VENEZUELA

In 1997, the U.S. trade deficit with Venezuela was $6.8 billion, a decrease of $1.3 billion from the U.S. trade deficit of about $8.2 billion in 1996. U.S. merchandise exports to Venezuela were more than $6.6 billion, an increase of $1.9 billion (39.4 percent) from the level of U.S. exports to Venezuela in 1996. Venezuela was the United States' twenty-second largest export market in 1997. U.S. imports from Venezuela were about $13.4 billion in 1997, an increase of $545 million (4.2 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Venezuela in 1996 was nearly $3.6 billion, an increase of 11.6 percent from the level of U.S. FDI in 1995. U.S. FDI in Venezuela is concentrated largely in the manufacturing and petroleum sectors.

IMPORT POLICIES

Tariffs

Venezuela has continued its efforts to conclude trade arrangements with other countries in Latin America and the Caribbean. Venezuela extends preferential tariffs on a limited variety of products to member states of the Latin American Integration Association (ALADI). Venezuela signed a partial Free Trade Agreement with Chile in 1993, but the two countries agreed in 1997 to expand the treaty's scope by eliminating the list of goods excluded from free-trade treatment. Venezuela, along with Colombia, has also concluded a Free Trade Agreement with Mexico (the "G-3" agreement), which entered into force January 1, 1995, under which most tariffs are to be reduced to zero by 2004. Venezuela also has a preferential agreement with the Caribbean Common Market (CARICOM), under which CARICOM will start reducing tariffs on Venezuelan goods in 1998. Venezuela, jointly with Colombia, in 1994 signed a framework agreement on free trade with several Central American countries, but has not yet negotiated schedules on tariff reduction and trade liberalization. Venezuela is currently negotiating a free trade accord with the Southern Common Market (MERCOSUR) in conjunction with other Andean Community members.

These preferential trade arrangements put U.S. exports at a disadvantage. For instance, Venezuela maintains tariffs of 20 percent ad valorem on imports of U.S. beer, wines, and all distilled spirits, while some categories of wine from Argentina, Chile, and Mexico are subject to duties of only 4, 0, and 5.6 percent respectively. Under the G-3 agreement, duties on almost all imported alcoholic beverages from Mexico will be reduced to zero by 2004. Venezuela also imposes a 15-percent duty on imports from the United States of compound preparations and undenatured ethyl alcohol used in the production of spirits. Reducing the non-preferential tariff rate could increase U.S. exports by $1-5 million.

Venezuela also maintains 20 percent ad valorem duties on canned soups, mixed vegetable juice, biscuits, and cookies; a reduction in the tariff would result in a potential increase of $1-5 million in U.S. exports. The Andean Community tariff on soybeans and its byproducts is variable (set by the price band system), but it is usually 15 percent. Soybean oils from Paraguay, Argentina and Brazil are subject to lower duties of 1, 8, and 10 percent respectively as a result of trade preference agreements. Soybean meal from Paraguay is assessed a 3.75 percent tariff. Eliminating these preferences could increase U.S. exports by $5- 10 million.

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Similarly, Venezuela maintains a 15-percent duty on fresh and dried fruit from the United States. Under the Venezuela-Chile free trade agreement, all fresh fruit from Chile is subject to a 2-percent tariff, while most dried fruit enters duty free. Elimination of these preferences could increase U.S. exports by $5-10 million.

The reduction of the 20-percent tariff on film and cameras would result in a potential increase in U.S. exports of $5-10 million in each category.

Non-Tariff Measures

Venezuela prohibits the importation of used cars, used tires, and used clothing. There are virtually no other quantitative import restrictions for industrial products.

The government implemented a yellow corn import licensing system in February 1997, ostensibly to administer its WTO tariff rate quota for sorghum and yellow corn, but in actuality to enforce domestic sorghum absorption requirements. Under this system, feed manufacturers must purchase a government assigned amount of domestic sorghum, at the official price, in order to obtain import licenses for yellow corn. The government has announced that it may establish similar import license requirements for white corn, rice and powdered milk.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Venezuela's sanitary restrictions on U.S. poultry products lacks a scientific basis and is discriminatory. Venezuela refuses to issue certificates for imports of U.S. poultry and poultry products on the basis that there is a history of avian influenza in the United States. Venezuelan agricultural authorities, however, have failed to establish that imports of U.S. poultry would pose a risk to the Venezuelan poultry industry. If the ban were lifted, U.S. exports of poultry and poultry products could amount to $5-20 million a year. The government had a similar ban in place against U.S. pork and swine, but that ban was lifted in April 1997 after the government was presented with evidence that porcine reproductive and respiratory syndrome (PRRS) already exists in Venezuela. However, the government still requires import licenses for pork and swine and these are rarely granted.

In 1993, the Venezuelan Commission for Industrial Standards (COVENIN) began to apply obligatory domestic standards for commodities to certain imports; by the end of 1995, there were nearly 300 standards. Some Venezuelan importers of U.S. products have alleged that the Government of Venezuela applies these standards more strictly to imports than to domestic products. The certification process is at times expensive, increasing the cost of U.S. exports vis-a-vis domestic products. COVENIN requires certification from independent laboratories -- which is often impossible in the United States. According to the U.S. cosmetic industry, Venezuela maintains qualitative restrictions which, if lifted, would increase U.S. exports by less than $5 million a year.

GOVERNMENT PROCUREMENT

The 1990 law of tenders, its associated regulations, and its modifying decree of 1991, together establish three classifications for government procurement based principally on the value of the goods and services being procured: general tenders (more than $21,200), selective tenders ($2,120 to $21,120), and direct purchases (less than $2,120). For general and selective tenders, the law states that for offers that are within a "reasonable" range of each other for similar conditions, preference will be given according to various criteria, including national content, labor impact, national value added, local participation, and technology transfer. For the purchase of goods, the government also applies a policy, not stated in the law of tenders, that local goods should be purchased, unless the price of such products is 25 percent more than the landed cost of competing foreign products.

In the petroleum industry, the state oil company, PDVSA, is required to purchase national materials and supplies. However, PDVSA is permitted to make foreign purchases if domestic firms cannot meet quantity, quality, or delivery requirements. In addition, imported materials supplied by local representatives of foreign manufacturers are classified as "domestic purchases." Firms that supply PDVSA must register with PDVSA's "unified suppliers registry" or with the "unified contractors registry." Venezuela is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Venezuela has reduced the number of export subsidies it provides, but retains a duty drawback system. Exporters can also get a rebate of the 16.5 percent wholesale tax paid on imported inputs.

Foreign as well as domestic companies are eligible for these drawback privileges, but U.S. firms located in Venezuela complain of long delays in receiving rebates. Exporters of selected agricultural products -- coffee, cocoa, some fruits, and certain seafood products -- receive a tax credit equal to 10 percent of the export's f.o.b. value.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Despite significant improvements -- especially in the enforcement of copyright law -- Venezuela does not yet provide adequate and effective protection of intellectual property rights (IPR). There is still widespread piracy of well-known trademarks, videos, satellite signals, and other protected works. Moreover, the Venezuelan court system has proven to be an unreliable means for pursuing IPR claims. As a result of its laws and practices, Venezuela has been on the "Watch List" under the Special 301 Provision of the 1988 Trade Act since 1989.

The government created a new intellectual property office (SAPI) in March 1997, which merged the existing industrial property office (SARPI) with the national copyright office. SAPI, which is expected to focus and improve enforcement efforts, is slated to become operational in June 1998. Under the new SAPI, the government plans to expand the mandate of COMANPI to include the enforcement of patents and trademarks as well as copyrights.

Venezuela is a member of the Paris Convention for the protection of industrial property and the Berne Convention for the protection of literary and artistic works. Venezuela has ratified, but not yet fully implemented, the provisions of the WTO Agreement on Trade-related aspects of Intellectual Property Rights (TRIPS).

Patents and trademarks

Venezuela

Two Andean Community decisions on the protection of patents and trademarks and of plant varieties have been in effect in Venezuela since January 1, 1994, and October 29, 1993, respectively.

The decisions are comprehensive and offer a significant improvement over previous standards of intellectual property protection provided by the Andean Community countries. For example, they provide a 20-year term of protection for patents and the reversal of the burden of proof in cases of alleged patent infringement. The provisions of the decisions covering protection of trade secrets and new plant varieties are generally consistent with world class standards for protecting intellectual rights. However, these decisions remain deficient with respect to patents and trademarks. The deficiencies include overly broad compulsory licensing provisions, working requirements, restrictions on biotechnology inventions, denial of pharmaceutical patent protection for patented products listed on the World Health Organization's model list of essential drugs, lack of transitional ("pipeline") protection, and lack of protection against parallel imports.

The fines provided in the 1955 industrial property law for patent and trademark infractions are minimal. They have never been increased to account for inflation and devaluation. The government proposed legislation in early 1996 to update the entire law, but the bill is still awaiting action by Congress.

Copyrights

Venezuela's 1993 copyright law and a 1995 implementing regulation substantially improved protection of copyright products and enhanced penalties for copyright infringement. An Andean Community decision on copyright protection, which complements Venezuela's domestic copyright law, has been in effect since 1994 and has established a generally effective and Berne-consistent system.

A national copyright office, established in October 1995, is responsible for controlling, overseeing, and ensuring compliance with the rights of authors and other copyright holders. It can issue opinions, serve as an arbitrator, and impose fines for copyright infringements. The government formed a special antipiracy police unit (COMANPI) in July 1996 to act as an enforcement arm of the copyright office. The eight-officer police unit has the power to seize goods, make arrests, or close establishments for violations of the law. However, it can only act based on a complaint by a copyright holder; it cannot carry out an arrest or seizure on its own initiative. COMANPI works closely with private sector representatives of the U.S. copyright industry, who provide the unit with intelligence information, financial backing, and training.

COMANPI made 60 arrests and seized 70,800 pirated videotapes, 60,500 illicit audio cassettes, and 10,216 illegally copied books in 1997. It also shut down a number of underground laboratories where large quantities of copyrighted material were being illicitly reproduced. Inadequate border controls against the import of pirated material hampered efforts to improve copyright protection still further. A customs bill, which includes measures to strengthen border enforcement, passed the lower house of Congress in 1997 and is expected to be approved by the Senate in early 1998.

COMANPI made notable strides in 1997 to improve the protection of encrypted satellite signals, which until recently was practically nonexistent. Venezuela is within the footprint of U.S. satellite television transmission and unauthorized reception and distribution of U.S. signals has traditionally been widespread. During 1997, COMANPI seized 56 unauthorized decoders and 20 parabolic antennas. COMANPI also began to focus on cable television piracy in 1997. In July, a person convicted of the unauthorized retransmission of television signals was sentenced by a court to twelve months in prison.

SERVICES BARRIERS

Venezuela maintains barriers in a number of service sectors. For example, all professions subject to national licensing legislation (e.g., engineers, architects, economists, business consultants, accountants, lawyers, doctors, veterinarians, and journalists) are reserved for those who meet Venezuelan certification requirements. Imports receiving government-approved tariff reductions or government financing, or those which are government-owned, must be insured by local insurers.

Basic Telecommunications Services

In the WTO Negotiations on Basic Telecommunications Services, which were concluded in February 1997, Venezuela made commitments on all basic telecommunications services. It will provide market access and national treatment for these services as of November 27, 2000, when the monopoly granted to the privatized national telephone company (CANTV) ends. Venezuela adopted parts of the reference paper on regulatory commitments.

Financial Services

In the WTO Negotiations on Financial Services, which were concluded in December 1997, Venezuela made commitments on banking, foreign exchange houses, capital markets, life insurance, reinsurance and brokerage. It will provide market access and national treatment for these services upon entry into force of the agreement. Venezuela, however, did not make a commitment on pensions or on maritime, aviation and transportation insurance, and its offer includes an economic needs test and an MFN exemption.

INVESTMENT BARRIERS

The state continues to control key sectors of the economy, including oil, gas, iron ore, and much of the coal and petrochemical industries; parastatals dominate others, like aluminum. The government, however, plans to privatize several major state enterprises in 1998, including a four-company aluminum complex and a ferrosilicon plant. The government also introduced legislation in 1997 proposing that a minority share of PREQUIVEN, the state petrochemical company, be sold to private investors via domestic and international capital markets. Foreign investment continues to be restricted in the petroleum sector, with the exploration, production, refining, transportation, storage and foreign and domestic sales of hydrocarbons reserved to the Venezuelan government and its entities (state oil company PDVSA) under the 1975 Hydrocarbons Law. However, private companies may engage in hydrocarbons-related activities through operating contracts or, when found to be in the public interest, through equity joint ventures as long as the joint ventures guarantee state control of the operation, are of limited duration, and have the prior authorization of Congress meeting in joint session.

Since 1993, the oil sector has been opened to increasing amounts of foreign investment through operating contracts and equity joint ventures. In 1996, the government awarded foreign investors equity participation in eight concessions for the exploration and production of light and medium crude. Several equity joint ventures between PDVSA and private companies involving natural gas and extra-heavy crudes also have been approved by the Congress. In addition, 33 "marginal" or inactive oil fields have been opened to national and foreign investors under operating contracts. Eighteen fields were auctioned in 1997 and more could be opened for bidding in 1999. During the 1997 bidding, the government set aside a quarter of the “marginal” fields for national companies, but the national companies were allowed to take on foreign partners, who could supply up to 70 percent of the capital of the partnership. In 1997, the government also moved to liberalize the domestic gasoline market by issuing a decree to permit foreign companies to own and operate service stations and by introducing legislation to end government-set prices. As part of its plans to more than double oil production by 2007, PDVSA expects a total of $75 billion to be invested in the oil sector over the next decade, with at least $35 billion coming from joint ventures with foreign firms.

Venezuela also limits foreign equity participation (except that from other Andean Community countries) to 19.9 percent in enterprises engaged in television and radio broadcasting, Spanish language newspapers, and professional services whose practice is regulated by national laws. The level of foreign investment is unrestricted in other sectors of the economy. Foreign investors in the mining sector are subject to Venezuela’s 1944 Mining Law and a complex set of executive decrees which require them to secure a concession from the government. Finally, 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. The law also requires that all industrial relations managers, personnel managers and foremen be Venezuelan. The law provides for temporary exceptions to the restrictions on foreign employment when qualified Venezuelan candidates are not available.

Venezuela also maintains several other investment-distorting measures. Preferential tax credits and credit access are accorded to export-oriented firms; other investment tax credits are directed to producers and purchasers of locally-produced capital goods. Under the Andean Community Common Automotive Policy, Venezuela, Ecuador and Colombia impose regional content requirements in the automotive assembly industry in order to qualify for reduced duties on imports. The local content requirement for passenger cars was 32 percent in 1997 and has risen to 33 percent for 1998. Venezuela has notified to the WTO the local content requirements in the automotive sector, which are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. Proper notification allows developing country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Venezuela, therefore, must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO members meet these obligations.

The government enforces a “one-for-one” policy which 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; a requirement that at least half of the television programming must be dedicated to national programs; and a requirement that at least half of the FM radio broadcasting from 7 a.m. to 10 p.m. be dedicated to Venezuelan music.