

VENEZUELA

TRADE SUMMARY

The U.S. trade deficit with Venezuela was \$20.2 billion in 2004, an increase of \$5.9 billion from \$14.3 billion in 2003. U.S. goods exports in 2004 were \$4.8 billion, up 69 percent from the previous year. Corresponding U.S. imports from Venezuela were \$25.0 billion, up 45.7 percent. Venezuela is currently the 26th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Venezuela were \$2.2 billion in 2003 (latest data available), and U.S. imports were \$419 million. Sales of services in Venezuela by majority U.S.-owned affiliates were \$4.7 billion in 2001 (latest data available), while sales of services in the United States by majority Venezuela-owned firms were \$308 million in 2001.

The stock of U.S. foreign direct investment (FDI) in Venezuela in 2003 was \$10.9 billion, up from \$10.3 billion in 2002. U.S. FDI in Venezuela is concentrated largely in the manufacturing, mining, and utilities sectors.

IMPORT POLICIES

Tariffs

Venezuela is part of the Andean Community. Venezuela has been using the tariffs established 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 commodity market reference prices and established floor and ceiling prices. When the reference price for a particular 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 the restrictive use of import licenses and permits. Under its WTO commitments, Venezuela is entitled to maintain tariff rate quotas (TRQ) for up to 62 Harmonized System code headings, but its administration of the TRQs has been arbitrary and nontransparent, and has negatively affected trade in basic agricultural commodities as well as processed products. The Venezuelan Government has denied import licenses for both in-quota

FOREIGN TRADE BARRIERS

and over-quota quantities, even though importers are willing to pay the over-quota tariff for additional quantities of products.

U.S. agricultural exporters indicate that the Venezuelan government also routinely fails to open the TRQs in a timely manner -- in some cases there have been delays of up to four months -- with the immediate consequence of disrupting trade in basic commodities. Further, for some products eligible for TRQs, the Venezuelan government has not taken the necessary steps to publish regulations establishing the TRQ mechanism, and for other products, such as pork, the government has refused to activate the quota at all. For many years, the government and domestic producers have agreed -- behind closed doors -- to minimum prices for major crops such as corn, sorghum and rice. The government generally prohibits imports until the entire local crop has been purchased at the set price, 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. For the first time in several years, in 2004 the government published information on import licenses through the Ministry of Agriculture.

Under the Andean Community's Common Automotive Policy, assembled passenger vehicles constitute an exception to the 20 percent maximum tariff and are subject to 35 percent import duties.

Non-Tariff Measures

In response to the rapid decline in the value of the national currency, the Bolivar, following a two-month general strike that brought oil production to a near standstill, the Central Bank of Venezuela halted trade in Bolivars on January 22, 2003. President Chavez announced the creation of an Exchange Administration Board (CADIVI) on February 5, 2003 to regulate the purchase and sale of foreign currency. During much of 2003, CADIVI was unable to process requests for authorization of foreign exchange in an efficient and timely manner and only supplied \$3.6 billion or approximately two months worth of transactions. There has been significant improvement over time. The supply of foreign currency reached a level of approximately \$15 billion in 2004, or 55 percent of approved authorizations. The Ministry of Light Industry (formerly the Ministry of Production and Commerce) maintains a list of imports that are eligible to receive foreign currency approval. This list has grown significantly since the introduction of the exchange controls and now includes services and the repatriation of capital. Although the number of currency certificate approvals has increased steeply, the exchange controls have put a significant constraint on imports, which account for 68.5 percent of requests, followed by private foreign debt with 12.5 percent and foreign investments with 8.6 percent. Exchange control authorities have repeatedly said that the exchange control system will be eased but will remain in place permanently.

Importers of agricultural products have received the majority of dollars under the CADIVI

FOREIGN TRADE BARRIERS

system, since most basic food products are on the import list. Even so, problems with coordinating the timing of access to dollars, approval of import permits and licenses, and contracting the 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, as they are not included among the list of high priority products for which foreign exchange is available.

Venezuela also requires that importers obtain sanitary and phytosanitary (SPS) permits from the Agriculture Ministry for most agricultural imports. U.S. industry has raised concerns about the use of SPS permits to unreasonably restrict agricultural and food imports as well as the consistency of Venezuela's SPS practices with WTO requirements. These practices have particularly affected trade in pork, poultry, beef, apples, grapes, pears, nuts, onions and potatoes. Industry representatives have reported that Venezuela also restricts the sale of nutritional supplements or natural products to pharmacies, limiting direct sales efforts.

Although the Venezuelan government 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. Imports of yellow corn are 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 such absorption requirements is extremely subjective, since Venezuela lacks a good statistical system to track levels of domestic crop production.

In 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 first round of consultations. Official consultations were held in November 2002 in Geneva. A subsequent exchange of letters on the SPS permit system was conducted in 2003. During the most recent meeting of the WTO Committee on Agriculture in November 2004, the United States again raised questions about permit and licensing procedures. At that time, Venezuela argued that these questions should be discussed under the WTO Sanitary and Phytosanitary Committee.

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. Some products such as cigarette paper, bank notes, weapons of war and certain explosives can only be imported by government agencies (tax authorities calculate the cigarette tax on the volume of cigarette paper imported by the manufacturers). The government can delegate authority to import on its behalf, and can place orders for such products with the local sales agents of the foreign manufacturers.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Some Venezuelan importers of U.S. products have alleged that Venezuela applies product

FOREIGN TRADE BARRIERS

standards more strictly to imports than to domestic products. The certification process is expensive. The Venezuelan Commission for Industrial Standards normally requires certification from independent laboratories located in Venezuela but at times will accept a certificate from independent laboratories elsewhere.

In 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 conduct these inspections: Bivac Venezuela (Veritas Group), SGS Trade Assurance Services, COTECNA, and Intertek Foreign Trade Standards.

Venezuela's labeling regulations, which became effective in 2002, establish the register of domestic manufacturers and importers of clothing and footwear and minimum labeling requirements for all clothing and footwear products marketed in Venezuela. Imported products require customized labels that include detailed information about the importer of the goods.

GOVERNMENT PROCUREMENT

Venezuela's government procurement law covers purchases by government entities, 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, government decree 1892 establishes a 5 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- sized domestic enterprises.

In an effort to move away from proprietary software products, the Government of Venezuela in 2004 introduced a law mandating the use of open-source software in government and public institutions. This is expected to reduce the demand for U.S. software products somewhat, though much software currently in use is unlicensed or pirated.

In the international arena, Venezuela has reinstated state controlled purchases of basic food products for its new internal distribution system, Mercal, a network of state-owned stores aimed at low-income Venezuelans. The state-trading entity, CASA, has purchased, to date, sugar, rice, wheat flour, black beans, milk powder, edible oil, margarines, poultry and eggs from a variety of countries. The private sector has complained that CASA has an unfair advantage in that its access to dollars is assured, as is its access to import licenses and permits. Furthermore, CASA,

FOREIGN TRADE BARRIERS

as a government entity, imports products without tariffs and customs duties.

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 signatory to 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. Venezuela implements its obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) through Andean Community Decision 486.

The Venezuelan Industrial Property Office (SAPI) leaves much room for improvement, and its actions and occasional publicly stated antagonism towards IPR often draw criticism from IPR advocates and rights holders. Protection of IPR is also hindered by the lack of adequate resources for the Venezuelan copyright and trademark enforcement police (COMANPI) and for the special IPR prosecutor's office. Venezuela's tax agency SENIAT is promoting several measures to fight piracy in an effort to reduce tax evasion, including a new anti-piracy law and the introduction of a tax on street vendors. According to industry representatives, SENIAT seems to be a promising enforcement entity due to its technical and financial capabilities.

Unfortunately, pirated software, music and movies remain readily available throughout the country, and levels of piracy are increasing. In the 2004 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 486 takes major steps towards bringing Venezuela into WTO TRIPS compliance. However, without corresponding local laws, Venezuela is not completely TRIPS compliant. Andean Community Decision 345 covers patent protection for plant varieties.

U.S. companies remain concerned about the impact of the Andean Tribunal's 2002 interpretation of Articles 14 and 21 of Decision 486, which do not allow for the patenting of "second-use" products. Under pressure from the Andean Community and in line with some changes in leadership at SAPI, Venezuela has revoked previously issued patents. Very few patents were

FOREIGN TRADE BARRIERS

awarded in 2004. Since 2002, Venezuela's food and drug regulatory agency (INH) began approving the commercialization of new drugs which were the bioequivalents of already patented drugs, thereby denying the patent-holding companies protection of their test data. In effect, the government now allows the test data of patented drugs or those for which patents have been requested, most of which required lengthy and expensive development, to be used by others seeking approval for their own unlicensed versions of the same products.

Copyrights

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 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. Industry experts are concerned about a proposed new copyright law which would require the mandatory registry of works in order to receive protection, reduce protection terms, hamper distribution agreements and increase royalties.

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 copyrighted material. COMANPI can only act based on a complaint by a copyright holder; it cannot carry out an arrest or seizure on its own initiative, which leads to weaker enforcement.

SERVICES BARRIERS

Venezuela maintains restrictions on a number of service sectors. Venezuela requires that certain professions be licensed in Venezuela (e.g., engineers, architects, economists, business consultants, accountants, lawyers, doctors, veterinarians and journalists). Foreign nationals wishing to practice these professions in Venezuela must have their credentials validated by a Venezuelan university, provided that a reciprocity agreement exists with their country of origin. Some (particularly government-related) accounting and auditing functions require Venezuelan citizenship, and only Venezuelan citizens may act as accountants for companies with publicly traded stock greater than 25 percent. A foreign lawyer cannot provide legal advice on foreign or international law without being licensed in the practice of Venezuelan law.

FOREIGN TRADE BARRIERS

Foreigners are required to establish a commercial presence for the provision of engineering services. Foreign consulting engineers must work through local firms or employ Venezuelan engineers. There is a law governing public service tenders, which gives preferential treatment to Venezuelan firms for projects financed with public funds. Foreign participation is restricted to a maximum of 19.9 percent in professional firms.

Venezuela limits foreign equity participation (except from other Andean Community countries) to 20 percent in enterprises engaged in television broadcasting, radio broadcasting and Spanish language newspapers.

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.

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.

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.

Rules governing civil aviation, maritime activities and transportation insurance were issued in 2001 in a package of 49 laws passed under enabling powers granted to President Chavez in 2000. Many of the laws still need implementing regulations. The impact of the legislation is, therefore, still 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 under President Chavez further privatization has been halted.

Foreign investment continues to be restricted in the petroleum sector. The exploration, production, refinement, transportation, storage and foreign and domestic sale of hydrocarbons are reserved to the state. However, private companies may engage in hydrocarbons-related

FOREIGN TRADE BARRIERS

activities through operating contracts or through equity joint ventures with the state-owned oil company Petroleos de Venezuela, S.A. (PDVSA). The Venezuelan constitution reserves ownership of PDVSA to the Venezuelan government. Sales to foreign investors of interests in subsidiaries and affiliates of PDVSA are permitted. In the early 1990s, the Venezuelan government partially opened the sector to private investment in order 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 as it mandates a minimum 50 percent national participation in future projects and increases most royalties paid to the government from 16.67 percent to 30 percent. No projects have been negotiated yet under this law. The Gaseous Hydrocarbons Law offers more liberal terms, and the Venezuelan government has sought foreign investment to develop offshore natural gas deposits near the Orinoco delta. In October 2004, the Venezuelan government eliminated a royalty holiday granted to joint venture projects relating to the development of Venezuela's extra heavy crude oil reserves. These joint-venture projects, known as "the strategic associations," were created during the partial opening of the sector and received 35-year contracts that were endorsed by the National Congress.

The government passed legislation in 1998 aimed at introducing domestic and foreign competition into the domestic gasoline market. The law allows foreign and non-governmental Venezuelan investors to own and operate service stations, although the government retains the right to set product prices. The government has not raised gasoline prices in several years, and currency devaluations and a high inflation rate have eliminated service station profit margins.

Hydroelectric power generation in Venezuela is reserved to the state, although private sector participation is permitted in transmission and distribution. In early 2000, the U.S. power generating company, AES Corporation, successfully took control, by means of a stock swap, of Electricidad de Caracas (EDC), the company that provides power to the Caracas metropolitan area.

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. In 1996, Corporacion Venezolana de Guayana (CVG), a state-owned umbrella corporation with mining interests, announced its first joint venture with a foreign company to develop the Las Cristinas gold mine. President Chavez personally announced the beginning of operations in May 1999. Low gold prices, however, forced CVG and its partners to suspend the project. In 2001, CVG revoked the concession on grounds of the concessionaire's alleged inability to comply with the contract by not developing the reserves as stipulated, and the concession has been granted to another firm. In April 1999, the Venezuelan government updated the 1945 Mining Law in order to encourage greater private sector participation in mineral extraction. However, in 2003, in line with a policy to centralize mining rights under the Ministry of Energy and Mines, the

FOREIGN TRADE BARRIERS

government ratified a 1996 decree requiring CVG to turn over to the Ministry the original files on concessions granted by CVG. In a separate matter, in September 2003 the Ministry acted unilaterally to terminate some concession areas of a private diamond mining company in southern Venezuela, alleging failure to comply with the terms of the concession. As of the end of 2004 this matter remained unresolved.

In early 2005, President Chavez reorganized the ministries that govern the energy and mining sectors as well as those governing commerce and industry. One result of this restructuring was to increase control over basic industries at the ministerial level and to strengthen the state owned CVG, which in addition to mining controls steel and aluminum production and electricity generation. Under a new board of directors, named in February 2005, CVG has announced a review of all existing contracts between CVG companies and third parties.