

UNITED STATES – MEASURES RELATING TO TRADE IN GOODS AND SERVICES

REQUEST FOR CONSULTATIONS BY VENEZUELA

The following communication, dated 28 December 2018, from the delegation of the Bolivarian Republic of Venezuela to the delegation of the United States, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

Upon instructions from the authorities of the Bolivarian Republic of Venezuela, a request is hereby made for consultations with the Government of the United States of America ("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"), with respect to certain measures imposed by the United States in relation to trade in goods and services. These measures apply exclusively to trade with the Bolivarian Republic of Venezuela.

Pursuant to Article 4.4 of the DSU, the reasons for this request, including identification of the measures at issue and an indication of the legal basis for the complaint, are given below.

The United States has imposed certain coercive trade-restrictive measures on the Bolivarian Republic of Venezuela in the context of attempts to isolate Venezuela economically. The Government of the Bolivarian Republic of Venezuela refers *inter alia* to those trade-restrictive measures under which, through the United States Executive Branch, persons are put on the Specially Designated Nationals and Blocked Persons List ("SDN List"), the United States blacklist. The regulatory framework encompassing the unilateral coercive trade-restrictive measures imposed by the United States on the Bolivarian Republic of Venezuela includes, but is not limited to, 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. §§ 1601-1651.¹

Regulations:

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

¹ The NEA is not discussed any further in this section. The NEA is a federal US law, adopted in 1976, that seeks to stop the practice of open-ended national emergency declarations and to rebalance the power of the Legislative Branch with regard to national emergencies. It meets these objectives, for instance, by allowing an emergency to be terminated by a joint resolution of Congress or to be automatically terminated where not expressly renewed.

Executive Orders²:

- (e) Executive Order 13692 Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela (9 March 2015);
- (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); and
- (i) Executive Order 13850 Blocking Property of Additional Persons Contributing to the Situation in Venezuela (1 November 2018).

This regulatory framework provides for:

- (i) inclusion on blacklists;
- (ii) coercive trade-restrictive measures concerning the sovereign debt market; and
- (iii) coercive trade-restrictive measures concerning digital currency.

As explained in this document, the unilateral coercive trade-restrictive measures imposed by the United States on the Bolivarian Republic of Venezuela violate its obligations under Articles I:1, II:1, III:4, V:2, X:3, XI:1 and XIII:1 of the GATT 1994. The coercive trade-restrictive measures also violate the United States' commitments under Articles II:1, XVI:2 and XVII:1 of the GATS.

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 products of Venezuelan origin treatment less favourable than that accorded to products from 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, as a result of these measures, a greater regulatory burden in terms of conditions governing importation, as well as restrictions on who can perform this 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 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 trade-restrictive measures;
- (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

² Executive Orders are instructions given to the Executive Branch by the President of the United States. In the context of the coercive trade-restrictive measures, the President, in these Executive Orders, typically orders the Secretary of the Treasury, in consultation with the Secretary of State, to block the property of persons in certain categories that are specified by the President in the Executive Order (i.e. those on the SDN list).

- (iv) Article XI:1 of the GATT 1994, because 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.

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.

Discriminatory coercive trade-restrictive measures relating to gold from the Bolivarian Republic of Venezuela, as established in Executive Order 13850, prohibit trade in Venezuelan gold in the United States and by United States persons. The measures in question appear to be inconsistent with the United States' obligations under various provisions of the GATT 1994, in particular, but not limited to, 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 the commerce of Venezuela treatment less favourable than that provided for in the appropriate 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 duties, taxes or other charges, on the importation of products from 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. Since 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 treatment less favourable 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 is according 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. Discriminatory coercive measures restricting trade with respect to certain Venezuelan persons and prohibiting the provision of services by and the receiving of services from these persons, as 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.

This request for consultations also refers to any modification, replacement or amendment of the measures identified above, and any subsequent closely connected measures.

The above-mentioned measures appear to nullify or impair the benefits accruing to the Bolivarian Republic of Venezuela directly or indirectly under the cited agreements.

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. Furthermore, the measures in question appear to nullify or impair the benefits that the Bolivarian Republic of Venezuela could reasonably have expected to accrue to it under the United States' specific commitments under the GATS within the meaning of Article XXIII:3 of the GATS.

The Bolivarian Republic of Venezuela reserves the right to raise additional factual issues and legal claims under other provisions of the covered agreements in relation to the matters mentioned above during the course of the consultations and in any future request for the establishment of a panel in these proceedings. The Bolivarian Republic of Venezuela looks forward to receiving a reply from the United States to this request, with a view to setting a mutually convenient date for consultations.
