

# VENEZUELA

## TRADE SUMMARY

The U.S. goods trade deficit with Venezuela was \$38.8 billion in 2008, an increase of \$9.1 billion from \$29.7 billion in 2007. U.S. goods exports in 2008 were \$12.6 billion, up 23.6 percent from the previous year. Corresponding U.S. imports from Venezuela were \$51.4 billion, up 28.8 percent. Venezuela is currently the 22nd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Venezuela were \$3.9 billion in 2007 (latest data available), and U.S. imports were \$658 million. Sales of services in Venezuela by majority U.S.-owned affiliates were \$3.7 billion in 2006 (latest data available), while sales of services in the United States by majority Venezuela-owned firms were \$3.9 million.

The stock of U.S. foreign direct investment (FDI) in Venezuela was \$10.0 billion in 2007 (latest data available) down from \$10.1 billion in 2006. U.S. FDI in Venezuela is concentrated largely in the manufacturing, nonbank holding companies, and mining sectors.

## IMPORT POLICIES

Venezuela officially withdrew from the Andean Community (CAN) in April 2006. President Chavez stated publicly that the reason for the withdrawal was the entry of other CAN member countries into free trade agreements with the United States, which, according to the Venezuelan government, changed the essence of the pact.

Under CAN rules, only tariff-related decisions and resolutions remain in force for five years from the date of a member's formal withdrawal. Over the years, CAN norms, which cover a wide range of disciplines, have been incorporated into the Venezuelan legal framework. Although the Venezuelan government has yet to officially clarify the legal impact of leaving the CAN, Venezuela has continued to follow CAN norms. In November 2006, Venezuela's Supreme Court accepted a petition requesting interpretation of the current validity of CAN norms. As of January 2009, the court had not issued a ruling on the matter.

## Tariffs

In December 2005, Venezuela signed the framework agreement to join the Southern Cone Common Market (MERCOSUR). MERCOSUR membership is contingent upon approval by the legislatures of all MERCOSUR countries. Venezuela had hoped to become a full member of MERCOSUR by the end of 2008; the legislatures of Brazil and Paraguay have yet to approve Venezuela's accession. Under the terms of its accession, Venezuela has four years from its accession to adopt the MERCOSUR Common External Tariff (CET), and to provide tariff-free treatment to its four MERCOSUR partners on all goods, with sensitive products allowed a two-year extension. Exceptions to the CET exist on a product-specific or sector-specific basis, mainly for goods not produced within the union or those which potentially affect the production capacity of the members. MERCOSUR's average external tariff is approximately 14 percent, except for capital goods which were reduced to zero until December 31, 2010.

While CAN offers higher tariffs on fisheries, textiles, and agriculture, MERCOSUR applies higher protection levels to vehicles, parts, leather, textiles, and shoes. Under the Andean Community's Common Automotive Policy (CAP), assembled passenger vehicles constitute an exception to the 20 percent

## FOREIGN TRADE BARRIERS

maximum tariff and are subject to 35 percent import duties. The CAP will remain effective until the end of 2009.

Venezuela's Valued Added Tax is 9 percent. Since December 2006, goods considered "non-priority items" including alcoholic beverages, rugs, carpeting, jewelry, and toilet paper, are assessed a 15 percent "luxury tax." In October 2007, the Venezuelan government doubled the tax on alcoholic beverages and increased the tax on cigarettes from 45 percent to 70 percent.

### **Nontariff Measures**

Difficulty in obtaining foreign exchange is a significant barrier to trade with Venezuela. By re-implementing foreign exchange controls in February 2003, the Venezuelan government prohibited the free circulation of foreign currency. To administer the controls, the Venezuelan government created a Foreign Exchange Commission, Comision de Administracion de Divisas (CADIVI), which functions as the official agency responsible for authorizing the purchase and sale of foreign currency.

Any resident of Venezuela needing foreign currency for either personal or commercial purposes has only two legal options for obtaining it. One option is to request authorization from CADIVI at the official exchange rate of \$1/Bolivar 2.15. The second option is to purchase Venezuelan sovereign bonds and shares exchangeable in foreign stock markets. It is illegal to obtain foreign currency in the parallel market, and the "Foreign Exchange Crime Law" of September 2005 clarified some of the penalties for obtaining foreign currency illegally.

The administration of exchange controls has seen various stages since February 2003. CADIVI was an entity that had to be created from scratch in response to new legislation. Initially, CADIVI faced considerable challenges due to lack of staffing, information systems, and organizational procedures, which resulted in delays for exchange approvals. Currently, the process is more efficient, particularly for cases involving settlement for imports of food on CADIVI's Priority List. CADIVI's daily average currency approvals have grown from \$63.5 million in 2005 to \$187 million as of October 2008.

The Ministry of People's Power for Light Industry and Commerce (MILCO) maintains a list of imports that are eligible to receive foreign currency approval. This list has grown significantly since the introduction of exchange controls, and now includes services and repatriation of capital. Despite exchange controls, imports have grown significantly due to economic growth fueled by high oil prices and Venezuelan government spending. Problems coordinating the timing of access to CADIVI dollars with the approval of import permits and licenses and contracting shipments have led to delays and higher import costs. CADIVI dollar approvals currently take 6 days to 90 days, but can run longer. However, in 2008, CADIVI created two different mechanisms to expedite dollar approvals for imports worth less than \$50,000 and for selected agricultural and food products. In both cases, a priority list of products is the basis on which to receive the benefit, avoiding issuance delays.

Another significant obstacle to importation is burdensome documentation requirements. Beginning January 1, 2008, all automobile importers must solicit a license from MILCO for authorization to receive foreign exchange for the importation of assembled vehicles. According to the resolution, approval of these licenses depends on "national need, the capacity of national production, plans to expand local production, model cost, historic sales, and the efficient use of fuel." When soliciting this license, all automotive companies will have to include their "national production plan" and their "vehicle importation plan." The law also prohibits the importation of passenger cars with engines larger than three liters, thus discriminating against companies selling predominantly larger cars. As of December 2008, licenses or import quotas for 2009 have not been notified to the automobile companies, meaning that fully assembled

## **FOREIGN TRADE BARRIERS**

automobiles will not arrive in Venezuela until late spring 2009, at the earliest. Venezuela prohibits the importation of used cars, buses, and trucks, used tires, and used clothing.

The government imposed import quotas on vehicles in January 2008 in a bid to increase the number of automobiles assembled in Venezuela, and carmakers are subject to limited allocations of dollars to import components they need to carry out production in Venezuela. The new automotive regime adds the requirement to produce dual fuel (gasoline and natural gas) vehicles. The original law mandated that all new vehicles sold in Venezuela after December 1, 2008, be dual fuel. The rule was twice postponed and then changed. As of April 1, 2009, 30 percent of vehicles sold are to be dual fuel, and each Venezuelan assembler must produce at least 2 dual fuel models. In addition, the gradually rising requirement for local content in domestically assembled vehicles was changed to a flat 50 percent requirement beginning in 2013. A new requirement for motors to be assembled in Venezuela by 2010 was also added. Assemblers have stated that the two requirements are extremely problematic. Local industry is and will be incapable of producing sufficient components to allow 50 percent local content, and the variety of motors and the necessary large production runs will make local motor assembly prohibitively expensive.

In addition, Venezuela also protects its agricultural producers through the use of licenses and sanitary permits to restrict imports. The Venezuelan government applies fixed farm gate prices for producers of corn, rice, sorghum, sugar, milk, and beef, and these prices have been under review through 2008 for different commodities, with the latest increase in mid-2008. Since 2007, selected basic commodities are granted agricultural subsidies based on acreage or volume.

Venezuela maintains tariff-rate quotas (TRQ) for up to 62 Harmonized System code headings. However, the issuance of import licenses for such TRQs is neither transparent nor automatic and has negatively affected trade in basic agricultural commodities as well as processed products. The issuance of import licenses and sanitary permits is very restrictive. The Venezuelan government has denied import licenses for both in-quota and over-quota quantities, even though importers are often willing to pay the over-quota tariff for additional quantities of some products. Automatic issuance of licenses of over-quota quantities has not occurred. Furthermore, the Venezuelan government has not published regulations establishing the TRQ mechanism for certain eligible products and has refused to activate the TRQ for others, such as pork.

Basic agricultural and processed food products remain on the CADIVI priority import list. Nevertheless, importers interested in importing many basic commodities, agricultural inputs, and some horticultural products must request a "certificate of nonproduction" or a "certificate of insufficient production." Some goods may require a certificate from more than one ministry. These certificates state that a certain product is not domestically produced or domestic production is insufficient, and allow importers to request foreign exchange for imports, import licenses, import permits, and possibly tax exoneration from other government offices. The number of ministries and agencies involved and the constant shift of responsibilities among them has hampered the issuance of import permits, licenses, and the registration of local and imported food products. On January 18, 2008, the government of Venezuela passed a resolution waiving the "certificate of nonproduction" requirement for 51 goods until July 18, 2008, to mitigate current food shortages.

Venezuela also blocks imports through its refusal to issue sanitary and phytosanitary (SPS) permits. Such permits are required by the Ministry of People's Power for Health (MPPS) and the Ministry of People's Power for Agriculture and Lands (MAT). The government of Venezuela, as of January 18, 2008, now requires the MAT and MPPS to issue these permits within seven days.

## **FOREIGN TRADE BARRIERS**

The government has delayed the issuance of import licenses for yellow corn and for oilseeds and oilseed products until the entire local crop has been purchased at the set price when there is a surplus of domestic crops. When there is a deficit, imports are readily authorized. In September 2007, the government of Venezuela began banning exports of rice and corn due to domestic scarcity problems. This was extended to other foods products in 2008.

Since January 2003, the Venezuelan government has implemented an import tax exoneration policy for staple products. Initially, the import tax exoneration was granted for a six month period. Since then, some products were added or removed from the initial list and there were certain periods when this policy expired. On January 18, 2008, the Government of Venezuela created a new list of tax exempt goods that featured some products on the current list and some additions. In addition, on February 18, 2008, a list of tax exempted goods was reviewed, and on October 17, 2008, the exoneration of customs duties for live cattle imports was announced.

The Venezuelan government has created a large food distribution network for the low and middle economic classes. Both the Venezuelan Agricultural Corporation (CVA) and the Corporación de Abastecimiento y Servicios Agrícolas are the leading state trading entities. At the same time, Mercado de Alimentos, C.A. and Productora y Distribuidora Venezolana de Alimentos are the food marketing branches of the network; offering products at prices that are at or below those of controlled products. Venezuela's food program is focused on providing a government subsidized basic basket of products, including dry milk, precooked corn flour, black beans, rice, vegetable oils, sardines, pasta, sugar, bologna, margarine, deviled ham, eggs, mayonnaise, and sauces. Government purchases can be imported or domestically produced food products. The government's food network competes with private industry, although the private sector also supplies products to this chain. The private sector has complained that all government entities have an unfair advantage because they have guaranteed access to dollars, import licenses, and permits and, as government entities, they import products without tariffs and custom duties.

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

Some Venezuelan importers of U.S. products have alleged that Venezuela applies product 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 addition, in May 2007, the World Organization for Animal Health (OIE) classified the United States as a "controlled risk" country for Bovine Spongiform Encephalopathy (BSE), thereby clarifying that U.S. live cattle, beef and beef products are safe to trade provided that the appropriate specified risk materials are removed. However, Venezuela continues to ban U.S. live cattle, beef and beef products.

Venezuela's standards regime is undergoing a change, and how these changes will be effectuated remains unclear. Venezuela's equivalent of the American National Standards Institute, a non-governmental agency called FONDONORMA, was told in spring 2007 by Venezuela's government agency in charge of certifying standards, SENCAMER, that it would no longer certify FONDONORMA standards. This has left a vacuum that has yet to be filled.

In August 2008, Venezuela's National Assembly approved a new law that changed labeling requirements and altered requirements for other documents in the import process. Previously, exporters to Venezuela could affix adhesive labels in Spanish to their products to fulfill the Spanish language requirement. The new law requires the Spanish language information to be indelibly printed on labels and proscribes the use of adhesive labels. This is in addition to the previous requirements that the importer's legal name or its taxpayer identification number be printed on the product, as well. At the time of writing,

## **FOREIGN TRADE BARRIERS**

implementing regulations had yet to be issued for the new law, so the exact treatment and consequences for exporters to Venezuela are not yet known, although the need for indelible information and the prohibition of self-adhesive labels will add cost and complexity to the manufacturing process once implemented. For food products, Spanish-language labels are now required on original packaging, and stickers or other temporary information are not allowed.

## **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 procurement based on reference prices maintained by MILCO. The law forbids discrimination against tenders based on whether they are national or international. However, the law also provides that the President can mandate temporary changes in the bidding process "under exceptional circumstances," 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 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 whose products have over 20 percent local content. In addition, half of that 20 percent of content must be from small to medium-sized domestic enterprises. The Venezuelan government is increasingly awarding contracts directly, thus avoiding competition required by the government procurement law. It is not clear to what degree the public procurement law applies to joint ventures in which a state entity has a controlling interest.

A presidential decree published in March 2008 re-affirmed many parts of the old law, but added some new problems. It established a National Service of Contractors, with which firms must register in order to be able to sell to the government. Bids will not be accepted without prior registration. Some observers believe that the registration requirement allows additional screening for political acceptability of a company.

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

## **EXPORT SUBSIDIES**

Exporters of selected agricultural products – cocoa, some fruits, and certain seafood products – are eligible to receive a tax credit equal to 10 percent of the export's value. The level of direct payments for export subsidies has generally been fairly small and limited to agricultural products. Venezuela has notified its export subsidies to the WTO in the past, with the last notification occurring in June 2001, for the export year 1998. The total value of export subsidies at that time was \$5.5 million. The government has not published further information for export subsidies.

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

The Venezuelan Industrial Property Office's policies on the protection and enforcement of IPRs often draw criticism from IPR advocates and right holders. Pirated software, music, and movies are readily available throughout the country, and piracy levels are increasing. In 2005, Venezuela was elevated to the USTR's Special 301 "Priority Watch List" and has been on this list for the past three years.

## **FOREIGN TRADE BARRIERS**

In September 2008, the Autonomous Service for Intellectual Property issued a press release in which it resurrected the Industrial Property Law of 1955. The 1955 Law expressly prohibits intellectual property rights for pharmaceuticals, foodstuffs and other products.

No patents for new pharmaceuticals have been issued since 2004, and some previously issued patents have been revoked. Pharmaceutical companies involved in research and development do not receive protection against unfair commercial use of their test data. Since 2002, Venezuela's food and drug regulatory agency has approved new drugs based on a pharmaceutical company's submission of non-proprietary test data.

### **Enforcement**

Lack of personnel, coupled with a very limited budget and minimal storage facilities for seized goods, has forced the Venezuelan copyright and trademark enforcement branch of the police to work with the National Guard and private industry to improve enforcement of copyrighted material. SENIAT, Venezuela's tax and customs authority, passed a regulation in mid-2005 that allows for *ex officio* seizure of contraband goods at customs points and inland, and gives companies three days to verify the product's authenticity and to press charges. In most cases, companies and violators reach a settlement instead of going through a lengthy, and often fruitless, court proceeding. SENIAT continues to be the only agency actively protecting IPR, and has launched public anti-piracy and "zero tax evasion" campaigns that have raised awareness of IPR issues.

### **SERVICES BARRIERS**

Venezuela maintains restrictions on a number of service 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**

Only Venezuelan citizens may provide accounting and auditing services to government institutions and related institutions, 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. A foreign lawyer cannot provide legal advice on foreign or international law without being licensed in the practice of Venezuelan law.

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.

#### **Audiovisual Services**

Venezuela limits foreign equity participation (except from other Andean Community countries) to 20 percent in enterprises engaged in Spanish language media, including television and radio broadcasting. 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, as well as a requirement that a percentage of film copying be done in Venezuelan facilities. At least half of the television programming must be dedicated to national programming, and at least half of FM radio broadcasting must be dedicated to Venezuelan music.

### **FOREIGN TRADE BARRIERS**

## **Telecommunications**

A trade association has reported that Venezuela's telecommunications law requires Venezuelan satellites to be utilized on a priority basis in the provision of satellite services in the country if they provide technical and economic conditions equivalent to those of foreign satellites.

## **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 and the government has re-nationalized certain key sectors of the economy. In 2007, the government nationalized certain electricity and telecommunications providers. In 2008, the government nationalized certain cement companies and proposed the nationalization of a commercial bank.

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 activities through mixed companies and 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 following approval by the government.

Since 2004, the national government has made significant changes to royalty policies, tax policies and contracts involving hydrocarbons-related activities. This has substantially increased uncertainty in the hydrocarbons sector and raised concerns of companies operating in Venezuela.

In 2006, the government transferred operating service agreements to mixed companies in which PDVSA holds a majority stake. President Chavez issued a decree in late February 2007 requiring four strategic associations (joint venture projects relating to the development of Venezuela's extra heavy crude oil reserves) to convert to PDVSA control joint ventures in which the government would hold at least a 60 percent equity stake. The decree established a deadline of April 30, 2007, for completing the transfer. ConocoPhillips and ExxonMobil refused to transfer their investment stakes in three of the strategic associations. As a result, the Venezuelan government took control of these investments. Both companies viewed the government's actions as expropriations and attempted to negotiate with Venezuelan authorities regarding compensation. Both companies have filed arbitration claims against the Venezuelan government. The United States is monitoring the process closely, has consulted with the affected U.S. companies, and has publicly stated its expectation that U.S. companies will receive fair treatment, including timely, adequate, and effective compensation.

In October 2008, PDVSA announced a new bid round for four blocks of the country's heavy crude reserves in Eastern Venezuela. Three additional blocks were added to the announced tender in early December 2008. National oil companies from politically strategic partner countries seem to be the preferred partners for the development of new projects.

The Gaseous Hydrocarbons Law of 1999 offers more liberal terms than the 2001 Hydrocarbons Law, and the Venezuelan government has sought foreign investment to develop offshore natural gas deposits.

Both the 2001 Hydrocarbons Law and the Gaseous Hydrocarbons Law require that there be a competitive process for the identification of private partners for projects to be developed by PDVSA. However, the

## **FOREIGN TRADE BARRIERS**

government may directly award contracts when the project is to be developed under special circumstances, or is of national interest.

The government passed legislation in 1998, aimed at introducing domestic and foreign competition into the domestic gasoline market. The law allowed foreign and private Venezuelan investors to own and operate service stations, although the government retained the right to set product prices. The government has not raised gasoline prices in several years, and currency devaluations and a high inflation rate eliminated service station profit margins. An Organic Law on the Restructuring of the Internal Liquid Fuels Market came into effect on September 18, 2008. The law mandates government control of domestic transportation and wholesale of liquid fuels and set a 60 day period for negotiations with the affected companies. All establishments that carry out retail activities of liquid fuels will be re-branded as PDVSA. The law does not define the term "liquid fuels," which creates uncertainty as to whether it will apply to products other than gasoline or diesel fuel, such as motor oils or lubricants.

Electric power generation, transmission, and distribution are open to private participation under Venezuelan law. However, President Chavez announced in January 2007 that the Venezuelan government would nationalize strategic areas including telecommunications and electricity. As a result, the U.S. power generating company, AES Corporation, sold its 82.14 percent stake in Electricidad de Caracas, the company that provides power to the Caracas metropolitan area, to the Venezuelan government in March 2007. The government also purchased the assets of several smaller power producers.

Private participation is allowed in the mining sector. In early 2005, President Chavez reorganized the ministries that govern the energy and mining sectors. One result of this restructuring was to increase control over basic industries at the ministerial level and to strengthen the state-owned Corporacion Venezolana de Guayana (CVG), which controls steel and aluminum production, electricity generation, and mining. Under its new board of directors, named in February 2005, CVG announced a review of all existing contracts between CVG companies and third parties. A draft mining law currently in the National Assembly seeks to repeal "inactive" concessions to foreign countries and to structure the mining sector under a joint-venture model.

Supply contracts by CVG companies are currently under review by the Ministry of Basic Industries and Mining (MIBAM). The Venezuelan government is looking to increase the development of downstream industrial sectors and to add value to Venezuelan exports. To this end, MIBAM is taking several steps to help local companies, including making available to them a higher percentage of materials, improving payment terms, and providing discounts of up to 10 percent.

Foreign participation is restricted to a maximum of 19.9 percent in professional firms.

## **FOREIGN TRADE BARRIERS**