VENEZUELA

TRADE SUMMARY

The U.S. goods trade deficit with Venezuela was $21.1 billion in 2012, down $9.8 billion from 2011. U.S. goods exports in 2012 were $17.6 billion, up 42.8 percent from the previous year. Corresponding U.S. imports from Venezuela were $38.7 billion, down 10.5 percent. Venezuela is currently the 21st largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Venezuela were $5.6 billion in 2011 (latest data available), and U.S. imports were $814 million. Sales of services in Venezuela by majority U.S.-owned affiliates were $3.0 billion in 2010 (latest data available), while sales of services in the United States by majority Venezuela-owned firms were $714 million.

The stock of U.S. foreign direct investment (FDI) in Venezuela was $12.1 billion in 2011 (latest data available), up from $9.7 billion in 2010. U.S. FDI in Venezuela is primarily concentrated in the manufacturing and nonbank holding companies sectors.

IMPORT POLICIES

An executive resolution published in Venezuela's Official Gazette on March 13, 2012 provides favorable treatment to public sector entities and state-owned enterprises with respect to various import policies. Specifically, unlike private enterprises, these public entities are exempt from presenting or maintaining import licenses, paying tariffs, or presenting documents or certificates related to the regulation of customs and duties. The Venezuelan government asserts that the purpose of the resolution was to simplify administrative procedures for import and exports.

Tariffs

According to the WTO, in 2012 Venezuela applied a simple average tariff of 15 percent on agricultural goods and 12.1 percent on non-agricultural goods.

At a July 2012 MERCOSUR summit in Rio de Janeiro, Venezuela became the fifth full member of MERCOSUR, an economic and political agreement established in 1991 among Argentina, Brazil, Paraguay and Uruguay. Under the terms of its accession, Venezuela has 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. Venezuela is permitted by MERCOSUR to maintain 260 exceptions to the CET until December 31, 2016, and 160 exceptions to the CET until December 31, 2017.

Nontariff Measures

The Law of Fair Costs and Prices was enacted on July 14, 2011, and entered into effect on November 22, 2011. The law gives a newly created Venezuelan government entity, the Superintendent of Fair Costs and Prices (SUNDECOP), broad authority to regulate the prices of almost all goods and services sold to the public, including imported products and services. Pursuant to its authority, SUNDECOP is empowered to decide at its own discretion whether prices are "fair" and to identify businesses that make "excessive profits through speculation."

Businesses have provided the cost and price data requested by the government, despite the fact that implementing regulations have never been issued. As of April 1, 2012, prices were reviewed and fair prices confirmed by SUNDECOP for foodstuffs, personal care and household cleaning products, and construction materials – ranging from soap and shampoo to cement comprising a total of 19 product lines. To date, SUNECOP has not reviewed prices for products in other sectors beyond the 19 product lines, but has met with different industry sectors and warned that prices could be raised or lowered after a thorough review.

Currency Controls

Currency controls introduced in 2003 continue to pose as a significant trade barrier in Venezuela. Importers must have prior authorization to obtain foreign currency before purchasing imports. The Venezuelan government (GBRV) revised its foreign currency regime on February 8, 2013. The GBRV eliminated the Central Bank-operated System for Transactions in Foreign Currency Denominated Securities (SITME), which since June 2010 had sold dollar-denominated GBRV and PDVSA bonds, for bolivars, at an implicit exchange rate of 5.3 bolivars per dollar. Importers may now seek foreign exchange through only one entity, the Foreign Exchange Commission, or *Comision de Administracion de Divisas* (CADIVI). In addition to eliminating SITME, the GBRV devalued the official exchange rate, at which CADIVI sells U.S. dollars, from 4.3 to 6.3 bolivars/dollar.

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 from RUSAD for foreign currency purchases may import goods and then apply for CADIVI approval to purchase dollars at the 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, chemicals, and metals. Certain products that the government deems strategic require a certificate of “non-national production or certificate of insufficient production” from the Ministry of Health or from other government entities depending on the product category in order to qualify for participation in the CADIVI system. If the GBRV considers the products to be non-strategic or non-essential, they are not eligible to be imported using the official CADIVI foreign exchange rate.

The process for obtaining authorizations for foreign currency (mainly U.S. dollars) through CADIVI is burdensome and time consuming and many companies report that they are not receiving sufficient foreign exchange to satisfy their business needs. The process takes on average nine months, and can require the importer to submit numerous supporting documents, with the support of the exporter. For example, the government requires exporters to provide a Venezuelan Consulate in the United States a sworn declaration (which must be either notarized or apostilled) stating that the commercial invoices are authentic. Additionally, since 2006, CADIVI approvals for dividend repatriation have been minimal.

Automotive Measures

Since January 1, 2008, the Ministry of People’s Power for Commerce requires all automobile importers to obtain a license for authorization to receive foreign exchange for the importation of assembled vehicles. Approval of these licenses is contingent on “national need, the capacity of national production, plans to expand local production, model cost, historic sales, and the efficient use of fuel.” The law also prohibits the importation of passenger cars with engines larger than three liters, thus impeding companies that sell predominantly larger cars.

Since 2008, the government has used an import quota mechanism to promote and increase the number of automobiles assembled in Venezuela. However, due to currency controls, carmakers are subject to limited allocations of dollars to pay for the imported components they need to carry out production in

Venezuela. On an annual basis, assemblers may present their requests for import licenses regarding the models and quantity of imported vehicles. The government has generally awarded import licenses to assemblers that have a related assembler in countries that have agreements with Venezuela, such as Argentina and Ecuador.

The 2008 aforementioned automotive regime contained requirements regarding dual fuel (gasoline and natural gas) vehicles. 30 percent of vehicles sold must be dual fuel, and each Venezuelan assembler must produce at least two 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. Since 2010, engines in domestically assembled vehicles must be assembled in Venezuela, and beginning in 2013, domestically assembled vehicles are subject to a 50 percent local content requirement. Assemblers have stated that these two requirements are extremely problematic. In particular, they have noted that Venezuela's domestic industry is unable to produce sufficient components to allow 50 percent local content and that the variety of motors and the requisite large production runs make local motor assembly prohibitively expensive.

Commodities and Agricultural Products

The Venezuelan government applies fixed farm gate prices for producers of corn, rice, sorghum, sugar cane, milk, and beef. These prices generally lag behind increases in input costs. The government of Venezuela bans the non-food use of corn and controls product movement through "mobilization guides," which results in a *de facto* export ban. Basic food items, such as coffee and sugar, cannot be exported until domestic demand is satisfied.

Venezuela maintains the authority to impose tariff-rate quotas (TRQs) for up to 62 Harmonized Tariff System code 8-digit headings. Currently, the government applies TRQs to oilseeds, corn, wheat, milk and dairy, and sugar. The issuance of import licenses for such TRQs 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 non-domestic production" 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 multiple ministries, increasing processing time. The number of ministries and agencies involved and the changes in responsibilities among them impedes the issuance of import permits, licenses, and the registration of local and imported food products. The government of Venezuela may waive the "certificate of nonproduction" requirement to mitigate food shortages. Whenever there is a shortage, imports are readily authorized. This has been the case for the last several years as demand has exceeded domestic supply.

The Venezuelan government is the main importer of basic foodstuffs and has created a large food distribution network targeted at the low and middle income classes. Venezuela's food program focuses on providing a 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.

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 Venezuelan 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 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. In addition, the Venezuelan government is increasingly awarding contracts directly, thus avoiding the bidding processes required by the government procurement law. There are also allegations that the procurement law is inconsistently applied or ignored, frequently to the benefit of local companies, and that companies from certain countries are favored while those from other countries, including the United States, receive less favorable treatment. 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 2012 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, including piracy over the Internet. Other concerns include the lack of effective protection against unfair commercial use of undisclosed test data and other data generated to obtain marketing approval for pharmaceutical products. Venezuela has taken steps to enforce the 2010 Law on Crimes and Contraband, including the penalty provisions of that law. However, Venezuela must still make significant improvements to its regime for IPR protection and enforcement, as resource constraints and lengthy legal processes hamper IPR enforcement. In 2012, the Venezuelan Supreme Court accepted a request that was presented in 2009 by the Venezuelan Pharmaceutical Chamber of Commerce to determine if 10 articles from the 1955 Industrial Property Law conflict with Venezuela's existing international obligations, including its obligations under the Paris Convention for the Protection of Industrial Property and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The case remains under consideration.

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 domestic, 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

Venezuelan law requires 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 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 regarding the distribution and exhibition of Venezuelan films required of cinema owners and film distributors. Finally, there is a requirement that a percentage of film reproduction be done in Venezuelan facilities.

INVESTMENT BARRIERS

The government controls 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 privatization halted under the Chavez Administration (2000 to March 5, 2013), who also re-nationalized companies in key sectors of the economy, including the telecommunications and oil sectors. According to data maintained by Conindustria (*Confederación Venezolana de Industriales*), there have been 1,171 state interventions (expropriations, private property seizures and nationalizations) since 2002. Of these, 40.9 percent were companies involved in the construction sector, 30.8 percent in the industrial sector (manufacturing, agro-industrial, agriculture or related industries), 19 percent in the oil sector, and 7.9 percent in the service and trade-related sectors. Other affected sectors include food, mining, chemicals, and transport services.

On January 24, 2012, the Venezuelan government announced its withdrawal from the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). Venezuela's exit from ICSID became effective on July 25, 2012. At least 29 ICSID cases against Venezuela are currently pending, making Venezuela the country with the largest number of pending ICSID claims. Prior to announcing Venezuela's ICSID withdrawal, President Chavez announced that the Venezuelan government would not recognize any ICSID decision related to the pending claim of a U.S. company. The United States does not have a Bilateral Investment Treaty with Venezuela.

Foreign investment in the petroleum sector is restricted. The exploration (except for offshore natural gas), production, refinement, transportation, storage, and foreign and domestic sale of hydrocarbons are reserved to the state. Private companies can engage in hydrocarbons-related activities only through mixed companies and equity joint ventures with the state-owned oil company, PDVSA. The government has in recent years forced international oil companies to convert investment interests in oil projects into minority stakes in joint ventures, without the right to operate the projects themselves. Combined with a windfall tax on profits, these and other government measures have substantially increased uncertainty in the hydrocarbons sector.

Venezuelan law requires a competitive process for awarding stakes in exploration and production acreage to private partners for projects developed by PDVSA. However, the government can directly award contracts when the project is developed under “special circumstances” or is of “national interest.” Oil companies from politically strategic partner countries appear to be the preferred partners for the development of many new projects. Assets and services involved in the injection of water, steam, or gas into petroleum reservoirs; gas compression; and hydrocarbons activity on Lake Maracaibo in western Venezuela are all reserved to the state. Activities, facilities, and projects in the petrochemicals sector are also reserved to the state, and the state is required to have at least a 50 percent ownership stake in petrochemical companies.