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UNITED STATES – MEASURES RELATING TO TRADE IN GOODS AND SERVICES

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY VENEZUELA

Revision

The following communication, received on 15 March 2021, from the delegation of Venezuela to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 28 December 2018, the Government of the Bolivarian Republic of Venezuela requested the holding of consultations with the Government of the United States pursuant to Article 4 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXIII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and Article XXIII of the General Agreement on Trade in Services ("GATS"). This request was circulated to WTO Members on 8 January 2019 as document WT/DS574/1, "United States – Measures relating to trade in goods and services".

On 25 February 2019, the United States informed the Government of the Bolivarian Republic of Venezuela that it was refusing its request for consultations.

The Government of the Bolivarian Republic of Venezuela therefore hereby requests that a panel be established in accordance with Article 6 of the DSU and Article XXIII:2 of the GATT 1994. The Government of the Bolivarian Republic of Venezuela intends to put forward suggestions regarding the information that should be sought under this procedure once the panel is established.

The measures that are the subject of this request are certain coercive and trade-restrictive measures, (i) consisting of inclusion on blacklists; and in relation to (ii) the sovereign debt market; and (iii) digital currency, imposed by the United States on the Bolivarian Republic of Venezuela in an attempt to isolate it economically. The measures include the following:

Statutes:

- (a) Venezuela Defense of Human Rights and Civil Society Act of 2014 ("VDHRA");
- (b) International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C §§ 1701-1706; and
- (c) National Emergencies Act ("NEA"), 50 U.S.C. §§ 1601-1651.

Regulations:

- (d) 31 CFR Part 591 – Venezuela Sanctions Regulations ("VSR").

Executive Orders:

- (e) Executive Order 13692 Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela (8 March 2015);

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- (f) Executive Order 13808 Imposing Additional Sanctions with Respect to the Situation in Venezuela (24 August 2017);
 - (g) Executive Order 13827 Taking Additional Steps to Address the Situation in Venezuela (19 March 2018);
 - (h) Executive Order 13835 Prohibiting Certain Additional Transactions with Respect to Venezuela (21 May 2018);
 - (i) Executive Order 13850 Blocking Property of Additional Persons Contributing to the Situation in Venezuela (1 November 2018); and
 - (j) Executive Order 13857 Taking Additional Steps to Address the National Emergency with Respect to Venezuela (28 January 2019).

The measures, and any amendment thereto, are inconsistent with the United States' obligations under Articles I:1, II:1, III:4, V:2, X:3, XI:1 and XIII:1 of the GATT 1994, and violate the United States' commitments under Articles II:1, XVI:2 and XVII:1 of the GATS.

The statutes, regulations and administrative procedures of the United States, and any amendment thereto, as listed above, are inconsistent as such with these provisions.

1. Discriminatory measures with respect to goods of Venezuelan origin. Adopted pursuant to the VDHRA, the IEEPA, Executive Order 13692 and the VSR, in violation of:
 - i Article I:1 of the GATT 1994, because they accord to products of Venezuelan origin treatment less favourable than that accorded to products of WTO Member countries that are not subject to the coercive and trade-restrictive measures. More specifically, in comparison to goods from WTO Member countries not subject to the coercive trade-restrictive measures, Venezuelan goods face, on account of these measures, a greater regulatory burden in terms of conditions governing importation, as well as restrictions on who can perform the import function, and unfair market opportunities once importation has taken place. All of this denies Venezuelan goods the equality of opportunities guaranteed by Article I:1 of the GATT;
 - ii Article III:4 of the GATT 1994, because they accord to products of Venezuelan origin treatment less favourable than that accorded to products of US origin. In comparison to products of US origin, products of Venezuelan origin face greater regulatory burdens and unfair market opportunities as a result of these coercive measures restricting trade;
 - iii Article V:2 of the GATT 1994, because they require the detention and seizure of certain goods transiting through the territory of the United States to another WTO Member country; and
 - iv Article XI:1 of the GATT 1994, as they operate as specific prohibitions on importation and exportation between the United States and the Bolivarian Republic of Venezuela, and constitute prohibited quantitative restrictions on the importation of products of the territory of a Member and on the exportation of products destined for the territory of another Member. In addition, even if the coercive trade-restrictive measures imposed on the Bolivarian Republic of Venezuela by the United States were not prohibited as quantitative restrictions, they would violate Article XIII:1 of the GATT 1994, inasmuch as like products of third-country WTO Members are not subject to equivalent prohibitions.

2. Discriminatory measures with respect to Venezuelan gold, established in Executive Order 13850.

The discriminatory and coercive trade-restrictive measures relating to gold from the Bolivarian Republic of Venezuela, established in Executive Order 13850, prohibit trade in Venezuelan gold in the United States and by United States persons. The measures in question are inconsistent with the United States' obligations under various provisions of the GATT 1994, including, in particular, the following:

- v Article I:1 of the GATT 1994, because they allow for the acquisition of Venezuelan gold with treatment less favourable than that accorded to gold for WTO Members not subject to the coercive trade-restrictive measures;
 - vi Article II:1(a) and (b) of the GATT 1994, because they accord to the commerce of Venezuela treatment less favourable than that provided for in the relevant Part of the United States Schedule of Concessions;
 - vii Article III:4 of the GATT 1994, because the United States does not accord Venezuelan gold treatment no less favourable than that accorded to like products from the United States;
 - viii Article X:3(a) of the GATT 1994, because the United States has not administered laws, regulations, decisions and rulings in relation to the measures in question in a uniform, impartial and reasonable manner; and
 - ix Article XI:1 of the GATT 1994, because, through the measures in question, the United States has instituted a prohibition and, therefore, restrictions other than tariffs, taxes or other charges, on the importation of products of the territory of the Bolivarian Republic of Venezuela.
3. Discriminatory coercive trade-restrictive measures with respect to the liquidity of the Venezuelan debt, adopted pursuant to Executive Orders 13808, 13827 and 13835.
 - x Given that the United States has undertaken to liberalize the financial services sector in its Schedule, it cannot maintain or adopt the measures described in Article XVI:2(a)-(f) of the GATS with respect to financial services, unless it has reserved the right to do so in its Schedule. Even if the United States, in its Schedule, appears to have reserved the right to adopt such measures in certain modes of supply, it has not reserved the right to adopt such measures in all modes of supply. Given that the coercive trade-restrictive measures of the United States constitute prohibited measures under Article XVI:2(a) and (b) in all modes of supply, they violate Article XVI:2 of the GATS.
 4. Discriminatory coercive trade-restrictive measures with respect to transactions in Venezuelan digital currency, adopted pursuant to Executive Orders 13808, 13827 and 13835.
 - xi The coercive trade-restrictive measures of the United States to which Venezuelan financial services and financial service suppliers are subject, under which suppliers receive less favourable treatment than that accorded to like services and service suppliers of WTO Member States not subject to the measures, are in violation of Article II:1 of the GATS. Furthermore, inasmuch as digital currencies originating in the United States are not subject to the same prohibitions as Venezuelan digital currencies, the United States accords less favourable treatment to Venezuelan financial services and service suppliers than to like domestic financial services and service suppliers, in violation of Article XVII:1 of the GATS.
 5. The discriminatory coercive measures restricting trade with respect to certain Venezuelan persons and prohibiting the provision and receipt of services by these persons, adopted pursuant to the VDHRA, the IEEPA and the VSR, violate Article II:1 of the GATS inasmuch as they accord less favourable treatment to Venezuelan services and service suppliers.

The above-mentioned measures at issue in this dispute appear to nullify or impair the benefits accruing to the Bolivarian Republic of Venezuela (1) directly or indirectly under the agreements cited, and (2) under the United States' specific commitments under the GATS within the meaning of Article XXIII:3 of the GATS.

In addition to, and irrespective of, the multiple violations of WTO obligations identified above, the Bolivarian Republic of Venezuela considers that, as a result of the application of the measures in question, the attainment of the objectives of the GATT 1994 is being impeded within the meaning of Article XXIII:1(b) of the GATT 1994.

The Bolivarian Republic of Venezuela submitted its request for the establishment of a panel on 14 March 2019. This request was circulated to WTO Members on 15 March 2019 as document WT/DS574/2. The Bolivarian Republic of Venezuela simultaneously asked that the request for the establishment of a panel be placed on the agenda for the next meeting of the Dispute Settlement Body, scheduled for 26 March 2019, but that meeting of the Dispute Settlement Body was cancelled and the panel request was never addressed at any of the subsequent meetings of the Dispute Settlement Body.

The Bolivarian Republic of Venezuela hereby resubmits the request for the establishment of a panel with standard terms of reference, in accordance with Article 7 of the DSU.

The Bolivarian Republic of Venezuela asks that its request for the establishment of a panel be placed on the agenda for the next meeting of the Dispute Settlement Body.
