

# VENEZUELA

## TRADE SUMMARY

The United States' trade deficit with Venezuela was \$14.3 billion in 2003, an increase of \$3.6 billion from \$10.7 billion in 2002. U.S. goods exports in 2003 were \$2.8 billion, down 35.9 percent from the previous year. Corresponding U.S. imports from Venezuela were \$17.1 billion, up 13.6 percent. Venezuela is currently the 33rd largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Venezuela were \$2.9 billion in 2002 (latest data available), and U.S. imports were \$454 million. Sales of services in Venezuela by majority U.S.-owned affiliates were \$4.7 billion in 2001 (latest data available).

The stock of U.S. foreign direct investment (FDI) in Venezuela in 2002 was \$10.8 billion, up from \$10.6 billion in 2001. U.S. FDI in Venezuela is concentrated largely in the mining, manufacturing and utilities sectors.

## IMPORT POLICIES

### Tariffs

Venezuela has been using the tariffs under the Andean Community's price-band system since 1995 for certain agricultural products, including feed grains, oilseeds, oilseed products, sugar, rice, wheat, milk, pork and poultry. Yellow corn was added to the price-band system in 1996, and processed poultry was added in 2001. *Ad valorem* rates for these products are adjusted according to the relationship between market commodity reference prices and established floor and ceiling prices. When the reference price for a particular market commodity falls below the established floor price, the compensatory tariff for that commodity and related products is adjusted upward. Conversely, when the reference price exceeds the established ceiling, the compensatory tariff is eliminated. Floor and ceiling prices are set once a year based on average prices during the past five years. Venezuela publishes these prices each April.

In addition to the traditionally high import tariffs of the Andean Community's price-band system, Venezuela also protects its agricultural producers through a non-legislated system of guaranteed minimum prices, and, most importantly, the restrictive use of import licenses and permits. Management of tariff-rate quota (TRQ) commitments by the government of Venezuela has been arbitrary and non-transparent and has negatively affected trade in basic agricultural commodities as well as processed products. The Venezuelan government has denied the issuance of import licenses for both in-quota and over-quota quantities, even though importers are willing to pay the over-quota tariff for additional product.

U.S. agricultural exporters advise that the Venezuelan government also fails to open the quotas on time and for some products, such as pork, the government has refused to "activate" the quota at all. Venezuela announced in late 2001 that it would not grant import licenses for corn until all domestic white corn had been marketed, resulting in an effective import ban. Venezuela also has restricted the issuance of import licenses for sorghum, soybean meal, yellow grease, pork, poultry, oilseeds, and some dairy products. The government of Venezuela no longer publishes information on license requests or license issuance.

Assembled passenger vehicles constitute an exception to the generalized 20 percent maximum tariff and are subject to 35 percent import duties.

### Non-Tariff Measures

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In response to the rapid decline of the national currency, the bolivar, after a two-month general strike which halted oil production, the Central Bank of Venezuela stopped trading bolivars on January 22, 2003. President Chavez then announced the creation of an Exchange Administration Board (CADIVI) on February 5. Throughout 2003, CADIVI continued to have difficulty processing requests for authorization of foreign exchange in an efficient and timely manner, although there has been improvement over time. Despite the promulgation of procedures, regulations, and some authorizations of transactions, by the end of the year the official system had supplied only \$3.6 billion, approximately three months' worth of transactions in a non-regulated Venezuelan economy. Delays of over sixty days from the time of authorization to access foreign currency until disbursement by a bank are common under the current system. Under the exchange control administration, import currency certificates are granted to companies on a case-by-case basis only for products pre-approved by the government for import. Although the number of currency certificate approvals has been increasing during 2003, industry representatives note that CADIVI is operating with a significant backlog in approvals and liquidations.

Agricultural products have received the majority of dollar allocations under the CADIVI system because most basic food products are on the import list. Even so, the problems with coordinating the timing of access to dollars, approval of import permits and licenses, and contracting for shipments have led to numerous delays and cancelled shipments. Trade in higher-value products, such as apples, pears, grapes, nectarines, and other fruits and nuts has been dramatically reduced because they are not included among the list of high priority products for which foreign exchange is available under the current currency controls.

Venezuela also requires that importers obtain sanitary and phytosanitary (SPS) permits from the Ministries of Health and Agriculture for most pharmaceutical and agricultural imports. In 2002 and 2003, the government increasingly appeared to use this requirement to restrict agricultural and food imports without providing evidence of a scientific basis, which raises concerns about the consistency of these practices with World Trade Organization (WTO) requirements. The Venezuelan government continues to issue SPS permits in a wholly discretionary manner without citing SPS concerns, and this restriction in particular affects trade in pork, poultry, beef, apples, grapes, pears, nuts, onions, and potatoes.

Although the government of Venezuela has not published requirements on absorption agreements, it has been common practice for years to require the purchase of domestic production before issuing import licenses or permits. Importation of yellow corn is dependent upon the purchase of local sorghum and/or white corn. Soybean imports are dependent upon the purchase of "locally produced" soybean meal and permits for grape and black bean imports have been tied to the purchase of local product. The use of absorption requirements is extremely subjective because Venezuela lacks a good statistical system to track levels of domestic crop production.

This discretionary use of import licensing and permitting procedures to curtail agricultural imports has become a major problem for the United States and other countries. Venezuelan government officials have been notified by various countries that these and other licensing practices appear to be inconsistent with Venezuela's WTO commitments. As a result, in November 2002, the United States Trade Representative initiated formal WTO consultations with Venezuela on its agricultural import license procedures for a wide-range of products. Canada, the EU, Chile, Argentina, and New Zealand participated in the consultations and posed questions to the government of Venezuela.

Venezuela prohibits the importation of used cars, used buses, used trucks, used tires, and used clothing. No other quantitative import restrictions exist for industrial products.

Venezuelan officials continue to discuss plans to improve customs procedures to better control the entry of illicit merchandise. The Venezuelan Commission on Antidumping and Safeguards has started

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investigations on the importation of steel and paper products as well as clothing and footwear. It appears that deficient customs procedures and contraband were contributing factors in those industries' calls for protection.

### **STANDARDS, TESTING, LABELING AND CERTIFICATION**

Some Venezuelan importers of U.S. products have alleged that the government of Venezuela applies product standards more strictly to imports than to domestic products. The certification process is expensive, increasing the cost of U.S. exports relative to domestic products. The Venezuelan Commission for Industrial Standards normally requires certification from independent laboratories located in Venezuela but at times accepts a certificate from established standards institutes abroad.

Venezuela implemented a new tire rim standard without giving industry an opportunity to comment on the proposed regulation. Although the government notified the WTO Technical Barriers to Trade Committee, the notification took place after the official comment period had passed. U.S. industry reports that the standard fails to recognize international tire rim standards and imposes very costly testing and marking requirements upon foreign manufacturers and distributors of rims wishing to sell in Venezuela.

On June 5, 2003, the government of Venezuela passed Decree 2444, which requires importers of goods to Venezuela to obtain pre-shipment inspections of all imports. Four companies are certified to do these inspections: Bivac Venezuela (Veritas Group), SGS Trade Assurance Services, COTECNA, and Intertek Foreign Trade Standards.

U.S. industries have raised concerns regarding Venezuela's enacted labeling regulation for clothing and footwear. The labeling regulation appears overly restrictive. Of primary concern to U.S. exporters is the requirement that labels be customized to include detailed information about the importer or retailer of the goods.

### **GOVERNMENT PROCUREMENT**

Venezuela's government procurement law covers purchases by government, national universities, and autonomous state and municipal institutions. The law requires a contracting agency to prepare a budget estimate for a given purchase based on reference prices maintained by the Ministry of Production and Commerce. This estimate is to be used in the bidding process. The law forbids discrimination against tenders based on whether they are national or international. However, the law also states that the President can mandate temporary changes in the bidding process "under exceptional circumstances" or in accordance with "economic development plans" to promote national development or to offset adverse conditions for national tenders. These measures can include margins of domestic price preference; reservation of contracts for nationals; requirements for domestic content, technology transfer, and/or the use of human resources; and other incentives to purchase from companies domiciled in Venezuela. For example, Decree 1892 establishes a five percent preference for bids from companies with over 20 percent local content. In addition, half of that 20 percent of content must be from small to medium size domestic enterprises.

In the international arena, the government of Venezuela reinstated state controlled purchases of basic food products for its new internal distribution system, Mercal. The state-trading entity, CASA, has purchased sugar, rice, wheat flour, black beans, milk powder, edible oil, margarine, poultry, and eggs from a variety of countries. Technical assistance in contracting and purchasing has been provided by the Cuban state trading enterprise ALIMPORT. The private sector has complained that CASA has an unfair advantage in that its access to dollars is assured, and it has no problems with obtaining import licenses

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and permits.

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

## **EXPORT SUBSIDIES**

Exporters of selected agricultural products - coffee, cocoa, some fruits and certain seafood products – are eligible to receive a tax credit equal to 10 percent of the export's value.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Venezuela is a member of the World Intellectual Property Organization (WIPO). It is also a member of the Berne Convention for the Protection of Literary and Artistic Works, the Geneva Phonograms Convention, the Universal Copyright Convention, and the Paris Convention for the Protection of Industrial Property.

The Venezuelan Industrial Property Office (SAPI) has been successful in improving its service to the business community, but protection of IPR is hindered by the lack of adequate resources for the Venezuelan copyright and trademark enforcement police (COMANPI) and for the special IPR prosecutor's office. The Venezuelan government is also working to have a new Industrial Property Law approved by the National Assembly, as well as to promote the ratification of the WIPO Internet treaties. Unfortunately, pirated music and videos remain readily available in the informal sector. In the 2003 Annual Review, Venezuela remained on USTR's Special 301 "Watch List."

### **Patents and Trademarks**

Venezuela provides the legal framework for patent and trademark protection through Andean Community Decision 486 and the 1955 National Industrial Property Law. Andean Community Decision 345 covers patent protection for plant varieties. While the government introduced legislation in early 1996 to update the 1955 Industrial Property Law and to bring Venezuela into compliance with the WTO Trade Related Aspects of Intellectual Property Rights (TRIPS), the draft legislation was sidelined by President Chavez's constitutional reform process. However, the National Assembly is debating a new Industrial Property Law, which may address many of the outstanding TRIPS issues. A customs bill, which includes provisions for border controls designed to be consistent with TRIPS to impede the importation of pirated goods, became law in November 1998, and a revision is currently pending.

In February 2002, and continuing through 2003, Venezuela's food and drug regulatory agency (INH) began approving the commercialization of new drugs which were the bioequivalents of already approved drugs, thereby denying the originator companies the exclusive use of their data. In effect, the government of Venezuela is allowing the test data of registered drugs from originator companies to be used by others seeking approval for their own pirate version of the same product. Also, U.S. companies are concerned that the government of Venezuela is implementing a policy that a company that had patented a compound for one use cannot subsequently patent a second use of that compound. This puts Venezuela at odds with international norms.

### **Copyrights**

The Venezuelan copyright and trademark enforcement branch of the police (COMANPI) continues to provide copyright enforcement support with a small staff of permanent investigators. A lack of personnel, coupled with a very limited budget and inadequate storage facilities for seized goods, has forced COMANPI to work with the National Guard and private industry to improve enforcement of

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copyright protection.

Andean Pact Decision 351 and Venezuela's 1993 Copyright Law provide the legal framework for the protection of copyrights. The 1993 Copyright Law is modern and comprehensive and extends copyright protection to all creative works, including computer software. A National Copyright Office was established in October 1995 and given responsibility for registering copyrights, as well as for controlling, overseeing, and ensuring compliance with the rights of authors and other copyright holders. However, COMANPI, the Copyright Office's enforcement arm, can only act based on a complaint by a copyright holder; it cannot carry out an arrest or seizure on its own initiative, thereby weakening its enforcement capacity.

## **SERVICES BARRIERS**

Venezuela maintains restrictions in a number of service sectors. For example, all professions subject to national licensing legislation (e.g., engineers, architects, economists, business consultants, accountants, lawyers, doctors, veterinarians, and journalists) are reserved for those individuals who meet Venezuelan certification requirements. In addition, only Venezuelan nationals may be licensed as architects. Some (particularly government-related) accounting and auditing functions require Venezuelan citizenship, and only Venezuelan nationals may act as accountants for companies with public stock greater than 25 percent. Also, foreign professionals wishing to work in Venezuela must revalidate their credentials at a Venezuelan university on the condition of reciprocity. A foreign lawyer cannot provide legal advice on foreign or international law without being licensed in the practice of Venezuelan law.

To provide engineering services, foreigners are required to establish a commercial presence. Foreign consulting engineers must work through local firms or employ Venezuelan engineers. There is a law for public tenders that gives preferential treatment to Venezuelan companies if they have the capability to carry out the work and/or if the project is financed by public funds. Foreign capital is restricted to a maximum of 19.9 percent in professional associations.

Venezuela limits foreign equity participation (except from other Andean Community countries) to 20 percent in enterprises engaged in television and radio broadcasting, Spanish language newspapers, and professional services whose practice is regulated by national laws. Finally, 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.

The government enforces a "one-for-one" policy that requires foreign musical performers giving concerts in Venezuela to share stage time with national entertainers. There is also an annual quota regarding the distribution and exhibition of Venezuelan films. At least half of the television programming must be dedicated to national programs, and at least half of FM radio broadcasting must be dedicated to Venezuelan music.

## **Financial Services**

By signing the 1997 WTO Financial Services Agreement, Venezuela made certain commitments to provide market access for banking, securities, life and non-life insurance, reinsurance, and brokerage activities. Venezuela did not make commitments on pensions or on maritime, aviation, and transportation insurance, and it reserved the right to apply an economic needs test as part of the licensing process. Only local insurers may insure imports that receive government-approved tariff reductions or government financing.

New rules governing civil aviation, maritime activities, and transportation insurance also have been

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issued in the package of 49 laws passed under enabling powers by President Chavez. Many of the laws still need implementing regulations, and the entire package has been challenged in the Supreme Court. The National Assembly is reviewing 15 of the most contentious laws. The impact of the legislation remains unclear.

### INVESTMENT BARRIERS

The 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, but President Chavez gradually has halted further privatization. In early 2000, a U.S. power generating company successfully took control, by means of a stock swap, of Electricidad de Caracas (EDC), the local electrical company that provides power to the Caracas metropolitan area.

Foreign investment continues to be restricted in the petroleum sector. The exploration, production, refining, transportation, storage, and foreign and domestic sale of hydrocarbons is reserved to the state. However, private companies may engage in hydrocarbons-related activities through operating contracts or through equity joint ventures with state owned oil company PDVSA. The Venezuelan constitution reserves ownership of PDVSA to the Venezuelan government. However, it does allow the sale of subsidiaries and affiliates of PDVSA to foreign investors. In the early 1990's, the Venezuelan government created an "oil sector opening" to promote new petrochemical joint ventures and to bring inactive oil fields back into production. Almost 60 foreign companies, representing 14 different countries, participated in this process. PDVSA and foreign oil companies signed 33 operating contracts for marginal fields after three rounds of bidding.

The Hydrocarbons Law of 2001 has raised concerns in the industry because it mandates a minimum 50 percent national participation in future projects and increases most royalties from 16.67 percent to 30 percent. The Gaseous Hydrocarbons Law offers more liberal terms, and Venezuela's government has sought foreign investment to develop offshore natural gas deposits near the Orinoco delta.

The government passed legislation in 1998 with provisions that could introduce domestic and foreign competition into the domestic gasoline market. The law allows foreign and non-governmental Venezuelan investors to own and operate service stations, though the government retains the right to set product prices.

A range of other natural resources - including iron ore, coal, bauxite, gold, nickel, and diamonds - is gradually being opened to greater private investment by means of strategic alliances. However, in both the gold and diamond sectors the government has unilaterally terminated some concessions granted to certain private companies, alleging failure to comply with the terms of the concession.