

# VENEZUELA

## TRADE SUMMARY

The U.S. goods trade deficit with Venezuela was \$29.7 billion in 2007, an increase of \$1.6 billion from \$28.1 billion in 2006. U.S. goods exports in 2007 were \$10.2 billion, up 13.3 percent from the previous year. Corresponding U.S. imports from Venezuela were \$39.9 billion, up 7.4 percent. Venezuela is currently the 23rd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Venezuela were \$3.2 billion in 2006 (latest data available), and U.S. imports were \$552 million. Sales of services in Venezuela by majority U.S.-owned affiliates were \$3.2 billion in 2005 (latest data available), while sales of services in the United States by majority Venezuela-owned firms were \$153 million.

The stock of U.S. foreign direct investment (FDI) in Venezuela was \$11.6 billion in 2006 (latest data available) up from \$9.6 billion in 2005. U.S. FDI in Venezuela is concentrated largely in the manufacturing, and mining sectors.

## IMPORT POLICIES

Venezuela officially withdrew from the Andean Community (CAN) in April 2006. President Chavez stated publicly that the reason for the withdrawal was the entry of other member countries into free trade agreements with the United States, which, according to the Venezuelan government, changed the essence of the pact.

Under CAN rules, tariff-related decisions and resolutions remain in force for 5 years from the date of a member's formal withdrawal. Over the years, CAN 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 CAN, Venezuela has continued to follow CAN norms. In November 2006, Venezuela's Supreme Court accepted a petition requesting an interpretation of the current validity of CAN norms. As of March 2008, the Court had not issued a ruling on the matter.

### Tariffs

In July 2006, Venezuela signed a membership agreement to become a full member of the Southern Cone Common Market (MERCOSUR), contingent upon the unanimous approval from member countries' legislatures. To date, Brazil and Paraguay's legislatures have not approved Venezuela's accession. Under the terms of its accession, Venezuela has 4 years from its accession to adopt the MERCOSUR Common External Tariff (CET) and to provide duty free treatment to its four MERCOSUR partners by January 2012 on all goods, with sensitive products allowed an extension to January 2014. Exceptions to the CET exist on a product specific or sector specific basis, mainly for goods not produced within the union or those which potentially affect the production capacity of the members. MERCOSUR's average external tariff is approximately 14 percent, except for capital goods, tariffs on which were recently reduced to zero.

While CAN applies higher tariffs on fisheries, textiles, and agriculture, MERCOSUR applies higher tariffs on vehicles, parts, leather, textiles, and shoes. Under the CAN's Common Automotive Policy (CAP), assembled passenger vehicles constitute an exception to the 20 percent maximum tariff and are subject to 35 percent import duties. The CAP will remain in effect until 2009.

On December 5, 2006, Venezuela imposed a new 15 percent luxury tax as part of a broader currency control measure for goods considered “nonpriority” items, including alcohol, rugs and carpeting, jewelry, and toilet paper. In October 2007, the Venezuelan government doubled the tax on alcoholic beverages and increased the tax on cigarettes from 45 percent to 70 percent. At the same time, Venezuela reduced its value added tax from 16.5 percent to 9 percent.

Venezuela continues to apply the CAN’s CET for certain agricultural products, including feed grains, oilseeds, oilseed products, sugar, rice, wheat, milk, pork, and poultry imports from third-countries. While most agricultural products fall within the 5 percent to 20 percent tariff range, Venezuela’s average tariff for the sector currently stands at approximately 17 percent. However, the adjustable levy applied under the CAN’s Price Band System can increase the actual duty significantly, raising tariffs when world prices are low and lowering them when prices are high.

### **Nontariff Measures**

Difficulty in obtaining foreign exchange and burdensome documentation requirements associated with importation are significant barriers to trade with Venezuela. Venezuela also protects its agricultural producers through a nonlegislated system of guaranteed minimum prices, and the use of import licenses and sanitary permits to restrict imports.

The Foreign Exchange Administration Board (CADIVI) regulates the purchase and sale of foreign currency in Venezuela. CADIVI’s daily average currency approvals have grown from \$63.5 million in 2005 to \$160 million as of October 2007. The Ministry of People’s Power for Light Industry and Commerce (MILCO) maintains a list of imports that are eligible to receive foreign currency approval. This list has grown significantly since the introduction of exchange controls, and now includes services and the repatriation of capital. Despite these exchange controls, imports have grown significantly due to economic growth fueled by high oil prices and Venezuelan government spending. Exchange control authorities have recently expressed the need to tighten the supply of currency to limit imports of certain products, particularly spirits, vehicles, and luxury goods, and to favor increasing domestic production. Problems coordinating the timing of access to CADIVI dollars with the approval of import permits and licenses and contracting shipments have led to delays and higher import costs. CADIVI dollar approvals currently take 60 days to 90 days, but can run longer.

Venezuela prohibits the importation of used cars, buses, and trucks; used tires; and used clothing. Beginning January 1, 2008, all automobile importers must solicit a license from MILCO 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.” When soliciting this license, all automotive companies will have to include their “national production plan” and their “vehicle importation plan.” This resolution also requires that by July 2008 all vehicles imported and assembled in Venezuela run on both natural gas and regular gas before being sold to the public.

The Venezuelan government approved minimum farm gate prices for corn, rice, and sorghum on August 18, 2006. The Official Gazette N° 38,503 establishes new farm gate prices for these commodities. The last increase occurred in December 2005. Farmers have argued that prices do not keep up with production costs, and have requested a certain level of subsidies. The Venezuelan government announced agricultural subsidies for selected commodities in February 2007 and extended those subsidies in April 2007. Information about agricultural subsidies has only been published through advertisements in a pro-government newspaper. The subsidy scheme is oriented exclusively to primary growers. Growers, based on their acreage, must fulfill a list of requirements to receive this subsidy.

In theory, each year the government, industry, and producers agree to a minimum price for major crops, such as corn, sorghum, and rice. During 2003, the Ministry of People's Power for Agriculture and Lands (MAT) established the National Boards (in Spanish: Juntas Nacionales, or Juntas). "Juntas" were created for eight major food sectors (grain and feed, sugar, oilseeds, livestock, poultry, coffee, dairy, and cheese). These "Juntas" are composed of representatives from the producer, processor, retail, consumer, and government sectors, and are charged with reviewing the criteria for establishing fair prices for the entire production chain. Each "Junta" is responsible for recommending and establishing fair prices in the sector, with the consensus of all of its members. Beginning in 2006, the "Juntas" have not met on a regular basis, and both producers and processors have stated that recommendations made and decisions taken within the "Juntas" are, in many cases, not observed by the government.

Venezuela maintains tariff-rate quotas (TRQs) for up to 62 Harmonized System code headings. However, 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. The issuance of import licenses and sanitary permits has become very restrictive. 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. Automatic issuance of licenses for over-quota quantities has not occurred. Furthermore, the Venezuelan government has not published regulations establishing the TRQ mechanism for certain eligible products and has refused to activate the TRQ for others, such as pork.

Basic agriculture and processed food products are still on the CADIVI priority import list. Nevertheless, importers interested in importing basic commodities, agricultural inputs, and some horticultural products must request a "certificate of nonproduction" or a "certificate of insufficient production" from either the Ministry of People's Power for Food (MINAL), MILCO, MAT, or the National Customs and Tax Administration Service (SENIAT), Venezuela's tax and customs authority. Some goods may require a certificate from more than one ministry. These certificates state that a certain product is not domestically produced or domestic production is not sufficient, and allow importers to request foreign exchange for imports, import licenses, import permits, and possibly tax exoneration from other government offices. The number of ministries and agencies involved and the constant shift of responsibilities among them has hampered the issuance of import permits, import 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 until July 18, 2008 to mitigate current food shortages.

Venezuela also blocks imports through its refusal to issue sanitary and phytosanitary (SPS) permits. Such permits are required by the Ministry of People's Power for Health (MPPS) and MAT. The government of Venezuela, as of January 18, now requires the MAT and MPPS to issue these permits within 7 days.

U.S. industry has raised concerns about the use of SPS permits to unreasonably restrict agricultural and food imports. 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.

The government generally delays the issuance of import licenses for yellow corn and for oilseeds and oilseed products until the entire local crop has been purchased at the set price. This occurs when there is a surplus of domestic crops. When there is a deficit, imports are readily authorized. In the case of oilseeds, the palm oil crop must be purchased, before issuing import licenses for any vegetable oil imports. Most recently, and due to insufficient domestic supply, the Venezuelan government restricted exports of both basic commodities and processed products; this is the case for white corn, rice, and corn flour.

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 production.

Since January 2003, the Venezuelan government has implemented an import tax exoneration policy for staple products. Initially, the import tax exoneration was granted for a 6 month period. Since then, some products were added or removed from the initial list and there were certain periods when this policy expired. This measure had been renewed every 6 months until 2007, when the government renewed it for a 1 year period. Import tax exoneration is currently valid until February 12, 2008 (according to the Official Gazette N° 38,625, dated 02/13/07). On January 18, 2008, the Government of Venezuela created a new list of tax exempt goods that featured some products on the current list and some additions.

The Venezuelan government has created a large food distribution network for the low-income population. Corporación de Abastecimiento y Servicios Agrícolas (CASA), a state trading entity, is the government food purchasing entity, and Mercado de Alimentos C.A. (MERCAL) is a government organization created in 2003 to commercialize and market food products. Venezuela’s food program is focused on providing a government subsidized basic basket of products to the poor classes. Products include dry milk, precooked corn flour, black beans, rice, vegetable oil, sardines, pasta, sugar, bologna, margarine, deviled ham, eggs, mayonnaise, and sauces. CASA purchases both domestic and imported products and has purchased sugar, rice, wheat flour, black beans, milk powder, edible oil, margarine, poultry, and eggs from a variety of countries. MERCAL distributes more than 40 percent of all basic food staples consumed in Venezuela, offering products at prices that are at or below 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 has guaranteed access to dollars, import licenses, and permits and, as a government entity, it imports products without tariffs and customs duties.

The Venezuelan Agricultural Corporation (CVA), a state-holding enterprise created in 2004, has the following processing subsidiaries: CVA Cereals and Oilseeds; CVA Dairy; CVA Sugar; CVA Inputs; and CVA-Leander, which was created in February 2007 for meat and fishery products, in response to meat shortages that occurred in January 2007. CVA’s main objective is to provide supplies to MERCAL. According to CVA’s regulations, these industries, in addition to processing pre-cooked corn flour, pastas, milled rice, powdered milk, refined sugar, and various agricultural inputs, may also import and export raw and processed food.

## **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 (COVENIN) normally requires certification from independent laboratories located in Venezuela, but at times will accept a certificate from independent laboratories elsewhere. In addition, in May 2007, the World Organization for Animal Health (OIE) classified the United States as a controlled risk country for Bovine Spongiform Encephalopathy (BSE), thereby clarifying that U.S. beef and beef products are safe to trade provided that the appropriate specified risk materials are removed. However, Venezuela continues to ban U.S. beef and beef products through BSE related measures.

Venezuela’s 2002 labeling regulations established a register of domestic manufacturers and importers of textiles, as well as the minimum labeling requirements for all textile products marketed in Venezuela. According to the regulations, each imported product must bear a label stating 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 manufacturing process when permanent labels are attached. Re-labeling products upon entry to meet these requirements results in additional costs and delays.

## **GOVERNMENT PROCUREMENT**

Venezuela's 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 MILCO, which is used in the bidding process. The law forbids discrimination against tenders based on national origin. However, the law states 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 price preferences for domestic products reservation of contracts for nationals, requirements of domestic content and technology transfer, and other incentives to purchase from companies domiciled in Venezuela. For example, government decree 1892 establishes a 5 percent preference for bids from companies offering products with more than 20 percent domestic content. In addition, half of that 20 percent of domestic content must be from small-to medium-sized domestic enterprises. The Venezuelan government is increasingly awarding contracts via directed procurements, thus avoiding competition required by the government procurement law. It is not clear to what degree the public procurement law applies to joint ventures in which a state entity has controlling interest.

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. The level of direct payments for export subsidies has generally been fairly small and limited to agricultural products. Venezuela has notified its export subsidies to the WTO in the past, with the last notification occurring in June 2001, for the export year 1998. The total value of export subsidies at that time was \$5.5 million. Exports of coffee, cacao, bananas, and other fruits received the major share of these subsidies. The government has not published further information for export subsidies.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

The Venezuelan Industrial Property Office's policies, as well as occasional publicly stated antagonism toward IPR, often draws criticism from IPR advocates and rights holders. Unfortunately, pirated software, music, and movies are widely available throughout the country, and piracy levels are increasing. In 2006, Venezuela was placed on USTR's Special 301 "Priority Watch List" and was kept on the list in 2007 for its failure to improve its IPR regime.

### **Patents and Trademarks**

The 1955 National Industrial Property Law provides the legal framework for patent and trademark protection in Venezuela. Venezuela's 1955 law is outdated and offers inadequate protections. The legal status of the CAN decision 486, which to some extent implements the WTO TRIPS Agreement, and CAN Decision 345, are currently in question since Venezuela withdrew from the organization in April 2006. Although the Venezuelan government has not yet formally clarified whether CAN norms still apply, it has continued to follow them.

U.S. companies remain concerned about the consequences of Venezuela leaving the Andean Community. If the Venezuelan government decides that CAN regulations still apply, U.S. companies will continue to monitor 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 the Autonomous Service for Intellectual Property (SAPI), Venezuela has revoked previously issued patents. Very few patents for new pharmaceuticals were awarded in 2004, and none were issued in 2005, 2006, or 2007. Since 2002, Venezuela's food and drug regulatory agency (INH) began approving the commercialization of new drugs which were the bioequivalent of innovative drugs and relied on innovator proprietary data submitted for INH marketing approval. As a result, innovative drug companies do not receive protection from unfair commercial use of their test data as required by TRIPS. In effect, the Venezuelan government allows others seeking marketing approval for the same products to use the same test data that required lengthy and expensive development.

### **Enforcement**

The Venezuelan copyright and trademark enforcement branch of the police (COMANPI) attempts to provide copyright enforcement support with a small staff of permanent investigators. 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. SENIAT, Venezuela's tax and customs authority, passed a regulation in mid-2005 that allows *ex officio* seizure of illegal goods at customs points and inland, and gives companies 3 days to verify the product's authenticity and press charges. In most cases, companies and violators reach a settlement instead of going through a lengthy, and often fruitless, court proceeding. SENIAT continues to be the only agency actively protecting IPR, and has launched public anti-piracy and "zero tax evasion" campaigns that have raised awareness of IPR issues.

### **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 accounting and auditing functions (particularly government related) require Venezuelan citizenship, and only Venezuelan citizens may act as accountants in companies which trade over 25 percent of their total shares in the local stock exchange. A foreign lawyer cannot provide legal advice on foreign or international law without being licensed to practice Venezuelan law.

On November 1, 2007, the Venezuelan government imposed a 1.5 percent tax on financial transactions for companies or legal entities, known by its Spanish acronym of ITF. Under the ITF, a transaction from one company to another would be taxed at 1.5 percent, but withdrawals from personal accounts are not taxed.

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 CAN countries) to 20 percent for

enterprises engaged in Spanish language media.

A trade association has reported that draft satellite regulations call for preferential treatment for satellites owned and operated by the Venezuelan government, and may subject U.S. satellite operators to local establishment requirements that the trade association considers burdensome.

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, as well as a requirement that a percentage of film copying be done in Venezuelan facilities. Television and FM broadcasters must use national content in half their programming.

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 applies an economic needs test as part of the licensing process.

## **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 in the 1990s under the Caldera administration, but under President Chavez further privatization has been halted. On January 8, 2007, President Chavez announced that the telecommunications provider CANTV, the electricity generation sector, the heavy-oil strategic associations, and other “important and strategic” areas would be nationalized. Several of the affected U.S. companies have reached agreement with the government on compensation terms while others have filed for international arbitration.

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 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.

Over the last 2 years, 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 sector and raised concerns of companies operating in Venezuela. In 2006, the government transferred operating service agreements to mixed companies in which PDVSA held a majority stake. PDVSA has recently begun seeking partners to develop 27 blocks of the country’s heavy crude reserves in Eastern Venezuela. National oil companies of politically strategic partner countries seem to be the preferred partners for the development of the new projects.

President Chavez issued a decree in late February 2007 requiring four strategic associations (joint venture projects relating to the development of Venezuela’s extra heavy crude oil reserves) to convert to PDVSA control 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 the strategic associations. As a result, the Venezuelan government took control of these investments. Both companies are treating the government’s

actions as expropriations and are currently in negotiation with Venezuelan authorities regarding compensation. Both companies have filed arbitration claims against the Venezuelan government. The United States is monitoring the process closely, has consulted with the affected U.S. companies, and has publicly stated its expectation that U.S. companies receive fair treatment, including timely, adequate, and effective compensation.

The Gaseous Hydrocarbons Law of 1999 offers more liberal terms for foreign equity participation, and the Venezuelan government has sought foreign investment to develop offshore natural gas deposits near the Orinoco delta.

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 no longer open to private participation. President Chavez announced in January 2007 that the Venezuelan government would nationalize strategic areas including telecommunications and electricity. As a result, the 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 other smaller power producers.

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, appointed in February 2005, CVG announced a review of all existing contracts between CVG companies and third parties. A draft mining law currently in the National Assembly seeks to repeal "inactive" concessions to foreign companies and structure the mining sector under a joint-venture model.

Supply contracts by CVG companies are currently under review by the Ministry of Popular Power for Basic Industries and Mining (MIBAM). The Venezuelan 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.