

# VENEZUELA

## TRADE SUMMARY

U.S. goods exports in 2013 were \$13.2 billion, down 24.5 percent from the previous year. Corresponding U.S. imports from Venezuela were \$32.0 billion, down 17.4 percent. The U.S. goods trade deficit with Venezuela was \$18.8 billion in 2013, down \$2.4 billion from 2012. Venezuela is currently the 24th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Venezuela were \$6.6 billion in 2012 (latest data available), and U.S. imports were \$891 million. Sales of services in Venezuela by majority U.S.-owned affiliates were \$3.5 billion in 2011 (latest data available), while sales of services in the United States by majority Venezuela-owned firms were not available in 2011 (\$479 million in 2010).

The stock of U.S. foreign direct investment (FDI) in Venezuela was \$15.0 billion in 2012 (latest data available), up from \$11.9 billion in 2011. Reported U.S. FDI in Venezuela is primarily concentrated in the manufacturing sector.

## IMPORT POLICIES

Public sector entities and state-owned enterprises are not required to present or maintain import licenses, to pay tariffs, or to present any documents or certificates related to the regulation of customs and duties, according to an executive resolution signed in March 2012. The Venezuelan government has stated that this measure was passed in order to simplify administrative procedures for import and export. However, it imposes significant competitive disadvantages on private sector entities, which are typically denied similar treatment. Venezuela has on occasion extended this treatment to private sector actors for short periods of time in order to facilitate imports of products it deems to be in shortage.

### Tariffs

The latest WTO tariff data indicates that in 2012 Venezuela applied a simple average tariff of 16.8 percent on agricultural goods and 12.8 percent on non-agricultural goods.

The Mercado Común del Sur (MERCOSUR) admitted Venezuela as its fifth full member, on July 31, 2012. 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 a two year extension allowed for sensitive products. On April 1, 2013, Venezuela adopted the CET for 28 percent of the goods in its tariff schedule. It will phase in the adoption of the remainder of the CET schedule on an annual basis starting on April 1, 2014 with full implementation of the CET completed in 2016.

### Price Controls

In an attempt to regulate local production and control market prices of basic consumable products, Venezuela has instituted a number of laws and decrees that impose price controls, dictate product movement from manufacture to retail, and limit profit margins of manufacturers and retailers. These measures have led to significant decreases in local production, forcing the government to increase imports to meet total demand. Total imports now represent more than 70 percent of total consumption.

To control imports, Venezuela has increased direct government purchases and implemented new import requirements and procedures for obtaining pre-import approval, import permits, and foreign exchange. These measures have disrupted trade by increasing the burden on exporters and importers. Many of these requirements are being waived when increased imports are necessary to maintain minimum levels of supply.

On January 24, 2014, President Maduro used decree authority to promulgate the Fair Costs and Prices Law with the intent to further regulate the private sector with profit limits, audits, and penalties. Any resident in Venezuela conducting any type of economic activity is subject to the law. The law created a new Venezuelan government institution, the National Superintendent for the Defense of Socio-Economic Rights (SUNDDE), by merging the Superintendent for Fair Costs and Prices and the Institute for the People's Defense for Access to Goods and Services. SUNDDE is the new authority empowered to decide whether prices are "fair" and to identify profit limits for businesses. Businesses that are found in compliance will be given a "Certificate of Fair Prices" that will be required in order to apply for hard currency through the newly established National Center for International Trade (CENCOEX).

### **Currency Controls**

Venezuela introduced strict currency controls in 2003. The measures continue to pose a significant obstacle to most trade with Venezuela. Most companies report that they cannot obtain sufficient foreign exchange to satisfy their business needs.

On November 29, 2013, President Maduro created a new institutional structure for the national currency exchange system through CENCOEX. CENCOEX absorbed the Currency Administration Commission (CADIVI) and now administers two Complementary System of Currency Administration (SICAD and SICAD 2).

Importers who wish to use the SICAD system must first enroll in SUNDDE's Registry for People that Develop Economic Activities. Theoretically, SICAD holds weekly sales to sell U.S. dollars to any bidders under a secret auction mechanism. In practice, Venezuelan authorities decide which sectors of the economy can participate in each sale (*e.g.*, metallurgic, tourism, graphic arts). The Venezuela Central Reserve Bank (BCV) may later publish the exchange rate at which SICAD sold U.S. dollars in the auction, generally in a band between 10 bolivars and 12 bolivars per dollar. In October 2013, the BCV began conducting weekly \$100 million sales through SICAD that totaled approximately \$900 million by the end of 2013. As of February 2014, Venezuela had held one SICAD sale totaling \$440 million.

In March 2014 the GBRV opened a third foreign-exchange mechanism, called SICAD 2. Under its governing laws and regulations, the GBRV, state oil firm PDVSA, the central bank, public- and private-sector firms, and private individuals may buy and sell both dollars and dollar-denominated securities on a daily basis, with Venezuelan banks and stock brokers serving as intermediaries. The foreign ministry and the central bank will oversee SICAD 2 and are authorized to intervene to regulate the mechanism's exchange rate. Details remain limited regarding the volumes and exchange rates that will be transacted through SICAD 2.

Accessing U.S. dollars through SICAD requires Venezuelan authorities' acceptance of the importer's bid. Venezuelan authorities have asserted the right to reject any application determined to be inconsistent with government priorities. Private sector firms and independent analysts have said SICAD's sales are arbitrary and lack transparency. The time to receive authorization for foreign currency through SICAD varies in length, but can take on average more than nine months from the beginning to the end of the process and require the submission of various supporting documents by the Venezuelan importer, with the

support or collaboration of the exporter. Businesses and individuals report rejections of applications after initial approval and approval of applications after rejection.

### **Local Content Requirements**

Venezuela implemented a flat 50 percent local content requirement in domestically-assembled vehicles and required motors to be fully assembled in-country effective January 1, 2013. 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 make local motor assembly prohibitively expensive. Since September 2012, Venezuela has required domestically-produced and imported vehicles to use a Venezuela-specific vehicle identification number, contrary to international standards and patterns.

### **Tariff-Rate Quotas**

Venezuela maintains the authority to impose tariff-rate quotas (TRQs) for up to 62 tariff lines. Venezuela administers TRQs for oilseeds, corn, wheat, milk and dairy, and sugar. The issuance of import licenses under these TRQs lacks transparency. The impact on imports has varied because of inconsistent application by Venezuela authorities. For example, given the significant reduction in domestic production of grains over the past several years the TRQ for basic grains is routinely suspended and a tariff of zero percent is applied. Venezuela has denied import licenses for both in-quota and over-quota quantities on a case-by-case basis, even though importers are often willing to pay the over-quota tariff. In addition, Venezuela has not published regulations establishing the TRQ mechanism for some eligible products while for products that have established TRQ mechanisms such as pork, the TRQ mechanism is not applied and U.S. exporters face a range of duties from 8 percent to 20 percent.

## **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 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 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. 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 domestic enterprises.

The Venezuelan government is increasingly awarding contracts directly, thus avoiding competition required by the government procurement law. A presidential decree in 2008 established a National Service of Contractors, with which firms must register in order to sell to government entities. Tenders are not accepted without prior registration.

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 2013 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 in 2008 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 and other data generated to obtain marketing approval for pharmaceutical products. In 2011, Venezuelan enforcement officials seized a larger number of counterfeit and pirated products than in previous years. Additionally, Venezuela has taken steps to enforce the 2010 Law on Crimes and Contraband, which establishes enhanced penalties for smuggling violations and provides for the seizure of infringing goods. However, Venezuela must still make significant improvements to its regime for IPR protection and enforcement. In 2012, the Supreme Court accepted a request (presented in 2009) by the Venezuelan Pharmaceutical Chamber of Commerce to decide if 10 articles from the 1955 Industrial Property Law conflict with Venezuela's international obligations, including its obligations under the Paris Convention and the TRIPS Agreement. The case is still 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 other government entities 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. Foreigners are required to establish a commercial presence for the provision of engineering services.

### **Financial Services**

A Venezuelan 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 Venezuelan government continues to control key sectors of the economy, including oil, petrochemicals, and much of the mining and aluminum industries. Venezuela began an ambitious program of privatization under the Caldera administration (1994-1999), but under the late President Chavez Administration, privatization has been halted and the Venezuelan government has re-nationalized certain key sectors of the economy. Since the beginning of 2011, the Venezuelan government has taken over or redistributed more than 2.7 million acres of land. The 2013 National Land Institute increased its budget for land expropriations by 13 percent from 2012, to finance a maximum of 980,000 land interventions. There have been 1,280 state interventions (expropriations, private property seizures, and nationalizations) in the private sector since 2002, an increase by 112 from the previous reporting period, according to the industry association CONINDUSTRIA (Confederación Venezolana de Industriales). Of these, 40 percent have been companies involved in the construction sector, 32 percent in the industrial sector (manufacturing, agro-industrial, agriculture or related industries), 17 percent in the oil sector, and 9 percent in the service and trade-related sectors. Other sectors affected have included food, mining, chemical, and transport services.

Foreign investment continues to be restricted in the petroleum sector. The exploration (except for natural gas offshore), production, refinement, transportation, storage, and foreign and domestic sale of hydrocarbons are reserved to the government. However, private companies may engage in oil and gas production through joint ventures with the state-owned petroleum company, Petroleo de Venezuela, S.A. (PDVSA). Venezuelan law requires a competitive process for awarding stakes in exploration and production acreage to 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.

National government decisions to force international oil companies to accept the conversion of their projects to minority stakes in joint ventures without the right to operate, to impose windfall profits taxes, and other moves have substantially increased uncertainty in the hydrocarbons sector. In 2007, ConocoPhillips and ExxonMobil refused to transfer their investment stakes in three oilfield projects, as the result of which the government of Venezuela took control of these investments. Both companies filed international arbitration claims against Venezuela and received favorable rulings from the International Chamber of Commerce's arbitration tribunal: ConocoPhillips was awarded \$66.8 million in September 2012, while ExxonMobil confirmed an award of \$907.6 million in January 2012. In September 2013, the World Bank's International Centre for the Settlement of Investment Disputes (ICSID) ruled that Venezuela unlawfully expropriated ConocoPhillips' three significant oil investments. Venezuela appealed the ICSID ruling.

Former President Chavez announced on January 8, 2012, that Venezuela would not recognize any ICSID decision related to ExxonMobil's claim and officially withdrew from the ICSID Convention on July 25, 2012. At least 26 ICSID cases against Venezuela are currently pending, making Venezuela the country with the largest number of pending ICSID claims.

Venezuela also controls the state assets and services involved in the injection of water, steam, or gas into petroleum reservoirs; and gas compression. The government is required to have at least a 50 percent ownership stake in petrochemical companies. In October 2010, the government nationalized a petrochemical plant that was partly owned by a private U.S. entity.

The National Assembly passed a law in August 2010 that merged all electricity utilities under one central holding entity with 75 percent direct government ownership and 25 percent PDVSA ownership. The

state-owned electric company, CORPOELEC, controls electric power generation, transmission, and distribution.

The state-owned Corporación Venezolana de Guayana controls steel and aluminum production, electricity generation, and mining. In 2008, the government revoked U.S.-based Gold Reserve's gold mining concession. In 2009, Gold Reserve filed for international arbitration against the Venezuelan government and it is still pending with the ICSID. In 2010, then-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 practice, Venezuela has waited in some cases for concessions to expire and then has announced it would not renew them. In 2012, the government failed to renew the concession for the Pasa Diablo coal mine, partly owned by U.S. firm Peabody Company, and a nickel mining concession, taking control of a company owned by London-based Anglo-American Company.