

VENEZUELA

TRADE SUMMARY

U.S. goods exports in 2014 were \$11.3 billion, down 14.1 percent from the previous year. Venezuela is currently the 27th largest export market for U.S. goods. Corresponding U.S. imports from Venezuela were \$30.2 billion, down 5.6 percent. The U.S. goods trade deficit with Venezuela was \$18.9 billion in 2014, an increase of \$86 million from 2013.

U.S. exports of services to Venezuela were \$7.0 billion in 2013 (latest data available), and U.S. imports were \$700 million. Sales of services in Venezuela by majority U.S.-owned affiliates were \$4.2 billion in 2012 (latest data available), while sales of services in the United States by majority Venezuela-owned firms were \$613 million.

The stock of U.S. foreign direct investment (FDI) in Venezuela was \$14.5 billion in 2013 (latest data available), up from \$13.5 billion in 2012. U.S. FDI in Venezuela is led by the manufacturing, nonbank holding companies, and finance and insurance sectors.

TECHNICAL BARRIERS TO TRADE/SANITARY AND PHYTOSANITARY BARRIERS

Sanitary and Phytosanitary Barriers

Venezuela continues to ban select U.S. beef, cattle and poultry product imports in a manner that appears to be inconsistent with World Organization for Animal Health (OIE) guidelines and recommendations. All U.S. beef, beef products and live cattle imports are banned due to a 2003 *bovine spongiform encephalopathy* (BSE) directive despite the fact that the OIE now classifies the United States as negligible risk for BSE. The total beef and live cattle import market is estimated at \$2.1 million.

Venezuela's import regulations related to poultry meat do not specifically ban imports from the United States, but its implementation of the regulations effectively bans U.S. poultry meat from the country. According to Venezuelan import regulations, poultry meat from any country that has had an occurrence of avian influenza is prohibited from importation into Venezuela. Venezuelan authorities have failed to comply with OIE guidelines, and they have refused to meet with USDA sanitary regulatory officials to discuss the issue.

IMPORT POLICIES

Venezuela has increased direct government purchases and implemented new import requirements and procedures for obtaining pre-import approvals, import permits, and foreign currency. These measures have disrupted trade by increasing the burden on exporters and importers. Many of these requirements are waived when increased imports are deemed necessary to maintain minimum levels of supply.

Venezuelan importers continue to complain about the government's unwillingness to approve import permits, requests for foreign exchange, and other documents when importing from the United States. In cases related to import of basic grains, such as wheat, the government has reportedly told importers to increase imports from South America. In addition, requests for imports from Mercado Común del Sur (MERCOSUR) and Caribbean countries are reportedly handled and approved faster than requests for imports from the United States. It appears that the overall impact of these policies has been limited, however, due to the overriding lack of foreign currency, the need for inputs, and the lack of supply from competing countries.

Public sector entities and state-owned enterprises are not required to present or maintain import licenses, to pay tariffs, or to present any documents or certificates related to the regulation of customs and duties, according to an executive resolution signed in March 2012. The Venezuelan government has stated that this measure was passed in order to simplify administrative procedures for import and export. However, it imposes significant competitive disadvantages on private sector entities, which are typically denied similar treatment. Venezuela has on occasion extended this treatment to private sector actors for short periods of time in order to facilitate imports of products it deems to be in shortage. The total shares of private sector imports decreased by 8.7 percent to 58.8 percent in the first six months of 2014 when compared to the same period in 2013.

Tariffs

Venezuela's average applied tariff rates were 16.8 percent on agricultural goods and 12.8 percent on non-agricultural goods in 2013. Venezuela's average bound tariff rates were 55.8 percent on agricultural goods and 33.6 percent on non-agricultural goods.

MERCOSUR admitted Venezuela as its fifth full member on July 31, 2012. Venezuela has four years from its date of accession to adopt the MERCOSUR common external tariff (CET) and to provide duty-free treatment to its four MERCOSUR partners on all goods, with a two-year extension allowed for sensitive products. By April 1, 2014, Venezuela had adopted the CET for 50 percent of the goods in its tariff schedule. It will phase in the adoption of the remainder of the CET schedule on an annual basis with full implementation of the CET completed in 2016.

Venezuela's customs authorities are empowered to establish reference prices for calculating import duties. The Customs Tariff Schedule establishes 11 levels of *ad valorem* import duty rates, ranging from zero to 20 percent, with some rates in some sectors up to 35 percent. In addition to import duties, importers must pay 1 percent of the value of goods as a customs service fee, as well as a value-added tax, which is currently 12 percent of the cost, insurance, and freight (CIF) value of the product.

Price Controls

In an attempt to regulate local production and control market prices of basic consumable products, Venezuela has instituted a number of laws and decrees that impose price controls, dictate product movements throughout the distribution chain, and limit profit margins of manufacturers and retailers. These measures have led to significant decreases in local production, forcing the government to increase imports to meet total demand. Total imports equaled roughly 50 percent of total consumption in 2013, according to the central bank's most recently published data.

On January 24, 2014, President Maduro used decree authority to promulgate the Fair Costs and Prices Law with the intent to further regulate the private sector with profit limits, audits, and penalties. The law applies to any resident in Venezuela conducting any type of economic activity. The law created a new Venezuelan government institution, the National Superintendent for the Defense of Socio-Economic Rights (SUNDDE), by merging the Superintendent for Fair Costs and Prices and the Institute for the People's Defense for Access to Goods and Services. SUNDDE is the new authority empowered to decide whether prices are "fair" and to identify profit limits for businesses. Businesses that are found in compliance will be given a "Certificate of Fair Prices" that will be required in order to apply for hard currency through the newly established National Center for International Trade (CENCOEX).

Currency Controls

Venezuela continues to maintain strict currency controls that were implemented in 2003. The measures continue to pose a significant obstacle to most trade with Venezuela. Many companies report that they cannot obtain sufficient foreign currency to satisfy their business needs.

Venezuelan law has established three foreign exchange (FX) mechanisms to sell dollars to the private sector. From February 2003 to March 2014, the primary mechanism of Venezuela's FX regime was the Commission for the Administration of Foreign Exchange (CADIVI). The Venezuelan government eliminated CADIVI in 2014 and folded its responsibilities into the newly established CENCOEX.

CENCOEX oversees two of the Venezuelan government's three FX mechanisms. The first mechanism, called simply CENCOEX, operates much as CADIVI did, selling dollars at the official exchange rate of 6.3 bolivars/dollar for imports of specific goods and services deemed national priorities, including food, medicine, and medical supplies. As with CADIVI, firms and individuals soliciting dollars from CENCOEX must register with the body and obtain supporting documentation from various Venezuelan government ministries, *e.g.*, certificates of non-national production of the proposed imports and statements of good standing with the tax authorities. The second CENCOEX-operated mechanism, the Complementary System of Foreign Exchange (SICAD), periodically sells dollars to specific priority sectors at roughly 12 bolivars/dollar. SICAD has not operated since November 2014.

The Venezuelan central bank (BCV) oversees the third currency exchange mechanism, the Marginal Currency System (SIMADI), which replaced the Alternative System of Foreign Exchange (SICAD II) in February 2015. SIMADI allows for three distinct currency exchange activities undertaken by different authorized agents: wholesale currency trading for firms by commercial banks; retail foreign currency trading for individuals by commercial banks and exchange houses; and trading in dollar-denominated securities by commercial banks and stock brokers through the public-sector stock exchange. The BCV publishes daily SIMADI's exchange rate, which is a weighted average of the exchange rates realized through the wholesale of currency and securities-based transactions. The BCV has controlled the SIMADI exchange rate, allowing it to depreciate gradually from roughly 170 to 180 bolivars/dollar in its first month of operations. Venezuelan firms and financial analysts have reported that SIMADI has not been able to satisfy the market demand for hard currency, much like its predecessors SICAD I and SICAD II were unable to do.

Private sector firms and independent analysts report that sales through Venezuela's FX mechanisms are arbitrary and lack transparency. The time to receive authorization for foreign currency through the CENCOEX-operated mechanisms varies in length, but can take more than nine months from the beginning to the end of the process and requires the submission of various supporting documents by the Venezuelan importer, with the support or collaboration of the exporter. Businesses and individuals report rejections of applications after initial approval and approval of applications after rejection.

Local Content Requirements

Venezuela implemented a 35 percent local content requirement in domestically assembled vehicles, effective December 4, 2013. Assemblers have stated that this requirement is problematic but an improvement on the previous local content requirement of 50 percent, which was in effect through 2013. The limited capacity of local industry to produce components makes satisfying the 35 percent local content difficult, and the general lack of hard currency to import inputs has reduced production levels severely. Furthermore, local motor assembly, which could contribute to meeting the local content requirement, is considered prohibitively expensive given the variety of motors and the size of production runs required.

Since September 2012, Venezuela has required domestically-produced and imported vehicles to use a Venezuela-specific vehicle identification number, contrary to international standards and practice.

Tariff-Rate Quotas

Venezuela maintains the authority to impose tariff-rate quotas (TRQs) for up to 62 tariff lines. Venezuela administers TRQs for oilseeds, corn, wheat, milk and dairy, and sugar. The procedure for issuance of import licenses under these TRQs is not transparent, and the relevant rules are inconsistently applied by Venezuela authorities. For example, Venezuela has not published regulations establishing the TRQ mechanism for some eligible products, while for products that have established TRQ mechanisms, such as pork, the TRQ mechanism is not applied. This leads to great uncertainty for U.S. exporters, who face duties ranging from 8 percent to 20 percent depending on whether the TRQ is applied.

GOVERNMENT PROCUREMENT

Venezuela's government procurement law covers purchases by government entities, national universities, and autonomous state and municipal institutions. It is not clear to what degree the procurement law applies to joint ventures in which a state entity has a controlling interest. The law requires a procuring entity to prepare a budget estimate for a procurement based on reference prices maintained by the Ministry of Light Industry and Trade.

Although the law forbids discrimination between domestic and foreign suppliers, it provides that the President can mandate temporary changes in the bidding process "under exceptional circumstances," in accordance with "economic development plans" that promote national development or provide preferences to domestic goods and suppliers. These measures can include price preferences for domestic goods and suppliers, reservation of procurements for nationals, requirements for domestic content, technology transfer, or the use of local labor and other incentives to purchase from companies domiciled in Venezuela. For example, Government Decree 1892 establishes a 5 percent preference for bids from companies whose products have over 20 percent local content. In addition, half of that 20 percent of content must be from small to medium domestic enterprises.

The Venezuelan government is increasingly awarding contracts directly, thus avoiding competition required by the government procurement law. A presidential decree in 2008 established a National Service of Contractors, with which firms must register in order to sell to government entities. Tenders are not accepted without prior registration.

Venezuela is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Venezuela remained on the Priority Watch List in the 2014 Special 301 Report. Key concerns cited in the report relate to the deteriorating environment for the protection and enforcement of intellectual property rights (IPR) in Venezuela. The reinstatement of the 1955 Industrial Property Law in 2008 has created uncertainty about the consistency of domestic laws and international obligations with respect to patent and trademark protections. Copyright piracy and trademark counterfeiting remain widespread, including piracy over the Internet. Other concerns include the lack of effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. Venezuela has taken steps to enforce the 2010 Law on Crimes and Contraband, which established enhanced penalties for smuggling violations and provides for the seizure of infringing goods. However, Venezuela must still make significant improvements to its regime for IPR protection and increase enforcement against counterfeiting and piracy, both physical and online.

SERVICES BARRIERS

Venezuela maintains restrictions on a number of services sectors, including professional services, audiovisual, and telecommunications services. In any enterprise with more than 10 workers, foreign employees are restricted to 10 percent of the work force, and Venezuelan law limits foreign employee salaries to 20 percent of the payroll.

Professional Services

Foreign equity participation in professional firms is restricted to a maximum of 19.9 percent. Only Venezuelan citizens may provide accounting and auditing services to government institutions and other government entities such as banks and hospitals. In addition, only Venezuelan citizens may act as accountants for companies in which the government has at least a 25 percent ownership interest. Foreigners are required to establish a commercial presence for the provision of engineering services.

Financial Services

Under a 2010 Venezuelan insurance law, at least half of the members of the board of insurance companies must be of Venezuelan nationality. In addition, all members of the board must be living in and have resident status in the country

Under the 2011 Venezuelan banking law, foreign banks without subsidiaries in Venezuela may act within Venezuela only through their representatives in Venezuela. With respect to services of the foreign bank they represent, such representatives may only promote the services among companies of the same nature that operate in Venezuela; among individuals and companies interested in the purchase or sale of goods and services in foreign markets (for financing services); and among potential applicants for credits or external capital. In addition, the banking law expressly prevents representatives from carrying out operations and rendering services that constitute activities of the foreign bank that they represent; receiving funds and investing such funds directly or indirectly in Venezuela; offering or investing in securities or other foreign securities within Venezuela; or advertising their activities in Venezuela.

Audiovisual Services

Venezuela limits foreign equity participation to less than 20 percent for enterprises engaged in Spanish language TV and radio broadcasting. At least half of the TV programming must be dedicated to national programming. Additionally, half of both FM and AM radio broadcasting must be dedicated to Venezuelan-produced material. In the case of music, 50 percent of the Venezuelan-produced material must be traditional Venezuelan songs. There is also an annual quota on the distribution and exhibition of Venezuelan films. The Venezuelan government film agency determines how many copies of foreign films shown in one year may be produced and sold for distribution in the following year. At least 20 percent of those authorized copies for distribution must be made in Venezuelan reproduction facilities.

INVESTMENT BARRIERS

The Venezuelan government continues to control key sectors of the economy, including oil, petrochemicals, and much of the mining and aluminum industries. Venezuela began an ambitious program of privatization under the Caldera administration (1994-1999), but under the late President Chavez administration, privatization was halted and the Venezuelan government re-nationalized key sectors of the economy. There have been 1,280 state interventions (expropriations, private property seizures, and nationalizations) in the private sector since 2002, according to the industry association CONINDUSTRIA (Confederación Venezolana de Industriales). Of these, 40 percent are companies involved in the construction sector, 32

percent in the industrial sector (manufacturing, agro-industrial, agriculture or related industries), 17 percent in the oil sector, and 9 percent in the service and trade-related sectors. Other sectors affected have included food, mining, chemical, and transport services.

Foreign investment continues to be restricted in Venezuela's petroleum sector. The exploration (except for natural gas offshore), production, refinement, transportation, storage, and foreign and domestic sale of hydrocarbons are reserved to the government, though private companies may engage in oil and gas production through joint ventures with the state-owned petroleum company, *Petróleo de Venezuela, S.A. (PDVSA)*. Although Venezuelan law requires a competitive process for awarding stakes in exploration and production acreage to private partners for projects to be developed by PDVSA, the government may directly award contracts when the project is to be developed under special circumstances or is of national interest. Oil companies from politically strategic partner countries seem to be the preferred partners for the development of many new projects.

Government decisions to force international oil companies to accept the conversion of their projects to minority stakes in joint ventures without the right to operate, to impose windfall profits taxes, and other moves have substantially increased uncertainty in the hydrocarbons sector. Companies that have refused to transfer their investment stakes in oilfield projects have had control of these investments taken over by the government, leading to international arbitration claims against Venezuela.

In January 2012, former President Chavez announced that Venezuela would not recognize any arbitral decision relating to one of these claims, and in July 2012, he officially withdrew Venezuela from the World Bank's International Center for Settlement of Investment Disputes (ICSID). Twenty-five ICSID cases against Venezuela are currently pending, making Venezuela the country with the largest number of pending ICSID claims.

Venezuela also controls the state assets and services involved in gas compression and in the injection of water, steam, or gas into petroleum reservoirs. The government is required to have at least a 50 percent ownership stake in petrochemical companies. In August 2010, the National Assembly passed a law merging all electricity utilities under one central holding entity with 75 percent direct government ownership and 25 percent PDVSA ownership. The state-owned electric company, *CORPOELEC*, controls electric power generation, transmission, and distribution.

The state-owned *Corporación Venezolana de Guayana* controls steel and aluminum production, electricity generation, and mining. In 2012, the government failed to renew the concession for the Paso del Diablo coal mine, partly owned by U.S. firm Peabody Company, and *Minera Loma de Nickel*, a nickel mining concession owned by London-based Anglo-American Company. In 2010, then-President Chavez declared that he would order the Ministry of Basic Industry and Mines to cancel all mine concession agreements and expropriate gold and diamond mining activity taking place in the state of Bolivar. In practice, Venezuela has waited in some cases for concessions to expire and then has announced it would not renew them.