VENEZUELA

TRADE SUMMARY

The U.S. goods trade deficit with Venezuela was $30.9 billion in 2011, up $8.8 billion from 2010. U.S. goods exports in 2011 were $12.4 billion, up 16.0 percent from the previous year. Corresponding U.S. imports from Venezuela were $43.3 billion, up 32.2 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 $5.0 billion in 2010 (latest data available), and U.S. imports were $729 million. Sales of services in Venezuela by majority U.S.-owned affiliates were $3.9 billion in 2009 (latest data available), while sales of services in the United States by majority Venezuela-owned firms were $806 million.

The stock of U.S. foreign direct investment (FDI) in Venezuela was $13.7 billion in 2010 (latest data available), down from $14.2 billion in 2009. 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, and they expire after a period of five years from the date of withdrawal. For Venezuela, this five year period ended on April 22, 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 officially clarify 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 December 2011, the court had not issued a ruling on the matter.

Tariffs

According to the WTO, in 2011 Venezuela applied a simple average tariff of 15 percent on agricultural goods and 12.1 percent on non agricultural goods.

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. 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. Paraguay's congress continues to block Venezuela's entrance into MERCOSUR.

Nontariff Measures

A Law of Fair Costs and Prices was promulgated on July 14, 2011, and entered into effect on November 22, 2011. The law gives the Venezuelan government broad authority to regulate the prices of almost all goods and services sold to the public, including imported products. A new bureaucracy has been empowered to decide whether prices are "fair" and to identify businesses that make "excessive profits." At the time of writing, businesses are providing the cost and other data requested by the government, despite the fact that detailed implementing regulations have not been released. The law will initially be applied to foodstuffs, personal care and household cleaning products, and construction materials.

Currency controls introduced in 2003 continue to pose a significant barrier to most trade with Venezuela, with the possible exception of food and agricultural goods and health and pharmaceutical products. There are currently two entities through which importers may seek foreign exchange: (1) the Foreign Exchange Commission, or *Comision de Administracion de Divisas* (CADIVI); and (2) the Transaction System for Foreign Currency Denominated Securities (SITME), which falls under the supervision of 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 2 exchange rates, 1 at 2.6 Bs/$1 (which applied to certain priority imports such as food, healthcare, science and technology products, capital goods, and public sector imports) and 1 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, which remains the official rate of exchange. SITME operations since June 2010 have had an implicit exchange rate of approximately 5.30 Bs/$1.

Importers who wish to use the CADIVI system must first enroll in its Registry of Users of the System of Administration of Foreign Exchange (RUSAD). Importers who receive pre-approval may import goods and then apply for CADIVI approval to purchase dollars at the relevant official rate to pay for the imports. The CADIVI system is available for importers in sectors classified as strategic, including food, health products, machinery and equipment, commerce, chemicals, and metals. 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 collaboration of the exporter.

When oil prices fell sharply in the latter half of 2008, the Venezuelan government 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 to September 2011, CADIVI approved a total of $22.9 billion in foreign exchange disbursals, averaging $128 million per working day. This included $14.8 billion in approvals for imports (not including imports under the Latin American Integration Association Agreement). Import sectors receiving the greatest exchange flows were: food (22.7 percent), healthcare (23.3 percent), automotive (13.1 percent), commerce (8.5 percent), machinery and equipment (5.2 percent), and chemical (8.5 percent).

The need to obtain CADIVI pre-approval to import goods and for payments at the official exchange rate has caused increased obstacles to trade due to the complex pre-approval process, delays in receiving approvals and payments, and restrictions on imports and importers. Once 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 grant. Many companies have moved to the SITME foreign exchange market (*discussed below*) to obtain foreign currency to pay for imports, somewhat alleviating the demand on the CADIVI system. However, many companies continue to report that they are not receiving sufficient

foreign exchange to satisfy their business needs. Additionally, since 2006, CADIVI approvals for dividend repatriation have been minimal.

In May 2010, the Venezuelan government abolished the former "*permuta*," or parallel market foreign exchange system, in place since currency controls were implemented in 2003. In June 2010, the BCV created SITME. Average SITME approvals since June 2010 have been approximately $35 million per business day, while average disbursals in the former parallel market in 2009 were estimated at $110 million per business day. SITME operations have received an exchange rate of approximately 5.30 Bs/$1. Under SITME, transaction amounts for individual customers are limited to $50,000 a day, with a maximum total of $350,000 a month. New regulations that took effect on January 1, 2012, require that all importers who wish to use SITME must first register in a new registry called RUSITME, similar to CADIVI's RUSAD. Requests for SITME exchange transactions are made through Venezuelan banks. Importers must have been bank clients for 90 days prior to their registration in the RUSITME system. Importers and others that acquire foreign exchange through CADIVI are not allowed to access SITME during the 90 days that follow. 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 disincentive to importation. Beginning January 1, 2008, all automobile importers were required to obtain a license from the Ministry of People's Power for Commerce 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." As part of requesting this license, all automotive companies 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. Venezuela prohibits the importation of used cars, buses, and trucks, and used tires, as well as used clothing.

Since 2008, the government has used an import quota mechanism for vehicles in a bid to increase the number of automobiles assembled in Venezuela. However, carmakers are subject to limited allocations of dollars to import components they need to carry out production in Venezuela. On an annual basis, assemblers may present their requests for a determined number and models of imported vehicles, which are then subject to the issuance of import licenses by the government. Import licenses have generally been awarded to assemblers that have a sister assembler in countries that already have government-to-government agreements with Venezuela, such as Argentina and Ecuador.

The 2008 automotive regime added 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. This rule was twice postponed and then changed. As of April 1, 2009, 30 percent of vehicles sold must be dual fuel, and each Venezuelan assembler must produce at least 2 dual fuel models. This dual fuel requirement also applies to vehicles imported by assemblers. Of the total number of vehicles brought into the country by an importer, 30 percent of the imported vehicles must be dual models, and the remaining 70 percent must be converted once imported. As of December 2011, however, the ability of the assemblers to meet this requirement is unclear due to the size of the investments needed to comply. In addition, the gradually increasing requirement for local content in domestically assembled vehicles was changed to a flat 50 percent requirement, which will be applicable beginning in 2013. A new requirement for motors 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 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 appears to protect some industries within its agricultural sector through the use of licenses and sanitary permits that restrict imports. The Venezuelan government applies fixed farm gate prices for producers of corn, rice, sorghum, sugar cane, milk, and beef. These prices are reviewed only when the industry applies sufficient pressure and 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) for up to 62 Harmonized System code 8-digit headings. 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 restrictive 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. Furthermore, the Venezuelan government has not published regulations establishing the TRQ mechanism for certain eligible products and has refused to activate the TRQ for other products, 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. Most recently, in 2010, the Venezuelan government updated that list, which now includes 467 agricultural products. 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* export ban. Since the passage of a February 2009 resolution, products such as coffee and sugar, and other basic food items, cannot be exported until domestic demand is 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 were added or removed from the initial list, and there were certain periods when this policy lapsed. On January 18, 2008, the government of Venezuela created a new list of tax-exempt goods that featured some products on the then current list and some additions. The list was last updated in October 2008, with customs duties for live cattle imports exonerated 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 targeted at the low and middle economic 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 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 tariffs and custom duties.

COMERSO, which was created in April 2010, now handles purchases for government-run supermarket chains. It appears that the expansion of the government role in trade is likely to grow. On December 1, 2010, the Venezuelan government created a new corporation, Venecom, which, according to the announcement in Venezuela's Official Gazette, is charged with handling foreign trade in support of the development of small and medium sized industry. 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 are reportedly 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 procuring entity to prepare a budget estimate for a procurement based on reference prices maintained by the Ministry of Light Industry and Trade. Although the law forbids discrimination between domestic and foreign suppliers, it provides that the President can mandate temporary changes in the bidding process "under exceptional circumstances," in accordance with "economic development plans" that promote national development or provides preferences to domestic goods and suppliers. These measures can include price preferences for domestic goods and suppliers, reservation of procurements for nationals, requirements for domestic content, technology transfer, or the use of local labor and other incentives to purchase from companies domiciled in Venezuela. For example, government decree 1892 establishes a 5 percent preference for bids from companies whose products have over 20 percent local content. In addition, half of that 20 percent of content must be from small to medium sized domestic enterprises. The Venezuelan government is increasingly awarding contracts directly, thus avoiding competition required by the government procurement law. There are allegations that companies from certain countries are favored while those from other countries, including the United States, receive less favorable treatment.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Venezuela was listed on the Priority Watch List in the 2011 Special 301 Report. Key concerns cited in the Report relate to the deteriorating environment for the protection and enforcement of intellectual property rights (IPR) in Venezuela. The reinstatement of the 1955 Industrial Property Law created uncertainty with respect to patent and trademark protections. Copyright piracy and trademark counterfeiting remain widespread. 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. Recent progress includes passage of a Law on Crime and Contraband, which imposes penalties for smuggling violations and provides for the seizure of goods that infringe IPR. However, Venezuela must still make significant improvements to its regime for IPR protection and enforcement.

SERVICES BARRIERS

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

Professional Services

Foreign equity participation in professional firms is restricted to a maximum of 19.9 percent. Only Venezuelan citizens may provide accounting and auditing services to government institutions and 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.

Financial Services

The insurance law, approved in July 2010, establishes 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 the country.

Audiovisual Services

Venezuela limits foreign equity participation to less than 20 percent for enterprises engaged in Spanish language television and radio broadcasting. At least half of the television programming must be dedicated to national programming. Additionally, half of both FM and AM radio broadcasting must be dedicated to Venezuelan-produced material. In the case of music, 50 percent of the Venezuelan-produced material must be traditional Venezuelan songs. There is also an annual quota regarding the distribution and exhibition of Venezuelan films required of cinema owners and film distributors. Additionally, there is 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 to 1999), but under President Chavez (since 2000) 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 an aluminum company, and proposed the nationalization of a commercial bank. In 2009, the government nationalized a food production plant and 76 oil field services companies. In 2010, the government nationalized a number of companies involved in the agricultural sector, drilling rigs belonging to a U.S. company, and a number of housing projects. According to data maintained by *Conindustria (Confederación Venezolana de Industriales)*, there were 499 industrial sector expropriations in 2011 alone, and a total of 988 nationalizations since 2002. Of these, 408 had been companies involved in the construction sector, 229 in agriculture or related industries, and 210 in the oil sector. Other sectors affected have included food, mining, chemical, and transport services.

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 the 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 for 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 that four projects relating to the development of Venezuela's extra heavy crude oil reserves be converted into PDVSA-controlled 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 these projects. Nevertheless, the Venezuelan government took control of these investments. Both companies have filed international arbitration claims against the Venezuelan government.

Both the 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. Oil companies from politically strategic partner countries seem to be the preferred partners for the development of many new projects.

In May 2009, the Venezuelan government promulgated a law reserving to the state those assets and services related 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) assets and services associated with the hydrocarbons industry on Lake Maracaibo in western Venezuela. This included boats for the transportation of personnel, divers, and maintenance; cranes and crane barges; tugs; flat barges; light vessels; cutting barges; barges for laying pipeline and sub-aquatic cable; vessel maintenance facilities; docks; and any type of dikes. Seventy-six companies, including several U.S.-owned firms, were nationalized pursuant to this law and none has received compensation to date. Several affected U.S.-owned firms have filed international arbitration claims against the Venezuelan government.

In June 2009, the government promulgated the Organic Law for the Development of Petrochemical Activities to regulate the execution of petrochemical activities and to reserve to the state activities defined as primary and intermediate activities, as well as all facilities and works required to carry out these activities. As a result, 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. In October 2010, the government nationalized a petrochemical plant that was partly owned by a private U.S. entity.

The previous government had 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 prices. The 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. The law mandated government control of domestic transportation and wholesale of liquid fuels and set a 60-day period for negotiations with the affected companies. Affected companies have not yet been compensated and

negotiations are ongoing. All establishments that carry out retail activities of liquid fuels were to be rebranded 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. Also unclear was whether the law applied only to fuel pumps and storage tanks at service stations or to the entire retail entity (including any other services provided, such as convenience stores). In 2010, the government seized some gasoline stations along the Colombian border. It has also nationalized fuel distribution companies and Venezuela's largest privately-owned lubricant manufacturer.

Electric power generation, transmission, and distribution were previously 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 the electrical sector. As a result, a 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. At the end of 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 direct government ownership and 25 percent PDVSA ownership.

In early 2005, President Chavez reorganized the ministries that govern the energy and mining sectors. One result of this restructuring was to increase ministerial control over basic industries and to strengthen the state-owned *Corporacion Venezolana de Guayana* (CVG), which controlled 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 is still pending in the National Assembly that seeks to repeal "inactive" concessions of foreign companies and to structure the mining sector under a joint-venture model. In April 2008, the government revoked U.S.-based Gold Reserve's gold mining concession. In October 2009, Gold Reserve filed for international arbitration against the Venezuelan government. In April 2010, President Chavez declared that he would order the Ministry of Basic Industry and Mines to cancel all mine concession agreements and expropriate gold and diamond mining activity taking place in the state of Bolivar. In October 2010, President Chavez announced a decision to nationalize the Las Cristinas gold concession located in southern Bolivar State, which had been held by Canada's Crystallex. The press has reported government plans to form a Venezuelan-Chinese joint venture to take over this concession. In August 2011, President Chavez signed a law that reserved to the state the right to explore for and manage the gold industry, as well as its connected activities, effectively nationalizing Venezuela's gold industry. In December 2011, President Chavez announced changes to various ministerial competencies, moving mining into the reformed Ministry of Petroleum and Mining.

On December 23, 2011, PDSVA lost an International Chamber of Commerce arbitration case against a major international oil company. With another case involving the same company pending before the World Bank's International Centre for the Settlement of Investment Disputes (ICSID), President Chavez announced on January 8, 2012 that the Venezuelan government would not recognize any ICSID decision related to the company's claim and stated that his government should withdraw from ICSID. On January 24, 2012, the Venezuelan government withdrew from the ICSID Convention; pursuant to the Convention, the withdrawal will take effect six months thereafter (*i.e.*, on July 25, 2012). At least 20 ICSID cases against Venezuela are currently pending.