TWO-EDGED SWORD: THE US-GASOLINE CASE AT THE WTO

Ligia Maura Costa

Fundação Getulio Vargas, Escola de Administração de Empresas de São Paulo

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In March 1995, after making unsuccessful representations to the United States, Venezuela filed a complaint with the World Trade Organization (WTO) Dispute Settlement Body (DSB) and requested it to set up a panel to examine whether the United States had violated the General Agreement on Tariffs and Trade (GATT-94)¹, among other WTO Agreements. In May, Brazil decided to endorse Venezuela's complaint, after making similar unsuccessful representations to the WTO concerning the United States². However, the Gasoline Dispute case at WTO proved to be a double-edged sword that was not easy to solve.

The United States is the main importer of Venezuelan oil³ and since the late 1970s, it has been providing Venezuela with expertise and technology to help improve its oil industry. By 1977, almost 50% of the leading Venezuelan firms had economic and financial ties with US companies⁴.

¹ United States — Standards for Reformulated and Conventional Gasoline. Available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds2_e.htm. Access on August 12 2011.

² Ibid..

³ Alvarez, C. J. & Hanson, S. Venezuela's Oil-Based Economy. In: *Council of Foreign Relations*. Available at <http://www.cfr.org/economics/venezuelas-oil-based-economy/p12089>. Access on August 12 2011.

⁴ Ibid.

The United States is one of Brazil's oil importers. Oil fields in Brazil were discovered in the late 1970s and to respond to the oil crisis of that time Brazil gradually implemented an energy policy which allowed it to reduce its dependence on imported energy products, in particular petroleum. The energy policy which combined conservation and substitution, along with research and the expansion of domestic production, reduced the country's dependence on imported crude oil and made the country an oil exporter.

In the 1980s and 1990s, the US oil industry faced increasing economic difficulties and since the early 1990s, the US market for gasoline has become very competitive – US companies and foreign companies have been in fierce competition to obtain a better position in the market. In addition, the US oil companies have witnessed a decline in domestic sales resulting from foreign competition. These economic problems were aggravated by the fact that the US oil companies were under pressure to meet new environmental requirements and improve the quality of their gasoline. The estimated cost of complying with these environmental regulations was almost US\$40 billion⁵. Thus, the US oil companies regarded the new environmental requirements as an opportunity to try to block foreign imports, such as Venezuelan and Brazilian gasoline.

The Petroleum Industry in Venezuela

The petroleum industry is particularly important to Venezuela (See Exhibit 1), where the oil industry plays an important role in its economy. In the 1940s, the Venezuelan government decided to regulate the increasing foreign control of its oil industry. After the 1970s, Venezuela became increasingly dependent upon its oil revenues and on January 1st 1976, the Venezuelan government nationalized the oil industry⁶ and formed *Petróleos de Venezuela S.A.*⁷ (PdVSA). PdVSA owns five refineries in the United States and is part owner of four refineries, either through partnerships with US companies or through PdVSA's US subsidiary, CITGO Petroleum Corporation⁸. By 1982, the oil industry provided almost 2/3 of the Venezuelan government's income and 94 percent of its export

⁵ Lavelle, M. GATT Complaint Fools Feds' Clean Air Oil Deal. In: *National Law Journal*. June, Vol. 13, 1994, p. 81-3.

⁶ Alvarez, C. J. & Hanson, S. Venezuela's Oil-Based Economy. Op. Cit.

⁷ See PdVSA website. Available at <http://www.pdvsa.com/>. Access on August 12 2011.

⁸ Alvarez, C. J. & Hanson, S. Venezuela's Oil-Based Economy. Op. Cit.

receipts. In 1991, the petroleum industry generated half of the 10.4 % growth rate of the Venezuelan economy (See Exhibit 2). In 1992, the oil industry accounted for 1/5 of Venezuela's gross national product (GNP), 2/3 of the central government's revenues, and 4/5 of its export earnings⁹. In 1993, the total amount of petroleum exports from Venezuela averaged 2.1 million barrels per day¹⁰; most of which was shipped to the US.

In fact, the United States was the largest importer of Venezuelan oil. At the beginning of 1995, Venezuela overtook Saudi Arabia as the top exporter of petroleum to the United States. From January to May 1995, Venezuela exported 1.43 million barrels of petroleum to the US and Saudi Arabia exported only 1.34 million. In brief, the United States received 16.8% of its oil from Venezuela and 15.7% from Saudi Arabia¹¹. The United States alone purchases at least 65% of Venezuelan oil exports (See Exhibit 3).

In 1993, PdVSA announced a five-year environmental protection plan that would cost the company over US\$ 800 million¹². The Venezuelan environmental protection plan included monetary allotments for atmospheric emissions control, treatment and disposal of toxic waste, treatment of industrial water and oil-tainted residues, contingency plans for oil spills and environmental impact studies¹³ (See Exhibit 4). Venezuela's environmental protection measures were much more stringent than similar measures adopted by other Latin American countries, such as Brazil.

The Petroleum Industry in Brazil

In 1953, Brazilian President Getulio Vargas founded the state-owned oil company *Petróleo Brasileiro S.A.* (Petrobras). As President Vargas declared, the founding of Petrobras was "a milestone

⁹ Ibid.

¹⁰ Randall, L. *The Political Economy of Venezuelan Oil*. New York: Praeger, 1987.

¹¹ Venezuela-Oil Gas Industry Profile. In: *1994 National Trade Data Bank*. Market Reports. February 14 1994.

¹² Venezuela Oil Company Announces Five-Year Environmental Plan. In: *Environment Watch Latin America*, Sept. 1993, p. 3.

¹³ Slocum, D.A.; Sanchez, J.C. & Barrios, R. Environmental Regulation of the Oil and Gas Industry in Venezuela. In: *SPE International Conference on Health, Safety, and Environment in Oil and Gas Exploration and Production, 7-10 June 1998, Caracas, Venezuela*. Available at <http://www.onepetro.org/mslib/servlet/onepetroreview?id=00046725&soc=SPE>. Access on August 12 2011.

in our economic independence”¹⁴. In fact, Petrobras was the outcome of a political campaign that was launched under the slogan “The Oil Is Ours” (*O Petróleo é Nosso*)¹⁵. At that time, Brazil had only discovered very modest oil fields. In 1954, almost 54% of energy consumption in Brazil was based on oil. Later, the oil crisis of the 1970s placed Brazil in a very critical economic situation: almost 80% of Brazil’s oil consumption was then imported.

The sharp increase in the price of oil during the 1970s imposed a burden on the Brazil’s balance of payments situation that later on, along with other factors, forced the country to declare a moratorium on debt payments in the 1980s. The main aim of the country’s energy policy back in 1973 was to reduce its dependence on imported energy products, particularly oil. This was combined with large investments in petroleum substitutes, such as electrical energy and ethanol, and a considerable expansion in research and the exploration and exploitation of domestic oil reserves. In 1974, the Campos Basin field was discovered and the discovery of other fields has followed.

Investments in the energy sector increased from 10% in the early 1970s to almost 23.5% in the 1980’s¹⁶. The combination of conservation and substitution, along with the expansion of domestic production, reduced the country’s dependence on imported oil, from around 80% in the late 1970’s to 45.6% in 1990¹⁷. By the end of 1995, Brazil had an estimated 4.8 billion barrels of proven oil reserves and potential reserves were at 8.8 billion barrels. About 64% of Brazil’s domestic oil comes from the Campos Basin. The country’s petroleum reserves may actually reach 100,000 barrels per day if new discoveries in deep water in the Southeast of the Brazilian coast are included (pre-salt fields / Tupi Basin)¹⁸.

¹⁴ Petrobras website. Available at <http://www.petrobras.com.br/en/about-us/our-history/>. Access on August 12 2011.

¹⁵ Ibid.

¹⁶ Id. Ibid.

¹⁷ Guan, E. J. Understanding Brazil’s Oil Industry: Policy Dynamics and Self-Sufficiency. In: *Journal of Emerging Knowledge on Emerging Markets*. Vol. 2, Article 7, 2010. Available at: <http://digitalcommons.kennesaw.edu/jekem/vol2/iss1/7>. Access on August 12 2011.

¹⁸ Id. Ibid. Otillar, S.P. & McQuaid, K.A. Recent Developments in Brazil’s Oil & Gas Industry: Brazil Appears to Be Stemming the Tide of Resource Nationalism. In: *Houston Journal of International Law*. March, 2008, p. 27-58.

The US Oil Industry

The United States is a net importer of crude oil and petroleum products. In 1994, imports accounted for more than 50% of the crude oil used in the US and about 10% of finished petroleum products¹⁹. The US domestic crude oil production peaked in 1970; however, it has been falling since 1986.

Petroleum refining is one of the leading industries in the US when measured in economic terms on the basis of the total value of shipments (See Exhibit 5)²⁰. Nevertheless, the US oil industry underwent economic difficulties in the 1980s and 1990 which arose from a number of factors including the following: the increased labor costs, the removal of subsidies and the need to comply with new safety and environmental regulations. In fact as part of the economic difficulties experienced during the 1990s, the US refineries had to comply with environmental regulations that cost an estimated US\$35-40 billion. A report by the National Petroleum Council stated that “given the projection of declining refinery use until the end of 1995, recovery of these costs will be difficult until capacity and demand are rebalanced by further capacity shutdowns and/or increased product demand”²¹. According to the American Petroleum Institute, the increase in environmental regulations, particularly the requirements of the Clean Air Act Amendments of 1990, was the most important factor that affected petroleum refining in the 1990s²². There was a major concern in the US that, in some cases, it might be cheaper for some refineries to close down partially or even entirely, rather than upgrade facilities to meet the standards of the new environmental regulatory standards.

The Clean Air Act and the Role of the EPA

The Environmental Protection Agency (EPA) was set up on December 2nd, 1970. The purpose of this US government agency was to combine a wide range of federal research, monitoring, standard-

¹⁹ Profile of the Petroleum Refining Industry. EPA Office of Compliance Sector Notebook Project, 1995. Available at <http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/petrefsn.pdf>. Access on August 12 2011.

²⁰ Ibid.

²¹ National Petroleum Council. Research, Development and Demonstration Needs of the Oil and Gas Industry. Vol. 1: Summary and Discussion, 1995, p. 7.

setting and enforcement activities in a single agency, and thus ensure environmental protection²³. The main role of EPA is to monitor compliance with specific environmental statutes, such as the Clean Air Act, the Resource Conservation and Recovery Act, and the Clean Water Act.

The Air Pollution Control Act of 1955 was the first US federal law to deal with air pollution. The Clean Air Act of 1970 resulted in a major shift in the federal government's role in air pollution control and significant amendments were made to it in 1977. Another set of key amendments to the Clean Air Act was carried out in 1990. The Clean Air Act and its amendments, including the Clean Air Act Amendments of 1990 (CAAA – 1990), were designed to “protect and enhance the nation's air resources so as to promote the public health and welfare and the productive capacity of the population”. This legislation authorizes the introduction of comprehensive federal and state regulations to limit emissions from both stationary (industrial) sources and mobile sources.

The CAAA – 1990 consists of six Titles. Pursuant to Title I of the CAAA – 1990, EPA has established National Ambient Air Quality Standards (NAAQSs) to reduce levels of “criteria pollutants”, including carbon monoxide, lead, nitrogen dioxide, particulate matter, ozone, and sulfur dioxide. Title I also authorizes EPA to lay down New Source Performance Standards (NSPSs), which are nationally uniform emission standards for new stationary sources that fall within particular industrial categories. NSPSs are based on the pollution control technology that is available to that category of industrial source, while granting the affected industries the flexibility to devise a cost-effective means of reducing emissions. In addition, Title I directs EPA to establish and enforce National Emission Standards for Hazardous Air Pollutants (NESHAPs).

Title II of the CAAA – 1990 is concerned with mobile sources, such as cars, trucks, buses, and planes. Reformulated gasoline, automobile pollution control devices, and vapor recovery nozzles on gas pumps are some of the mechanisms EPA uses to regulate mobile air emission sources. Title III

²² Statement of the American Petroleum Institute, Issues Affecting the Refining Sector of the Petroleum Industry, Hearings Before the Committee on Energy and Natural Resources, United States Senate, Washington, DC, May 19 and 28, 1992, U.S. Government Printing Office.

²³ EPA website. Available at <http://www.epa.gov/history/>. Access on August 12 2011.

directs EPA to compile a list of sources that emit any of 189 Hazardous Air Pollutants (HAPs), and to draw up regulations for these categories. Emission standards are being laid down for both new and existing sources based on “Maximum Achievable Control Technology (MACT)”.

Title IV implements a sulfur dioxide emissions program which is designed to reduce the formation of acid rain. Title V implemented an operating permit program for all the “major sources” regulated by the CAAA – 1990. One purpose of this operating permit is to include all the air emission requirements that apply to a given facility. Finally, Title VI is intended to protect stratospheric ozone by phasing out the manufacture of ozone-depleting chemicals and restricting their use and distribution²⁴.

EPA Gasoline Standards: the PdVSA struggle

In the 1990s, PdVSA was the second largest oil producer in the world and the seventh largest foreign investor in the United States. PdVSA was shipping gasoline to New York with 29.9% of a smog-producing chemical – known as olefins. Olefins lead to the formation of toxic nitrogen oxides. However, the CAAA – 1990 stipulated that the US refineries had to limit the level of olefins in gasoline to 9.2 percent by 1995. After that, only reformulated gasoline (RFG), with reduced emissions of olefins, would be allowed to be sold in the most polluted areas of the country (the Northeast of the United States). On the other hand, conventional gasoline could be sold in the rest of the country. U.S. oil refineries were concerned about the ambiguity of the legislation since it could allow Venezuela to sell gasoline in the US without respecting the 9.2 percent limit of olefins. There was even greater concern that it would cost US refineries an estimated amount of US\$ 35-40 billion to comply with the CAAA – 1990 regulations. In view of this real threat, two traditional enemies, the US oil industry and the environmental agencies, acted together to oppose imports of Venezuelan gasoline. The US refineries claimed that the EPA was protecting Venezuela’s gasoline industry and damaging the US oil producers. Environmental groups claimed that Venezuela was selling “dirty” gasoline to the US. As the United States was the largest importer of Venezuelan oil (around 65 per cent of the total oil exports),

²⁴ Clean Air Act – Amendments of 1990. Available at <http://thomas.loc.gov/cgi-bin/query/D?c101:5:./temp/~c101CwBjyw>. Access on August 12 2011.

the new US regulation represented a major problem for PdVSA. As a result, in 1993, it, announced a five-year environmental protection plan that would cost the company over US\$ 800 million.

After conducting negotiations with foreign and domestic producers, and in particular with PdVSA, the EPA laid down different standards for domestic and foreign oil refineries. The US refineries were required to establish an “individual historic baseline” through three different methods, which are as follows: Method 1 requires refineries to keep records of the quality and volume of gasoline produced or shipped in 1990. If the relevant data type were not available for Method 1, the domestic refinery had to use Method 2 that allows data type consisting of 1990 gasoline blend stock quality data and 1990 blend stock production records. If neither of these methods was available, the domestic refinery had to use Method 3 data type that consisted of post-1990 gasoline blend stock and/or gasoline quality data modeled in light of refinery changes to show the 1990 gasoline composition. According to EPA, as foreign oil refineries lacked “reliable data” for their gasoline, they had to prove the quality of their 1990 gasoline through a “statutory baseline”. Thus the foreign oil refineries were not allowed to use the same three different methods as the US refineries.

PdVSA claimed that it had sufficient data on the quality of the gasoline produced in 1990 and the company was able to fulfill an individual historic baseline through the same methods as the US companies. PdVSA also informed US officials that they should expect an oil shortage as the foreign refiners were not in a position to meet the statutory baseline in a short period of time. Brazilian officials informed EPA that the country would cease to export to the US when the regulations came into effect in 1995, because Brazil did not have the investment capacity to meet the new regulatory standards. Other foreign refineries claimed that the EPA regulations treated foreigners in a less favorable manner than the US refineries. From the European Union’s perspective, investments in reformulated gasoline that complied with the US regulations would not be economically feasible, as the European Union only exported a small amount of gasoline to the US.

After a further round of negotiations in 1994, EPA issued revised regulations that would allow foreign importers to use 1990 data to establish an “individual historic baseline” and demonstrate

their willingness to comply with the requirements of reformulated and conventional gasoline, in the same way as the local producers. The EPA inspectors would be granted full access to the foreign refinery so that they could conduct inspections and audits. This regulation was based on the assumption that EPA would be allocated funds in its budget to allow the EPA officials to conduct the inspections and audits outside US territory. However, the US Congress passed a bill prohibiting EPA from allocating funds to pay for inspections and audits required by the revised regulations outside the US. In short, the US Congress overruled the EPA's revised regulation by cutting its funds. Venezuela estimates that these US environmental regulations represent US\$150 million in lost sales. Following this, Venezuelan government officials filed a complaint at the WTO claiming that the United States was using non-tariff measures – environmental regulations – to protect the domestic market and bring about unfair and discriminatory trade.

The Battle at the WTO

In 1995, more than 123 nations were members of the newly formed World Trade Organization (WTO). As the United States and Venezuela were both members of the WTO, Venezuela was granted a special forum to hear its trade complaint against the US. Apart from Venezuela, any other WTO oil-exporting country member was entitled to file a complaint against the US regarding the gasoline regulations as well. This was the case of Brazil, a gasoline exporter to the US market that joined Venezuela in its complaint. Moreover, other WTO members that did not export oil to the US, might also be concerned with the US legislation and expected to join the dispute as third parties.

In March 1995, after making unsuccessful representations to the United States, Venezuela filed a request at the WTO Dispute Settlement Body (DSB) to set up a panel to examine whether the United States had violated the WTO Agreements (Article III:4 of the GATT-94 and the Technical Barriers to Trade Agreement – TBT Agreement) . In May 1995, after making similar unsuccessful representations to the United States with regard to the same matter, Brazil decided to join Venezuela in the panel dispute. Australia, Canada, the European Community and Norway reserved the right to participate in the dispute as third parties; however only the European Union and Norway presented their case to the panel. The main issue at stake was the fact that the EPA regulations in CAAA – 1990

violated the GATT-94 principle of national treatment by using different criteria to determine whether domestic and importing refineries complied with the requirements of the EPA and the CAAA – 1990. Venezuela and Brazil claimed that this regulation treated exporters of foreign-refined reformulated and conventional gasoline in a less favorable manner than domestic producers, and that the EPA rules were thus inconsistent with the US obligations under the WTO Agreements, in particular, Article III – National Treatment (See Exhibit 6). On May 31st 1995, the DSB formed a panel to examine the complaint filed by Venezuela and Brazil against the United States²⁵. The panel comprised three panelists from Finland, Hong Kong and New Zealand, respectively.

Venezuela and Brazil requested the panel to find that the EPA regulation in CAAA – 1990 was “(a) contrary to Articles I and III of GATT-94; (b) not covered by any of the exceptions under Article XX of GATT-94; (c) contrary to Article 2 of the Agreement on Technical Barriers to Trade”²⁶. On the other hand, the United States requested the panel to find that the EPA regulation in CAAA – 1990 was “(a) consistent with Articles I and III of the General Agreement 1994; (b) fell within the scope of Article XX (b), (d), and (g) of GATT-94; (c) consistent with the Agreement on Technical Barriers to Trade”²⁷.

Venezuela and Brazil argued that the EPA regulation on gasoline violated Article III:4 of GATT-94 because it accorded less favourable treatment to imported gasoline, (both reformulated and conventional), than to US gasoline. The regulation required imported gasoline to be in accordance with a more stringent statutory baseline whereas US gasoline only had to comply with a US refiner’s individual baseline. Furthermore, Venezuela stated that a “US government official had publicly stated that such discrimination was intentionally endorsed as a means of affording protection to US gasoline”²⁸. Venezuela and Brazil recalled that EPA did not impose on US refiners the burden of having to change its production procedures, although its gasoline was dirtier than the statutory baseline, but it did impose this requirement on foreign refiners as a result of this new regulation. Furthermore

²⁵ Costa, L.M. *Comércio Exterior. Negociação e Aspectos Legais*. Rio de Janeiro: Elsevier/Campos, 2005, p. 36-8.

²⁶ United States — Standards for Reformulated and Conventional Gasoline. Item 3.1. Available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds4_e.htm. Access on August 12 2011.

²⁷ Ibid. Item 3.4.

Brazil and Venezuela insisted that they were not challenging the right of the United States as a sovereign country to introduce legislation to protect the environment and the health of US citizens. On the contrary, they were just requesting the US to introduce rules that were consistent with the WTO Agreements.

The United States replied that the EPA regulations in CAAA – 1990 did not treat imported gasoline less favourably than domestic gasoline. The environmental aim of the regulation was to ensure an overall quality for the gasoline sold in the United States market. With regard to the US, domestically-produced gasoline had to be at least as clean as foreign gasoline²⁹. In order to protect the environment, “dirty” gasoline had to be banned from the US market. In addition, the gasoline regulations only applied to imported gasoline and not to that produced by foreign refiners. Furthermore, the US argued that the CAAA – 1990 fell within the GATT-94 Article XX Exceptions, which allowed countries to adopt measures that are “necessary for the protection of human, animal and plant life or health” (See Exhibit 7). As regards the US, air pollution posed “health risks to humans, animal and plants. Toxic air pollution was a cause of cancer, birth defects, damage to the brain or other parts of the nervous system, reproductive disorders and genetic mutation. It could affect not only people with impaired respiratory systems, but healthy adults and children as well”³⁰. The high levels of olefins in the Venezuelan gasoline were not only a threat to the US environment, but also and more importantly, could pose a health risk to the people living in the most polluted areas of the country, the main destination of the Venezuelan gasoline. According to the EPA, motor vehicles emit 75-90% of the carbon monoxide in the air and the olefin levels of the Venezuelan gasoline were three times higher than what was allowed domestically. Thus, the EPA regulation in CAAA – 1990 only seeks to protect public health and welfare by reducing emissions of toxic pollutants and is in accordance with Article XX of GATT-94.

In fact, according to the US, the EPA regulation in CAAA – 1990 falls within the scope of Article XX, “g”: related to the conservation of exhaustible natural resources; and clean air was one of

²⁸ Id. Ibid. Item 3.13.

²⁹ Id. Ibid. Item 3.17.

these exhaustible natural resources. By preventing air pollution, the CAAA – 1990 also protected other exhaustible natural resources such as lakes, parks and forests, which were affected by it³¹. In brief, the new US regulation does not bar Venezuelan or Brazilian oil.

The European Union stated that it did not challenge the right of the United States to enforce any legislation which was aimed at protecting human, animal or plant life or health, as long as this measure was in accordance with WTO Agreements and was not constructed to afford protection or represent disguised restrictions to trade. Norway added that the Norwegian State Oil Company (Statoil) was facing huge problems with the new regulation in the US. In 1989, Statoil built the Mongstad refinery for a single reason – to provide gasoline to the US market. In 1990, Statoil sold the US about 350,000 tons from the Mongstad refinery. Since December 1994, Statoil has no longer been exporting from Mongstad to the US market³².

Looking out on Lake Geneva, the Alps and Mont Blanc from the windows of the WTO Headquarters, Mr. Joseph Wong, the Chairman of the panel, and the two other members, Mr. Crawford Falconer and Mr. Kim Luotonen, wielded a two-edged sword. They had to decide whether the EPA regulation in CAAA – 1990 was in accordance with the WTO Agreements or not.

³⁰ Id. Ibid. Item 3.39.

³¹ Id. Ibid. Item 3.59.

³² Id. Ibid. Item 3.62.

Exhibit 1

Venezuela's Oil Fields

Source PdVSA. Available at <http://www.pdvsa.com/>. Accessed on August 12 2011.

Exhibit 2

Economic Indicators – Venezuela (1991-1993)

1991	Oil generated half of Venezuelans 10.4% growth rate
1992	1/5 of country's GNP from oil industry
1992	2/3 of all government revenues came from oil industry
1992	4/5 of all country's export earnings came from oil industry
1992	net inflow of foreign exchange \$US 12 billion
1992	Industry produced an average of 37,000 barrels condensates
1992	Total amount of petroleum avg. 2.1 million
1992	Price for a barrel of Venezuelan oil was US\$ 14.91
1993	prices for a barrel of Venezuelan oil was US\$ 13.40
1992	Conventional crude reserves 680 million to 63.33 billion barrels

Source: Venezuela – Oil, Gas Industry Profile. In: *National Trade Data Bank Market Reports*. 16 February 1994.

Exhibit 3**Exports of Crude Oil and Refined Products by Geographical Area
(Thousands of barrels per Day)**

Region	1992-1993	Percentage of exports
US and Canada	1,341 – 1,503	69.3%
Central America & Caribbean	350 – 340	15.7%
Europe	241 – 195	9.0%
South America	69 – 80	3.7%
Japan	6 – 8	0.3%
Others*	47 – 44	2.0%
Total	2,054 – 2,170	100.0%

* Includes bunkers

Source: Petróleos de Venezuela, S.A. Annual Report 1993 Venezuela: PDVSA, 1994, p. 25.

Exhibit 4**Resources to be spent by PdVSA on environmental protection plan (1993-98)**

VENEZUELAN ENVIRONMENTAL PROJECTS	MILLIONS OF US\$ SPENT ON ENVIRONMENTAL PROJECTS
Treatment and Disposal of Solid and Toxic Wastes	\$179
Treatment of Industrial Waste Water	\$158
Treatment of Oil Tainted Residues	\$147
Contingency Plans for Oil Spills and other Emergencies	\$21
Environmental Impact Studies (Not Available)	N/A
Atmospheric Emissions Controls	\$295
Total	\$800

Source: “Venezuelan Oil Company Announces Five-Year Environmental Plan”. In: *Environment Watch Latin America*. 3 (September 1993).

Exhibit 5
Top U.S. Companies with Petroleum Refining Operations

Rank^(a)	Company^(b)	1993 Sales (millions of dollars)
1	Exxon Corporation – Irving TX	102,847
2	Mobil Corporation – Fairfax, VA	56,910
3	El du Pont de Nemours and Co. (Conoco Inc., Subsidiary) – Wilmington, DE	38,031
4	Texaco Inc. – White Plains, NY	37,271
5	Chevron Corporation – San Francisco, CA	35,523
6	Amoco Oil Corporation – Chicago, IL	22,320
7	Shell Oil Company – Houston, TX	22,201
8	Atlantic Richfield Company – Los Angeles, CA	18,922
9	BP America Incorporated – Cleveland, OH	16,200
10	Caltex Petroleum Corporation – Dallas, TX	15,100

^(a) When Ward's Business Directory listed both a parent and subsidiary in the top ten, only the parent company is presented above to avoid double counting sales volumes. Not all sales can be attributed to the companies' petroleum refining operations.

^(b) Companies shown listed SIC 2911 as primary activity.

Source: Ward's Business Directory of U.S. Private and Public Companies - 1993.

Exhibit 6

GATT 94 - National Treatment

“Article III: National Treatment on Internal Taxation and Regulation

[...]

2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

[...]

4. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

[...]”.

Exhibit 7

GATT-94 - Article XX – General Exceptions

“Article XX: General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

[...]

(b) necessary to protect human, animal or plant life or health;

[...]

(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;

[...]

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

[...]”.