

VENEZUELA

TRADE SUMMARY

The U.S. goods trade deficit with Venezuela was \$22.1 billion in 2010, up \$3.4 billion from 2009. U.S. goods exports in 2010 were \$10.7 billion, up 14.4 percent from the previous year. Corresponding U.S. imports from Venezuela were \$32.8 billion, up 16.8 percent. Venezuela is currently the 25th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Venezuela were \$5.0 billion in 2009 (latest data available), and U.S. imports were \$788 million. Sales of services in Venezuela by majority U.S.-owned affiliates were \$4.1 billion in 2008 (latest data available), while sales of services in the United States by majority Venezuela-owned firms were \$1.9 billion.

The stock of U.S. foreign direct investment (FDI) in Venezuela was \$14.5 billion in 2009 (latest data available), up from \$13.5 billion in 2008. U.S. FDI in Venezuela is primarily concentrated in the nonbank holding companies and manufacturing sectors.

IMPORT POLICIES

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

Under AC rules, following a member's formal withdrawal, only tariff-related decisions and resolutions remain in force, expiring after a period of five years from the date of withdrawal. All of Venezuela's obligations under the AC tariff liberalization regime should remain in place until the end of April 2011. Over the years, AC norms, which cover a wide range of disciplines, have been incorporated into the Venezuelan legal framework. Although the Venezuelan government has yet to clarify officially the legal impact of leaving the AC, to date Venezuela has continued to follow AC norms. In November 2006, Venezuela's Supreme Court accepted a petition requesting an interpretation of the current validity of AC norms. As of January 2011, the court had not issued a ruling on the matter.

Tariffs

In December 2005, Venezuela signed a framework agreement to join the Southern Cone Common Market (MERCOSUR). MERCOSUR membership is contingent upon approval by the legislatures of all MERCOSUR countries. The last hurdle to Venezuela's full membership in MERCOSUR is obtaining Paraguay's formal approval. In early 2010, Paraguayan President Lugo withdrew the petition for approval from the Paraguayan Congress; it was re-introduced on November 24, 2010, and has been withdrawn again. Under the terms of its accession, Venezuela will have 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 sensitive products allowed a two year extension.

According to the WTO, Venezuela applied a simple average tariff of 15 percent on agricultural goods and 12.1 percent on non-agricultural goods.

Nontariff Measures

Currency controls introduced in 2003 continue to pose a significant barrier to most trade with Venezuela, with the possible exception of agricultural goods and pharmaceutical products. These controls are overseen by the Foreign Exchange Commission, or *Comision de Administracion de Divisas* (CADIVI), and, in the case of the Transaction System for Foreign Currency Denominated Securities (SITME), newly established in June 2010, by the Central Bank of Venezuela (BCV).

The official exchange rate was fixed at 2.15 bolivars (Bs)/\$1 from March 2005 through January 10, 2010. On January 11, 2010, the government devalued the currency and set two exchange rates, one at 2.6 Bs/\$1 (which applied to certain priority imports such as food, medicines and healthcare equipment, science and technology products, capital goods, and public sector imports) and one at 4.3 Bs/\$1 (which applied to non-priority imports and most other categories of foreign exchange requests). On December 30, 2010, the government announced the devaluation of the currency as of January 1, 2011, eliminating the 2.6 Bs rate and creating a single official exchange rate of 4.3 Bs/\$1.

Importers who receive CADIVI pre-approval may import goods and then apply for CADIVI approval to purchase dollars at the relevant official rate to pay for the imports. CADIVI cannot be used for certain types of luxury goods. Authorizations for foreign currency through CADIVI are not expeditious, and can require the submission of significant numbers of supporting documents by the Venezuelan importer with the support or cooperation of the exporter.

When oil prices fell sharply in the latter half of 2008, the Venezuelan government significantly reduced overall CADIVI approvals from an average of \$187 million per working day in October 2008 to a daily average of \$118 million for 2009. In the period from January-September 2010, CADIVI approved a total of \$21.3 billion in foreign exchange disbursements, averaging \$120 million per working day. This included \$14.7 billion in approvals for imports (not including imports realized under the Latin American Integration Association (ALADI) Agreement). Import sectors receiving the greatest exchange flows were: food (20.8 percent), medicines and healthcare equipment (19.5 percent), automotive (12.1 percent), retail (12 percent), machinery and equipment (6.7 percent), and chemicals (6.6 percent).

The need to obtain CADIVI pre-approvals to import goods and for payments at the official exchange rate(s) has resulted in increased obstacles to trade due to its complexity, delays in receiving approvals and payments, and restrictions on imports and importers. Once the goods have arrived in Venezuela, cleared customs, and have been verified, CADIVI should approve payment within 30 days. However, importers have reported delays in receiving such approvals, as well as unpredictability and inconsistency in their granting. Many companies have moved to the SITME foreign exchange market to obtain foreign currency to pay for imports, somewhat alleviating the demand on the CADIVI system.

In May 2010, the Venezuelan government abolished the former “permuta” or parallel market foreign exchange system, which had been in place since currency controls were implemented in 2003. In June 2010, the BCV created SITME to replace the “permuta” market. Average SITME approvals since June 2010 have been approximately \$35 million per business day, while average disbursements in the old parallel market were estimated at \$80 million to \$100 million per business day during 2009. SITME operations have received an exchange rate that differs from the official rate and is approximately 5.30 Bs/\$1. Under SITME, transaction amounts for individual customers are limited to \$50,000/day, with a maximum total of \$350,000/month. Requests for SITME exchange transactions are made through Venezuelan banks. Importers that acquire foreign exchange through CADIVI are not allowed to access SITME for a period of 90 days. The elimination of the “permuta” market and restricted access to CADIVI and SITME has resulted in the growth of a black market for foreign exchange transactions.

Burdensome documentation requirements are another significant import barrier. Beginning January 1, 2008, all automobile importers require a license from the Ministry of People's Power for Light Industry and Commerce (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 applying for this license, an automotive company has to include its "national production plan" and its "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. Even when the Venezuelan government issues import licenses for assembled vehicles, delays and burdensome paperwork make it difficult to fill the year's import quotas. Venezuela prohibits the importation of used cars, buses, trucks, and used tires, as well as used clothing.

The government also imposed import quotas on vehicles in January 2008 in a bid to increase the number of automobiles assembled in Venezuela. In addition, carmakers are subject to limited allocations of dollars to import components they need to produce in Venezuela. The automotive regime adds a 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 by each company are to be dual fuel, and each Venezuelan assembler must produce at least 2 dual fuel models. As of December 2010, however, the ability of the assemblers to meet this requirement remains unclear. In addition, the gradually rising requirement for local content in domestically assembled vehicles was changed to a flat 50 percent requirement, applicable beginning in 2013. A new requirement for engines to be assembled in Venezuela by 2010 was also added. Assemblers have stated that these two requirements are extremely problematic. Local industry is unable to produce sufficient components to meet a 50 percent local content requirement, and the variety of engines and the necessary large production runs will make local engine assembly prohibitively expensive.

In addition, Venezuela also protects some industries within its agricultural sector 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 cane, milk, and beef. These prices, although reviewed periodically, still generally lag behind increases in input costs. Since 2007, selected basic commodities are granted agricultural subsidies based on acreage or volume.

Venezuela maintains the authority to impose tariff-rate quotas (TRQs) on up to 62 Harmonized System code headings at the 6-digit level. Currently, the government is applying TRQs to oilseeds, corn, wheat, milk and dairy, and sugar. 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. Import licenses and sanitary permits are restricted for products for which the government is trying to increase domestic output, such as raw materials for processing. 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. Licenses for over-quota quantities are not automatically issued. 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.

Importers of many basic commodities, horticultural products, and agricultural inputs must request a "certificate of nonproduction" or a "certificate of insufficient production" before trade can take place. If the certificate is issued, the importer can request foreign exchange and obtain import licenses, import permits, and possibly tax exoneration from other government offices. Some goods may require a certificate from more than one ministry, increasing processing time. The number of ministries and agencies involved and the constant shifting 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 to mitigate food shortages.

The government has delayed the issuance of import licenses for yellow corn and for oilseeds and oilseed products until the entire domestic crop has been purchased at the set price when there is a surplus. When there is a deficit, imports are readily authorized. This has been the case for the last several years as demand has exceeded domestic supply. Since September 2007, the government of Venezuela has banned non-food use of corn and has controlled product movement through “mobilization guides,” which results in a *de facto* ban on the export of corn. Since a resolution was promulgated in February 2009, products such as coffee, sugar, and other basic food items, cannot be exported while domestic demand is not satisfied.

Since January 2003, the Venezuelan government has waived import duties for staple products. Initially, the import duty waiver was granted for a six month period. Since then, some products have been added or removed from the initial list, and there have been certain periods when this policy lapsed. On January 18, 2008, the government of Venezuela created a new list of tariff-exempt goods, which included products that had been on the previous list as well as new products. The list was last updated in October 2008, with customs duties for live cattle imports waived in order to allow more cattle into the country for processing.

The Venezuelan government is the main importer of basic foodstuffs and has created a large food distribution network to serve low and middle income classes. The *Corporacion Venezolana de Alimentos* (CVAL) and the *Corporación de Abastecimiento y Servicios Agrícolas* (CASA) are the leading state trading entities. At the same time, *Mercado de Alimentos*, C.A. (MERCAL) and *Productora y Distribuidora Venezolana de Alimentos* (PDVAL), a division of Venezuela’s state-owned oil company *Petroleos de Venezuela* (PDVSA), also import for their own food marketing chains, offering products at prices that are at or below government-fixed prices. Two supermarket chains, *Corporacion de Mercados Socialistas* (COMERSO) and *Abastos Bicentenarios* have been recently created to increase the government’s market presence, and to compete with the private sector. 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 entities have an advantage in purchasing abroad because they have guaranteed access to official dollars, import licenses and permits, and import products without custom duties.

As noted above, the Venezuelan government is the main importer of basic foodstuffs through entities such as COMERSO, which was created in April 2010 and now handles purchases for government-run supermarket chains. It appears that this expansion of the government role in trade is likely to grow. On December 1, 2010, the Venezuelan government created a new corporation called *Corporación de Importación, Exportación y Comercialización Mayorista de Bienes para el Pueblo* (Venecom) which, according to the announcement in Venezuela’s Official Gazette, will be charged with handling foreign trade in support of the development of small and medium sized industries. Venecom follows in the footsteps of *Suministros Venezolanos Industriales C.A.* (SUVINCA), which was established in 2006 and began operations in 2008, and is charged with supporting the government’s plan to develop 200 “socialist factories.” SUVINCA and Venecom will reportedly be involved in importing for these sectors.

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 public procurement

law applies to joint ventures in which a state entity has a controlling interest. The law requires a contracting agency to prepare a budget estimate for a procurement based on reference prices maintained by the Ministry of Light Industry and Trade (MILCO). The law forbids discrimination between domestic and foreign suppliers. 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” 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 contracts 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, half of which must come from small to medium-sized domestic enterprises. The Venezuelan government is increasingly awarding contracts without competition. There are allegations that companies from certain countries are favored while those from other countries, including the United States, are discriminated against.

A presidential decree published in March 2008 raised additional concerns. The decree established a National Service of Contractors, with which firms must register in order to sell to the government. Bids will not be accepted without prior registration. Some observers assert that the registration requirement allows additional, arbitrary screening.

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 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 on export subsidies.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Venezuela was listed on the Priority Watch List in the 2010 Special 301 Report. Key concerns cited in the Report relate to the deteriorating environment for the protection and enforcement of IPR in Venezuela. Copyright piracy is increasing and the protection for certain trademarks remains unclear. Concerns remain regarding the revocation of existing patents on pharmaceuticals. 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. Although Venezuela's tax and customs authority had made some progress on raising awareness of IPR issues through public anti-piracy and “zero tax evasion” campaigns, those programs are no longer in place.

SERVICES BARRIERS

Venezuela maintains restrictions on a number of service sectors, including professional services, audiovisual, and telecommunications services. In any enterprise with more than ten 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 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 fully licensed as a lawyer in Venezuela. 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.

The insurance law approved at the end of July 2010 established that, for all insurance companies, at least half of the members of the board must be of Venezuelan nationality. In addition, all members of the board must be living in, and have resident status in, Venezuela.

Audiovisual Services

Venezuela limits foreign equity participation to less than 50 percent for enterprises engaged in Spanish language media, including television and radio broadcasting. At least half of the television programming must be dedicated to domestic 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 for the distribution and exhibition of Venezuelan films, as well as a requirement that a percentage of film copying be done in Venezuelan facilities.

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 (1994-1999), but under President Chavez (since 2000) privatization has been halted and the government has re-nationalized key sectors of the economy. In 2007, the government nationalized certain electricity and telecommunications providers. In 2008, the government nationalized certain cement companies and an aluminum company, and first proposed the nationalization of a commercial bank. In 2009, the government nationalized a food production plant and 76 oilfield services companies. In 2010, the government nationalized a number of companies involved in the agricultural sector; gasoline stations along the Colombian border; a petrochemical plant in which equity was held by a U.S. company; drilling rigs belonging to a U.S. company; and a number of housing projects. Fuel distribution companies and Venezuela's largest privately-owned lubricant manufacturer have also been nationalized.

Petroleum Sector

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, PDVSA. Sales to foreign investors of interests in subsidiaries and affiliates of PDVSA are permitted, contingent on approval by the government. Pursuant to a June 2009 law, only the state, and companies in which the state has at least a 50 percent ownership stake, may carry out primary and intermediate petrochemical activities.

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 created concern on the part of companies operating in Venezuela. President Chavez issued a decree in late February 2007 requiring that four joint venture projects relating to the development of Venezuela's extra heavy crude oil reserves convert themselves into PDVSA-controlled joint ventures in which the government holds at least a 60-percent equity stake. The decree established a deadline of April 30, 2007, for completing the transfer. Two U.S. companies operating in the sectors refused to transfer their stakes, and the Venezuelan government took control of their investments as a result. Both companies have filed international arbitration claims against the Venezuelan government. The United States is monitoring the process closely and has impressed upon the government of Venezuela that U.S. companies must receive fair treatment, including timely, adequate, and effective compensation where an expropriation has occurred.

Both Venezuela's 2001 Hydrocarbons Law and the 1999 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 government may directly award contracts when the project is to be developed under special circumstances or is of "national interest." National oil companies from politically strategic partner countries seem to be the preferred partners for the development of many new projects. In February 2010, for example, the government awarded new heavy oil projects in the Junín region of the Orinoco Oil Belt to private companies and consortia from Russia, China, Vietnam, and Italy.

Although foreign investors have previously been allowed to own and operate gasoline service stations in Venezuela, gasoline prices in the domestic market are set by the government. The current government has not raised gasoline prices in several years, even though currency devaluations and a high inflation rate have eliminated service station profit margins. An Organic Law on the Restructuring of the Internal Liquid Fuels Market came into effect on September 18, 2008, mandating government control of domestic transportation and wholesale distribution of liquid fuels. All establishments that carry out retail activities for liquid fuels were to be re-branded as PDVSA. The law did not define the term "liquid fuels," creating uncertainty as to whether it applied to products other than gasoline or diesel fuel, such as motor oils and lubricants. It was also unclear whether the law applied to fuel pumps and storage tanks at service stations or to the entire entity (including any other services provided, such as convenience stores). Affected companies have not yet been compensated and negotiations are still ongoing, despite a 60-day deadline for negotiations established by the 2008 legislation.

In May 2009, the Venezuelan government promulgated a law reserving to the state those assets and services relating to the performance of primary activities identified in the 2001 Hydrocarbons Law. Specifically, the assets and services included: (1) those involved in the injection of water, steam, or gas into petroleum reservoirs; (2) those related to gas compression; and (3) a range of assets and services associated with the hydrocarbons industry on Lake Maracaibo in western Venezuela. Seventy-six companies, including several U.S.-owned firms, were nationalized pursuant to this law and none have received compensation to date.

Electricity and Mining

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 these 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.

In January 2007, President Chavez announced that the Venezuelan government would nationalize strategic areas including telecommunications and the electricity sector. As a result, privately-owned power producers, including a U.S. company, were required to sell their assets to the Venezuelan government. In August 2010, the National Assembly passed an Organic Law for the Reorganization of

the Electricity Sector, effectively ordering the fusion of all electricity utilities under one central holding entity that would have 75 percent government ownership and 25 percent PDVSA ownership.

A draft mining law is still pending in the National Assembly that seeks to repeal “inactive” concessions to foreign countries, and to structure the mining sector under a joint-venture model. In April 2008, the government revoked a U.S.-based company’s gold mining concession. The company has since filed for international arbitration against the Venezuelan government. In April 2010, President Chavez announced 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 Venezuela’s southern state of Bolivar. A decision to nationalize a gold concession in the state was announced by President Chavez in October 2010.