaluate all options available to the agency in responding to this decision. EPA's goal is to identify any and all feasible options consistent with EPA's commitment to fully protect public health and the environment, and at the same time consistent with the obligations of the United States under the WTO. Before deciding what course to take, EPA intends to fully evaluate all options identified in this public process. This invitation for public comment is designed to inform EPA's evaluation of the options.

The following description of the relevant regulatory provisions and related issues is provided to help the public in preparing comments. As noted above, the conventional gasoline program contains emissions requirements designed to ensure that gasoline does not degrade in quality from 1990 levels in ways that would adversely affect the levels of air pollution from motor vehicles. The Clean Air Act calls for conventional gasoline produced or imported by a refiner or importer to stay as clean as it was in 1990. See section 211(k)(8) of the Act. To meet this requirement, EPA regulations require that domestic refiners establish a baseline that reflects the quality of the gasoline they produced in 1990. The emission requirements for conventional gasoline are keyed to these individual baselines. For the conventional gasoline program, see 40 CFR 80.90 -93, 80.101(b). Individual baselines play a limited role in the reformulated gasoline program. From 1995 through 1997, certain of the emission requirements for reformulated gasoline are expressed in terms of individual baselines. After that date, individual baselines are not used in the RFG program. See 40 CFR 80.41(h), (j).

Based on the limited ability of importers and domestic blenders to determine the quality of the gasoline they produced or imported in 1990, in almost all cases they are assigned the statutory baseline instead of an individual baseline. The statutory baseline was designed to approximate the national average for 1990 gasoline quality. There is no provision in the regulations under which a foreign refiner may establish an individual baseline, nor are they assigned the statutory baseline. Imported gasoline is regulated through the importer, not the foreign refiner, and foreign refinery modelling information/data may not be used by an importer to establish an importer baseline.

The rulemaking record for the conventional and reformulated gasoline program contains information regarding the environmental, cost, verification and enforcement issues associated with setting the baseline rules for domestic and imported gasoline. For further discussion of these matters, see 59 FR 7716 (February 16, 1994); 59 FR 22800 (May 3, 1994).

One baseline issue considered during the rulemakings noted above involves allowing foreign refiners to petition EPA for approval of an individual baseline for a foreign refinery. This issue was also raised during the WTO dispute settlement proceedings. In this respect, the Appellate Body identified two omissions of the United States: (1) the United States had not sufficiently explored ways of overcoming its administrative concerns with respect to imported gasoline and (2) the United States had considered the costs of compliance with the statutory baseline for domestic refiners but had not adequately considered them for foreign refiners. It is important to note that EPA is inviting comment on all feasible options that the agency should consider. Commenters should not limit themselves to consideration of individual baselines for foreign refiners. EPA is interested in evaluating any alternative approach that would achieve the environmental benefits associated with these gasoline programs while treating domestic and imported gasoline in a manner consistent with U.S. obligations under the WTO.

Some of the issues that are relevant to individual baselines and may also be relevant to other options include the following:

How would EPA be able to accurately establish a reliable and verifiable individual baseline for a foreign refiner? This would include consideration of the technical problems associated with determining the quality and volume for gasoline imported into the U.S. from a foreign refinery in 1990, determining the refinery of origin for gasoline imported in 1990, and consideration of the role of independent verification in establishing an accurate baseline.

How would EPA be able to adequately monitor compliance and enforce any baseline requirements? This would include consideration of the ability to audit and inspect both foreign and domestic facilities, and the ability to enforce against foreign refiners and importers.

How would EPA be able to effectively determine the refinery of origin of imported gasoline, so as to determine the appropriate baseline to apply to the imported product? This would include consideration of the kind of tracking and segregation needed to ensure effective determination of refinery of origin.

Commenters should address these issues to the extent relevant to the option(s) they are addressing.

Commenters should identify the potential environmental impacts from implementation of any suggested option. For example, for those commenters that might propose individual baselines, this would include consideration of the number of foreign refiners that could seek and be able to establish an individual baseline, the individual baseline levels that could be established, the volume of imported gasoline that could be subject to such a baseline, the areas of the country in which this gasoline would be used, the length of time that a foreign refiner could use an individual baseline, and the regulatory programs in which such a baseline was allowed, e.g. conventional or reformulated gasoline.¹

In addition, EPA invites any other comments relevant to the two issues raised by the appellate body in its report as omissions on the part of the United States-exploring adequately the means of mitigating the administrative problems identified in EPA's earlier rulemaking, and considering the costs for foreign refiners that might result from the use of the statutory baseline for imports.

A key criterion in evaluating any options presented in response to this notice will be fully protecting the public health and the environment. The reformulated and conventional gasoline programs are important components in the strategy for achieving that goal. EPA invites comment that would allow EPA to better quantify or characterize potential environmental impacts of any options proposed by commenters, as well as feasible options to address any such potential impacts.

As noted above, EPA's goal in inviting public comment is to obtain information that will help the agency identify any and all feasible options consistent with EPA's commitment to fully protect public health and the environment, and at the same time consistent with the obligations of the United States under the WTO. EPA requests that commenters provide information and analysis on the public health and environmental impact associated with any option presented for consideration. Commenters should also identify the economic and other impacts associated with any suggested option, and discuss the relationship of the option to the United States' obligations under the WTO.

Dated: June 20, 1996.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

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¹ Commenters should be aware that EPA is currently prohibited by law from taking any further action on its May 1994 proposed rule that would have allowed the establishment of individual baselines for foreign refiners for use in the federal reformulated gasoline program. Omnibus Consolidated Recissions and Appropriations Act of 1996, Pub. L. No. 104-134, section 101(e), 142 Cong. Rec. H3922 (daily ed. April 25, 1996); 59 Fed. Reg. 22800 (May 3, 1994).