

WORLD TRADE ORGANIZATION

RESTRICTED

WT/DS2/7

19 April 1996

(96-1452)

Original: English

UNITED STATES - STANDARDS FOR REFORMULATED AND CONVENTIONAL GASOLINE

Communication from the Appellate Body

The following communication, dated 15 April 1996, from the Chairman of the Appellate Body addressed to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 17(5) of the DSU.

I am writing to you pursuant to Article 17(5) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"). Before writing this letter, I consulted with the other Members of the Appellate Body, including, in particular, the Presiding Member, Mr. Feliciano, and the other two Members of the Division, Messrs. Beeby and Matsushita, who have heard and will decide the above appeal.

As you know, Article 17(5) contemplates that, as a general rule, the Appellate Body will circulate its report no later than 60 days after the appellant has formally notified its decision to appeal. In the case currently under appeal, the United States filed its Notice of Appeal on 21 February 1996 with the result that the 60-day period will expire on Sunday, 21 April 1996. Pursuant to Rule 17(2) of the *Working Procedures for Appellate Review* which incorporates the DSB Decision on "Expiration of Time-Periods in the DSU", WT/DSB/M/7, where a DSU time-period expires on a weekend or WTO holiday, any document may be filed or issued on the first working day of the WTO Secretariat following the day on which that time-period would normally expire, in this case, Monday, 22 April 1996.

For the reasons set out below, the Appellate Body has come to the reluctant conclusion that, in this appeal, it will not be able to meet the 60-day time-period. There are several reasons for this.

In my letter to you of 22 March 1996, I indicated that for reasons which were both unavoidable and exceptional, the oral hearing, required by Rule 27 of the *Working Procedures for Appellate Review* to be held, in general, 30 days after the filing of the Notice of Appeal, had to be put back two days from its initially scheduled date of 25 March 1996. It occupied two days on 27 and 28 March 1996. Answers in writing to some of the questions put by the Division to participants and third participants were received, pursuant to the time-limit set by the Division, on 28 March 1996. Further, post-hearing statements of the positions of the participants and third participants as well as responses to other questions put by the Division were received, within the time-limit set by the Division, on Monday, 1 April 1996. The Division had to spend much of 29, 30 and 31 March and 1 April 1996 reviewing this further written material and preparing for a meeting with the other four Members of the Appellate Body which, of necessity, came immediately after the oral hearing. The Appellate Body's General Meeting, which concerned both general policy and administrative matters and the exchange of views on this appeal,

./.

contemplated by Rule 4 of our *Working Procedures for Appellate Review*, took place on 2, 3 and 4 April 1996.

Easter intervened immediately thereafter, and while work on the appeal did not cease - far from it - it, for most concerned, proceeded at a rather slower pace to allow for a recharging of the batteries. Following the Easter break, work on the appeal has resumed at full pace. The time available before 22 April 1996 will, however, be reduced to allow for translation of the report. Even with the enthusiastic support of the Translation and Documentation Division, which will undoubtedly be forthcoming, this process and the final checking of the final report is likely to occupy several days.

As I have indicated above, it is with reluctance that the Appellate Body has concluded, that for all the reasons set out in this letter, it will not be able to meet the deadline of 22 April 1996. Were it to attempt to do so, in this, the first appeal to come before the Appellate Body and at no matter what cost, this would not in our view be fair to the participants and third participants which have presented lengthy and carefully-prepared written and oral submissions on complex issues.

We estimate that it will be possible to circulate the report no later than 29 April 1996.