

Dispute Settlement Body
26 March 2021

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD
ON 26 MARCH 2021¹

Chairman: H.E. Mr Dacio Castillo (Honduras)

1.1. Prior to the adoption of the Agenda, the Chairman welcomed all delegations participating in the virtual meeting of the DSB and said that he wished to recall a few technical instructions regarding this virtual meeting. He noted that if a Member was unable to take the floor during the meeting because of a technical issue, the delegation could inform himself or the Secretariat and that Agenda item would remain open until the delegation could take the floor. In the alternative, the item would remain open temporarily, the meeting would proceed to the next Agenda item, and the DSB would revert to the open item after the technical issue had been resolved. If a technical issue remained unresolved, the delegation had the option to send the statement to the Secretariat with the request that it be read out by the Secretariat on behalf of that delegation during the meeting so that the statement could be reflected in the minutes of the meeting. He then drew attention to the proposed Agenda contained in document WT/DSB/W/679 and invited the United States to speak.

1.2. The representative of the United States said that, pursuant to Rule 6 of the Rules of Procedure for Meetings of the General Council, as agreed by the DSB, the United States proposed an amendment to the proposed Agenda. The United States proposed to remove item 4, referred to as "Request for the Establishment of a Panel by Venezuela." The United States said that item 4 of the proposed agenda contained an item that had been submitted by purported representatives of the government of Venezuela. This was not the case. The purported representatives of the Government of Venezuela attempted to place a similar item on the Agenda of the DSB meeting in March 2019. At that time, the US position was that the item had not been requested by the legitimate government of Venezuela and therefore could not be placed on the Agenda. The basis for the US position was straightforward: the United States – along with more than 50 other WTO Members – did not recognize the Maduro regime as legitimate. Instead, the United States recognized Juan Guaidó as the legitimate President of Venezuela. In the two years since the Maduro regime's last attempt to add its request to the DSB agenda, the US position had not changed. Now, the United States – as well as many other WTO Members – continued to not recognize the legitimacy of the Maduro regime. For that reason, the United States said that it must object to the adoption of a proposed agenda that included item 4, because that item had been requested, not on behalf of the legitimate government of Venezuela, but by individuals acting on behalf of the illegitimate Maduro regime. Those representatives did not have the right to place an item on the agenda of a DSB meeting on behalf of the government of Venezuela. The United States instead proposed that the DSB amend the proposed Agenda to remove item 4, such that the Agenda would contain only those items properly requested to be included by Members of the WTO. The United States invited all Members to join in adopting an amended Agenda.

1.3. The Chairman said that, in light of the US objection to the proposed Agenda, he wished to ask if Venezuela was in a position to withdraw its panel request from the proposed Agenda.

¹ The proceedings of this meeting were held in a virtual format only following the latest amendments to the COVID-19 related safety measures circulated by the WTO Health Task Force.

1.4. The representative of Venezuela said that in response to the question posed by the Chairman, Venezuela deeply regretted that it was, unfortunately, under the obligation to respond to the statement made by United States, which, under the influence of intolerance and repeating unusual and somewhat fragile arguments about the alleged legitimacy of Venezuela's Government, sought to paralyze the work of this important Body. It was reprehensible and inappropriate that one delegation sought to multi-lateralize its bilateral position and impose its confrontational agenda in a forum that had been established to settle disputes in an impartial and objective manner, in accordance with legal rules. Venezuela regretted that the United States had decided to block the Agenda of the present meeting, in response to the legitimate right of Venezuela to include on the Agenda of the present meeting the request for the establishment of a panel, submitted by Venezuela and contained in document WT/DS574/2/Rev.1, which had been circulated on 16 March 2021. Venezuela had a sense of *déjà vu*, since it had tried to include its panel request pertaining to this matter in 2019, with the same response from the United States. Venezuela believed, perhaps naively, that the new US government would open the door to respectful dialogue and ensure observance of public international law. Venezuela saw that this was not the case and that the words and actions continued to lack consistency.

1.5. Venezuela said that it could not withdraw its Agenda item since this would violate the sovereign rights of the Venezuelan people who were currently suffering an onslaught of illegal unilateral coercive measures imposed by the United States, which were at the root of Venezuela's panel request. In its panel request, Venezuela referred to certain coercive and trade-restrictive measures. He said that Venezuela's panel request, which had been circulated to all delegations in a timely manner, listed ten measures, including statutes, regulations, and executive orders, applied by the United States to Venezuela inconsistently with US obligations under the GATT 1994 and US commitments under the GATS. Those measures were as follows: (i) discriminatory measures regarding goods of Venezuelan origin; (ii) discriminatory measures regarding Venezuelan gold, established in Executive Order 13850; (iii) discriminatory trade-restrictive coercive measures on Venezuelan debt liquidity adopted under Executive Orders 13808, 13827, and 13835; (iv) discriminatory trade-restrictive coercive measures regarding transactions in Venezuelan digital currency adopted under Executive Orders 13808, 13827, and 13835; and (v) discriminatory coercive measures that restricted trade with certain Venezuelan persons and prohibited the provision and receipt of services by such persons.

1.6. Without going into detail regarding all the arguments for each violation, Venezuela wished to highlight some of those arguments in order to justify why it was requesting the establishment of a panel. Article I of the GATT 1994 was one of the key features of the multilateral trade system, because it supported the Most-Favored-Nation (MFN) principle. Venezuela believed that the United States violated this Article because it granted Venezuelan products less favorable treatment than that given to products from WTO Members that were not subject to the coercive and trade-restrictive measures. In addition, Venezuela emphasized that the US measures violated Article III, concerning the National Treatment principle, because they granted products of Venezuelan origin less favorable treatment than that given to products from WTO Members that were not subject to the coercive and trade-restrictive measures. With regard to services, since the United States had committed to liberalizing the financial services sector in its Schedule, it could not maintain or adopt the measures described in Article XVI:2(a) through (f) of the GATS, concerning financial services, unless it had reserved the right to do so in its Schedule.

1.7. It was Venezuela's intention to use all existing legal mechanisms to raise its voice and make itself understood. As it had been denounced on multiple occasions before the WTO, the negative impact of the illegal unilateral coercive measures imposed by the United States and its allies widely reduced financial resources of Venezuela, prevented supply of medicines and medical equipment, and affected the human rights and the self-determination of peoples. This was in violation of international law, the Charter of the United Nations, the rules contained in the WTO Agreements, and the principles governing peaceful relations between States. Through the US misnamed and illegal sanctions, Venezuela had been deprived of at least USD 30 billion in cash, which formed part of Venezuela's assets abroad, resources that should have been used to take care of the health, nutrition and integral rights of its people. Those who had confiscated Venezuela's assets and resources had shown great cruelty, even in the circumstances of a pandemic, disregarding the calls of the UN Secretary-General and High Commissioner for Human Rights and especially of the Venezuelan people. They had stepped up their economic warfare seeking to use the media in a deliberate and premeditated manner to fuel a disastrous situation in order to misrepresent Venezuela in all multilateral fora.

1.8. It was worth highlighting the preliminary report prepared by the UN Special Rapporteur, Ms Alena Douhan, on the negative impact of unilateral coercive measures on the enjoyment of human rights, during her visit to Venezuela between 1 and 12 February 2021. The conclusions of her preliminary report were compelling. Just by way of example, the report stated as follows: "Impediments to food imports, which account for more than 50% of food consumption, have led to the sustained growth of malnutrition over the past six years." It also stated that the impact of trade sanctions was particularly felt in the Venezuelan countryside, where agricultural activities had almost come to a halt since diesel imports were exhausted. Venezuela could still refine limited quantities of regular petrol, but it could not refine diesel used in heavy trucks and agricultural machinery. Many farmers had been obliged to leave their fields unattended while their machinery remained at a standstill. Ms Douhan was also critical of the sanctions imposed on Venezuela's oil exports. Since Venezuela was dependent on oil exports, the US embargo had strangled the whole economy. The Special Rapporteur agreed with Venezuela's complaint to the WTO, calling for the lifting of sanctions against Venezuela, the restitution of its assets, and guarantees of access for Venezuela to its resources that had been illegally frozen, as well as access to the global financial system. Venezuela invited Members to read the preliminary report carefully. Venezuela appreciated the understanding and solidarity of WTO Members in denouncing the unilateral coercive measures as a criminal practice that violated public international law.

1.9. Even in those hostile circumstances, Venezuela had made great efforts to guarantee the Bolivarian Social Welfare State, which had been seriously undermined by the unilateral coercive and illegal sanctions. However, Venezuela would be ready to take any available action, within the framework of multilateral agreements, to denounce those measures against Venezuela. Venezuela's channels of communication would remain open for respectful dialogue based on tolerance and the search for solutions. Venezuela asked the United States to reflect on whether, in more than 60 years, those types of measures used against other countries had achieved desired results. Venezuela also asked the United States to reflect on whether Venezuela was a threat to their national security. Venezuela asked the United States to look beyond the surface, to review the statistics, to ask itself if it understood the particular situation of the Venezuelan people, and, above all, if the United States wanted to continue to be directly responsible for the suffering of those people. Venezuela reiterated its call for respect for peoples' self-determination and joint efforts to strengthen multilateralism and the concept of a multipolar world without hegemony. Venezuela strongly called on the United States to stop making excuses and allow the establishment of the panel, in accordance with the DSU provisions. From the technical and legal point of view, Venezuela was submitting a file before the WTO that merited its consideration. Finally, Venezuela thanked the Chairman and WTO Members for their understanding and support of Venezuela's legitimate claim in order to take advantage of the circumstances provided under the WTO, in defense of law and multilateralism.

1.10. The representative of Peru said that Peru supported the US objection regarding the inclusion of item 4 on the proposed Agenda by the Maduro regime of Venezuela.

1.11. The representative of Brazil said that, in Brazil's, view the representatives of the Maduro regime did not have the legitimacy to speak on behalf of Venezuela at the WTO. Therefore, those representatives could not request the establishment of a panel in the DSB. Brazil hoped that every effort would be made to avoid paralysis of the regular work of the DSB. Brazil supported the amendment proposed by the United States to the Agenda of this meeting.

1.12. The representative of Colombia said that Colombia echoed and supported the concerns expressed by the United States. Colombia also supported the US proposal to amend the proposed Agenda by removing item 4. In Colombia's view only those items that had been properly requested to be placed on the Agenda should remain thereon.

1.13. The representative of the European Union said that, if the EU understood correctly, the United States was not ready to accept the panel request by Venezuela as being valid, as it was submitted by a government which the United States no longer recognized as the legitimate government representing Venezuela. In that case, the European Union would have expected the United States to rely on the security exceptions under Article XXI of the GATT 1994 and Article XIV *bis* of the GATS to justify any departures from basic GATT and GATS provisions that may exist with regard to the measures taken against Venezuela. The EU noted that the US measures at issue appeared justified by the security exceptions, so the challenge at issue could not, in any event, succeed. All that being said, the EU had to react for systemic reasons and express its concern at the prospect of the DSB being prevented from proceeding with the present meeting with all the items on the proposed

Agenda simply because that Agenda could not be adopted. There was a long-standing and widely recognised principle that DSB Agendas could not be blocked to the extent that they included items governed by negative consensus. That included first panel requests (governed by consensus), since they were a necessary precondition to second panel requests. That principle was of utmost importance because the binding nature of WTO dispute settlement rested on it. That said, the EU expected that the meeting be suspended, as a result of the US objection to the adoption of the proposed Agenda. That would allow the Chairperson and the WTO Members directly involved to consult in an effort to find a solution. The EU hoped that these efforts would rapidly yield a solution, so that the meeting could proceed to enable the DSB to discharge its important duties with which it was entrusted

1.14. The representative of Cuba said that Cuba recognized the legitimately elected government in Venezuela of Nicolás Maduro as well as the legitimate right of the delegation led by its Ambassador to request that this item be included on the proposed Agenda of the present meeting. Cuba said that Members should consider who was trying to paralyse the work of the DSB regarding this matter.

1.15. The representative of the Russian Federation stated that the Russian Federation wished to refer to its previous statement made at the DSB meeting on 26 April 2019 in support of the legitimate delegates of the government of Venezuela and wished to reiterate its principal position that the WTO was not an appropriate forum for political discussions. The Russian Federation was greatly concerned with the disruption of the normal functioning of the DSB due to political controversies between WTO Members, especially under the present challenging times for the dispute settlement system caused by the Appellate Body crisis. The Russian Federation expressed its hope for the quick resolution of this matter on mutually acceptable terms.

1.16. The Chairman said that, since Venezuela was not a position to withdraw its panel request under item 4 of the proposed Agenda, he would suspend the meeting in order to allow time for consultations. He thanked Members for their understanding regarding this matter.

1.17. The DSB took note of the statements and, as proposed by the Chairman, the meeting was suspended to allow time for consultations.
