VENEZUELA

TRADE SUMMARY

The U.S. goods trade deficit with Venezuela was $27.6 billion in 2005, an increase of $7.4 billion from $20.2 billion in 2004. U.S. goods exports in 2005 were $6.4 billion, up 34 percent from the previous year. Corresponding U.S. imports from Venezuela were $34.0 billion, up 36.3 percent. Venezuela is currently the 27th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Venezuela were $2.4 billion in 2004 (latest data available), and U.S. imports were $529 million. Sales of services in Venezuela by majority U.S.-owned affiliates were $4.3 billion in 2003 (latest data available), while sales of services in the United States by majority Venezuela-owned firms were $113 million.

The stock of U.S. foreign direct investment (FDI) in Venezuela in 2004 was $8.5 billion, down from $9.1 billion in 2003. U.S. FDI in Venezuela is concentrated largely in the manufacturing, and mining sectors.

IMPORT POLICIES

Tariffs

Venezuela is part of the Andean Community. Venezuela has been using the tariffs established under the Andean Community's price band system since 1995 for certain agricultural products, including feed grains, oilseeds, oilseed products, sugar, rice, wheat, milk, pork, and poultry. *Ad valorem* rates for these products are adjusted according to the relationship between commodity market reference prices and established floor and ceiling prices. When the reference price for a particular commodity falls below the established floor price, the compensatory tariff for that commodity and related products is adjusted upward. Conversely, when the reference price exceeds the established ceiling, the compensatory tariff is eliminated. Floor and ceiling prices are set once a year based on average prices during the past five years. Venezuela publishes these prices each April.

In addition to the traditionally high import tariffs of the Andean Community’s price band system, Venezuela also protects its agricultural producers through a non-legislated system of guaranteed minimum prices and the restrictive use of import licenses and permits. For many years, the government and domestic producers have agreed -- behind closed doors -- to minimum prices for major crops such as corn, sorghum and rice. The government generally prohibits imports until the entire local crop has been purchased at the set price, resulting in an effective import ban.

Under its WTO commitments, Venezuela is entitled to maintain tariff-rate quotas (TRQ) for up to 62 Harmonized System code headings, but its administration of the TRQs has been arbitrary and nontransparent and has negatively affected trade in basic agricultural commodities as well as processed products. The issuance of import licenses and sanitary permits has become very restrictive. Import licenses as well as the correspondent sanitary permits are needed for corn, sorghum, oilseeds, and dairy products. Only sanitary permits are needed for products where the licensing system has not yet been implemented, such as beef, pork, poultry, fruits, and vegetables. 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, for some products eligible for TRQs, the Venezuelan government has not taken the necessary steps to publish regulations establishing the TRQ mechanism. For other products, such as pork, the government has refused to activate the quota at all.

Under the Andean Community's Common Automotive Policy, assembled passenger vehicles constitute an exception to the 20 percent maximum tariff and are subject to 35 percent import duties.

Non-Tariff Measures

In response to the rapid decline in the value of the national currency, the Bolivar, following a two-month general strike that brought oil production to a near standstill, the Central Bank of Venezuela halted trade in Bolivars on January 22, 2003. President Chavez announced the creation of an Exchange Administration Board (CADIVI) on February 5, 2003, to regulate the purchase and sale of foreign currency. During much of 2003, CADIVI was unable to process requests for authorization of foreign exchange in an efficient and timely manner, and only supplied $3.6 billion or approximately two months worth of transactions. There has been significant improvement over time. The supply of foreign currency reached a level of approximately $15 billion in 2004, or 55 percent of approved authorizations, and $15.8 billion or 94.1 percent of approved authorizations by November 4, 2005. The Ministry of Light Industry (formerly the Ministry of Production and Commerce) maintains a list of imports that are eligible to receive foreign currency approval. This list has grown significantly since the introduction of the exchange controls, and now includes services and the repatriation of capital. Although the number of currency certificate approvals has increased steeply, the exchange controls have put a significant constraint on imports, which currently account for 64.4 percent of requests, followed by private foreign debt with 7.8 percent and foreign investments with 6.3 percent. Exchange control authorities have repeatedly said that the exchange control system will be eased, but will remain in place permanently.

The 2006 national budget recently passed to the National Assembly for ratification, does not anticipate any currency devaluations from the current parity of 2.150 Bolivars per $1. Importers of agricultural products have received the majority of dollars available under the CADIVI system, since most basic food products are on the import list. Even so, problems with coordinating the timing of access to dollars, approval of import permits and licenses, and contracting the shipments have led to numerous delays and cancelled shipments. Trade in higher value products, such as apples, pears, grapes, nectarines, and other fruits and nuts, has been dramatically reduced as they are not included among the list of high priority products for which foreign exchange is available.

Venezuela also requires that importers obtain sanitary and phytosanitary (SPS) permits from the Agriculture Ministry for most agricultural imports. U.S. industry has raised concerns about the use of SPS permits to unreasonably restrict agricultural and food imports, as well as the consistency of Venezuela's SPS practices with WTO requirements. These practices have particularly affected trade in pork, poultry, beef, apples, grapes, pears, nuts, onions and potatoes. Industry representatives have reported that Venezuela also restricts the sale of nutritional supplements or natural products to pharmacies, limiting direct sales efforts.

Although the Venezuelan government has not published requirements on absorption agreements, it has been common practice for years to require the purchase of domestic production before issuing import licenses or permits. Imports of yellow corn are dependent upon the purchase of local sorghum and/or white corn. Soybean meal imports are dependent upon the purchase of "domestically produced" soybean meal that is crushed from imported soybeans, and permits for grape and black bean imports have been tied to the purchase of local product.

In 2002, the United States Trade Representative initiated formal WTO consultations with Venezuela on its agricultural import license procedures for a wide-range of products. Canada, the EU, Chile, Argentina, and New Zealand participated in the first round of consultations. Official consultations were held in November 2002 in Geneva. A subsequent exchange of letters on the SPS permit system was conducted in 2003. During the most recent meeting of the WTO Committee on Agriculture in November 2004, the United States again raised questions about permit and licensing procedures. At that time, Venezuela argued that these questions should be discussed under the WTO Sanitary and Phytosanitary Committee.

Venezuela prohibits the importation of used cars, buses, and trucks; used tires; and used clothing. No other quantitative import restrictions exist for industrial products. Some products such as cigarette paper, bank notes, weapons of war and certain explosives can only be imported by government agencies (tax authorities calculate the cigarette tax on the volume of cigarette paper imported by the manufacturers). The government can delegate authority to import on its behalf and can place orders for such products with the local sales agents of the foreign manufacturers.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Some Venezuelan importers of U.S. products have alleged that Venezuela applies product standards more strictly to imports than to domestic products. The certification process is expensive. The Venezuelan Commission for Industrial Standards normally requires certification from independent laboratories located in Venezuela, but at times will accept a certificate from independent laboratories elsewhere.

Venezuela's labeling regulations, which became effective in 2002, established the register of domestic manufacturers and importers of clothing and footwear, as well as the minimum labeling requirements for all clothing and footwear products marketed in Venezuela. Imported product labels must include the legal name or tax payer number of the Venezuelan importer. Industry reports that such information is difficult if not impossible to know during the construction process when permanent labels are attached. Re-labeling of products upon entry to meet these requirements results in additional costs and delays.

GOVERNMENT PROCUREMENT

Venezuela's government procurement law covers purchases by government entities, national universities and autonomous state and municipal institutions. The law requires a contracting agency to prepare a budget estimate for a procurement based on reference prices maintained by the Ministry of Production and Commerce. This estimate is to be used in the bidding process. The law forbids discrimination against tenders based on whether they are national or international. However, the law also states that the President can mandate temporary changes in the bidding process "under exceptional circumstances," or in accordance with "economic development plans" to promote national development, or to offset adverse conditions for national tenders. These measures can include margins of domestic price preference; reservation of contracts for nationals; requirements for domestic content, technology transfer and/or the use of human resources; and other incentives to purchase from companies domiciled in Venezuela. For example, government decree 1892 establishes a 5 percent preference for bids from companies with over 20 percent local content. In addition, half of that 20 percent of content must be from small to medium-sized domestic enterprises. The Government of Venezuela (GOV) is increasingly awarding contracts directly, thus avoiding competition required by the government procurement law.

In an effort to move away from proprietary software products, the Government of Venezuela in 2004 introduced a law mandating the use of open-source software in government entities and public institutions. This is expected to reduce the demand for U.S. software products somewhat, though much software currently in use is unlicensed or pirated.

The Venezuelan government has created a huge food distribution network, aimed at low-income people. CASA (Corporación de Abastecimiento y Servicios Agrícolas) is the government food purchasing entity, and MERCAL (Mercado de Alimentos) is a government organization created for the commercialization and marketing of food products. The state-trading entity, CASA, purchases both domestic and imported products. To date, it has purchased sugar, rice, wheat flour, black beans, milk powder, edible oil, margarine, poultry, and eggs from a variety of countries. MERCAL now distributes more than 30 percent of all basic food staples consumed in Venezuela, offering products at prices that are lower than those of controlled-price products. CASA and Mercal compete with private industry, although the private sector also supplies products to this chain. The private sector has complained that CASA has an unfair advantage because it is ensured access to dollars, import licenses, and permits. Furthermore, CASA, as a government entity, imports products without tariffs and customs duties.

The GOV has also created several state-owned enterprises, such as CVA Cereals and Oilseeds, CVA Dairy, and CVA Sugar, to supply the food network. Additionally, the GOV has controlled food prices since 2003, when it set prices for 107 food products. In addition to price controls, the government implemented exchange controls in an attempt to keep food prices low and to control inflation. Nevertheless, at times these measures have had the opposite effect and have created new distortions in the market, such as temporary scarcities of certain products. Huge increases in input prices, as well as the need to maintain at least a reasonable profit margin, have led both producers and merchants to reduce production, withhold product for sale, or illegally sell outside the controlled price. There has never been an admission of such activities. Some products frequently disappear from the market shelves, and some end up in the Colombian market, which does not have price regulations.

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

EXPORT SUBSIDIES

Exporters of selected agricultural products -- coffee, cocoa, some fruits, and certain seafood products -- are eligible to receive a tax credit equal to 10 percent of the export's value.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Venezuela is a member of the World Intellectual Property Organization (WIPO). It is also a signatory to the Berne Convention for the Protection of Literary and Artistic Works, the Geneva Phonograms Convention, the Universal Copyright Convention, and the Paris Convention for the Protection of Industrial Property.

The Venezuelan Industrial Property Office's (SAPI) actions and occasional publicly stated antagonism towards IPR often draw criticism from IPR advocates and right holders. Protection of IPR is also hindered by the lack of adequate resources for the Venezuelan copyright and trademark enforcement police (COMANPI) and for the special IPR prosecutor's office. Venezuela's tax agency, SENIAT, is promoting several measures to fight piracy in an effort to reduce tax evasion, including a new anti-piracy law and the introduction of a tax on street vendors. According to industry representatives, SENIAT seems to be a promising enforcement entity due to its technical and financial capabilities.

Unfortunately, pirated software, music, and movies remain readily available throughout the country, and levels of piracy are increasing. In the 2005 Annual Review, Venezuela was placed on USTR's Special 301 "Priority Watch List."

Copyrights

Andean Pact Decision 351 and Venezuela's 1993 Copyright Law provide the legal framework for the protection of copyrights. The 1993 Copyright Law is modern and comprehensive and extends copyright protection to all creative works, including computer software. A National Copyright Office was established in 1995 and given responsibility for registering copyrights, as well as for controlling, overseeing and ensuring compliance with the rights of authors and other copyright holders. Industry experts are concerned about a proposed new copyright law that would require the mandatory registry of works in order to receive protection, reduce protection terms, hamper distribution agreements, and increase royalties.

Patents and Trademarks

Venezuela provides the legal framework for patent and trademark protection through Andean Community Decision 486 and the 1955 National Industrial Property Law. Andean Community Decision 486 implements the TRIPS Agreement to a degree, but Venezuela falls short with respect to its domestic laws. Andean Community Decision 345 covers protection for plant varieties.

U.S. companies remain concerned about the impact of the Andean Tribunal's 2002 interpretation of Articles 14 and 21 of Decision 486, which do not allow for the patenting of "second-use" products (e.g. new uses of previously known or patented products). Under pressure from the Andean Community and in line with some changes in leadership at SAPI, Venezuela has revoked previously issued patents. Very few patents for new pharmaceuticals were awarded in 2004. Since 2002, Venezuela's food and drug regulatory agency (INH) began approving the commercialization of new drugs, which were the bioequivalent of innovative drugs that previously received INH marketing approval, thereby denying the innovative drug companies protection against unfair competition of their test data as required by TRIPS. In effect, the government now allows unfair reliance on the test data, which required lengthy and expensive development, to be used by others seeking marketing approval for the same products.

Enforcement

The Venezuelan copyright and trademark enforcement branch of the police (COMANPI) continues to provide copyright enforcement support with a small staff of permanent investigators. A lack of personnel, coupled with a very limited budget and inadequate storage facilities for seized goods, has forced COMANPI to work with the National Guard and private industry to improve enforcement of copyrighted material. COMANPI can only act based on a complaint by a copyright holder. It cannot carry out an arrest or seizure on its own initiative, leading to weaker enforcement.

SERVICES BARRIERS

Venezuela maintains restrictions on a number of service sectors. Venezuela requires that certain professions be licensed in Venezuela (e.g., engineers, architects, economists, business consultants, accountants, lawyers, doctors, veterinarians and journalists). Foreign nationals wishing to practice these professions in Venezuela must have their credentials validated by a Venezuelan university, provided that a reciprocity agreement exists with their country of origin. Some (particularly government-related) accounting and auditing functions require Venezuelan citizenship, and only Venezuelan citizens may act as accountants for companies with publicly traded stock valued at more than 25 percent. A foreign lawyer cannot provide legal advice on foreign or international law without being licensed in the practice of Venezuelan law.

Foreigners are required to establish a commercial presence for the provision of engineering services. Foreign consulting engineers must work through local firms or employ Venezuelan engineers. There is a law governing public service tenders that gives preferential treatment to Venezuelan firms for projects financed with public funds. Foreign participation is restricted to a maximum of 19.9 percent in professional firms.

Venezuela limits foreign equity participation (except from other Andean Community countries) to 20 percent in enterprises engaged in television and radio broadcasting and Spanish language newspapers.

The government enforces a "one-for-one" policy that requires foreign musical performers giving concerts in Venezuela to share stage time with national entertainers. There is also an annual quota regarding the distribution and exhibition of Venezuelan films. At least half of the television programming must be dedicated to national programs, and at least half of FM radio broadcasting must be dedicated to Venezuelan music.

Finally, 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.

By signing the 1997 WTO Financial Services Agreement, Venezuela made certain commitments to provide market access for banking, securities, life and non-life insurance, reinsurance and brokerage activities. Venezuela did not make commitments on pensions, or on maritime, aviation and transportation insurance, and it reserved the right to apply an economic needs test as part of the licensing process.

Rules governing maritime activities and transportation insurance were issued in 2001 in a package of 49 laws passed under enabling powers granted to President Chavez in 2000. A new law for civil aviation was passed in June 2005. Many of the laws still need implementing regulations. The impact of the legislation is, therefore, still unclear.

INVESTMENT BARRIERS

The government continues to control key sectors of the economy, including oil, petrochemicals and much of the mining and aluminum industries. Venezuela began an ambitious program of privatization under the Caldera administration, but under President Chavez further privatization has been halted.

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 operating contracts and equity joint ventures with the state-owned oil company Petroleos de Venezuela, S.A. (PDVSA). The Venezuelan constitution reserves ownership of PDVSA to the Venezuelan government. Sales to foreign investors of interests in subsidiaries and affiliates of PDVSA are permitted. In the early 1990s, the Venezuelan government partially opened the sector to private investment in order to promote new petrochemical joint ventures and to bring inactive oil fields back into production. Almost 60 foreign companies, representing 14 different countries, participated in these partial privatizations. PDVSA and foreign oil companies signed 33 operating contracts for marginal fields after three rounds of bidding.

The Hydrocarbons Law of 2001 has raised concerns in the industry as it mandates a minimum 51 percent national participation in future projects and increases most royalties paid to the government from 16.67 percent to 30 percent. Over the last two years, the national government has made a number of changes in royalty policies, tax policies, and contracts that have substantially increased the uncertainty for companies operating in Venezuela. In recent months, the government commenced the “migration” of operating contracts to mixed companies, looking to conform the contracts to the 2001 Hydrocarbons Law under which it would hold a controlling interest. Recently, however, the Minister of Energy and Petroleum (MEP) has placed government participation at a minimum of 60 percent.

The Gaseous Hydrocarbons Law of 1999 offers more liberal terms, and the Venezuelan government has sought foreign investment to develop offshore natural gas deposits near the Orinoco delta. In October 2004, the Venezuelan government eliminated a royalty holiday granted to joint venture projects relating to the development of Venezuela's extra heavy crude oil reserves. These joint venture projects, known as "the strategic associations," were established during the partial opening of the sector and received 35-year contracts that were endorsed by the National Congress. PDVSA has recently begun seeking partners to develop 27 blocks of the country's heavy crude reserves. National oil companies of strategic partner-countries seem to be the preferred partners for the development of the new projects.

Both the 2001 Hydrocarbons Law and the Gaseous Hydrocarbons Law require that there be a competitive process for the identification of private partners for projects to be developed by PDVSA. However, the government may directly award contracts when the project is to be developed under special circumstances, or is of national interest.

The government passed legislation in 1998, aimed at introducing domestic and foreign competition into the domestic gasoline market. The law allows foreign and private Venezuelan investors to own and operate service stations, although the government retains the right to set product prices. The government has not raised gasoline prices in several years, and currency devaluations and a high inflation rate have eliminated service station profit margins.

Electric power generation, transmission, and distribution are open to private participation. Hydroelectric power-generation on several rivers is reserved to the state, although private sector participation is permitted in transmission and distribution. In early 2000, the U.S. power-generating company, AES Corporation, successfully took control, by means of a stock swap, of Electricidad de Caracas (EDC), the company that provides power to the Caracas metropolitan area.

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

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