

14 January 2019

(19-0204)

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Original: Spanish

**COLOMBIA – MEASURES CONCERNING THE DISTRIBUTION
OF LIQUID FUELS****REQUEST FOR CONSULTATIONS BY VENEZUELA**

The following communication, dated 9 January 2019, from the delegation of the Bolivarian Republic of Venezuela to the delegation of Colombia, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

Upon instructions from my authorities, I hereby request consultations with the Government of the Republic of Colombia ("Colombia") pursuant to Article 4 of the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article XXIII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), with regard to the measures maintained by the Colombian Government governing the distribution of liquid fuels.

In accordance with 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 set out below.

It appears that a series of distribution and licensing measures, and product surcharges, market access measures and pricing policies applied by the Government of Colombia may be directly or indirectly discriminating against imported liquid fuels. In particular, Colombia has imposed measures limiting the distribution of liquid fuels imported, *inter alia*, from Venezuela to municipalities and towns in departments situated in border areas between Colombia and Venezuela, such as La Guajira, Norte de Santander, Arauca, Vichada and Guainía.

According to these measures:

- Fuels imported from Venezuela may only enter Colombian territory through specific places and at specific times via the indicated routes;
- Liquid fuels imported from Venezuela must be sent to certain collection points for storage and distribution to supply facilities;
- Fuels imported from Venezuela may only be distributed by authorized wholesale distributors or other suppliers that have been approved as authorized agents by the Colombian Ministry of Mines and Energy;
- The maximum volume of liquid fuel that may be imported from Venezuela is assigned by the Colombian Mining and Energy Planning Division ("UPME"); and
- Liquid fuels imported into Colombia from neighbouring countries other than Venezuela, through Colombian municipalities bordering those countries, are not subject to the import regulations applicable to imports from Venezuela.

These measures are reflected in legal and public policy instruments and regulations that include the following, operating separately or collectively:

1. Law No. 681 of 9 August 2001 ("Law No. 681/2001") modifying the regime applicable to fuel concessions in border areas and establishing other regulations related to fuel taxation: Under Article 1, Ecopetrol S.A. ("Ecopetrol"), the largest oil company in Colombia, has monopoly rights on fuel distribution;
2. Decree No. 386 of 13 February 2007 ("Decree No. 386/2007") of the Ministry of Mines and Energy, regulating Article 1 of the above-mentioned Law No. 681/2001 and establishing special rules for municipalities situated along the border with Venezuela, such as those in Arauca, La Guajira, Guainía, Vichada and Norte de Santander;
3. Supply plans for the distribution of liquid fuels, *inter alia*, of Venezuelan origin by Ecopetrol in municipalities and towns situated in border areas, as approved by the Colombian Ministry of Mines and Energy;
4. Resolution No. 1240104 of 23 April 2007 issued by the Ministry of Mines and Energy, approving the supply plans for the distribution of fuels imported from Venezuela and/or produced in the country in border municipalities in the department of Arauca, and granting certain approvals and introducing other measures (the plans have been modified from time to time);
5. Resolution No. 124539 of 23 September 2007 issued by the Ministry of Mines and Energy, approving the supply plans for the distribution of liquid fuels imported into Colombia from Venezuela and/or produced in the country in border municipalities in the department of Guainía;
6. Resolution No. 124112 of 23 April 2007 issued by the Ministry of Mines and Energy, approving the supply plans for the distribution of liquid fuels imported into Colombia from Venezuela and/or produced in the country in border municipalities in the department of Vichada;
7. Resolution No. 124106 of 23 April 2007 issued by the Ministry of Mines and Energy, approving the supply plans for the distribution of fuels imported into Colombia from Venezuela and/or produced in the country in border municipalities in the department of La Guajira;
8. Resolution No. 124371 of 29 December 2008 issued by the Ministry of Mines and Energy, approving the supply plans for the distribution of fuel imported into Colombia from Venezuela and/or produced in the country in border municipalities in the department of Vichada;
9. Resolution No. 01476 of 25 February 2005;
10. Resolution No. 07944 of 2 September 2005;
11. Decree No. 4299 of 25 November 2005 of the Ministry of Mines and Energy, regulating Article 61 of Law No. 812 of 2003 and establishing criteria for qualifying as an Authorized Agent;
12. Decree No. 1503 of 19 July 2002 of the Ministry of Mines and Energy, regulating the marking ("identification") of liquid fuels during the storage, handling, transportation and distribution process;
13. Resolution No. 42066 of 2017 issued by the Ministry of Mines and Energy, establishing, *inter alia*: (1) the methodology used to determine the maximum volumes of liquid fuel and so-called ACPMs (engine fuel oils and similar) exempt from VAT, import tax and gas tax in each municipality recognised as a border area; (2) the channel for distribution to collection centres authorized by the Colombian Ministry of Mines and Energy; (3) the methodology used to determine the volumes for the border municipality in question; and (4) a list of municipalities considered as border municipalities for the purposes of importing and/or producing liquid fuels;
14. Law No. 812 of 26 June 2003 approving the 2003-2006 National Development Plan for a Community State and establishing who shall act as agents in the supply chain for the distribution of liquid fuels in Colombia.

These measures appear to be inconsistent with Colombia's obligations under Articles I:1, III:4, V, XI:1 and XXIV:12 of the GATT 1994.

- Article I:1 of the GATT 1994, because by imposing restrictions on the distribution of Venezuelan fuel, Colombia is subjecting Venezuelan liquid fuels to treatment less favourable than that accorded to fuels from other countries;
- Article III:4 of the GATT 1994, because the measures constitute laws, regulations and requirements affecting the internal sale, offering for sale, purchase or distribution of liquid fuels and fail to accord to products imported into Colombia treatment no less favourable than that accorded to like products of Colombian origin.
- Article V:2 of the GATT 1994, because the Resolution denies freedom of transit through Colombian territory, via the routes most convenient for international transit, for traffic in transit to or from Venezuelan territory;
- Article XI:1 of the GATT 1994, because the measures constitute a prohibited quantitative restriction; and
- Article XXIV:12 of the GATT 1994, because Colombia has not taken such reasonable measures as may be available to it to ensure observance of the provisions of the GATT 1994 by the regional and local governments and authorities within its territory.

Without prejudice to the measures identified herein, the requested consultations also concern any other regulatory instrument, guidelines, practices, decisions or administrative and/or judicial acts that regulate or implement the measures in question, including those that could formally amend them and that were not mentioned previously, as well as specific instances of application.

Venezuela also informs Colombia that in the course of the consultations it may be necessary to discuss other factual or legal points linked to the measures in question and/or raise other issues under the WTO covered agreements that have not been mentioned in this request and that are related to other obligations of Colombia under the WTO, including, but not limited to, its obligations under Articles X:3 and XIII of the GATT 1994.

In Venezuela's view, these measures appear to nullify or impair the benefits accruing directly or indirectly to Venezuela under the GATT 1994.

Venezuela looks forward to receiving a reply from Colombia to this request and arranging a mutually convenient date for consultations.
