VENEZUELA

TRADE SUMMARY

The U.S. goods trade deficit with Venezuela was $18.7 billion in 2009, down $20.1 billion from 2008. U.S. goods exports in 2009 were $9.4 billion, down 25.8 percent from the previous year. Corresponding U.S. imports from Venezuela were $28.1 billion, down 45.4 percent. Venezuela is currently the 25th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.,* excluding military and government) to Venezuela were $5.0 billion in 2008 (latest data available), and U.S. imports were $850 million. Sales of services in Venezuela by majority U.S.-owned affiliates were $3.4 billion in 2007 (latest data available), while sales of services in the United States by majority Venezuela-owned firms were $2.1 billion.

The stock of U.S. foreign direct investment (FDI) in Venezuela was $17.3 billion in 2008 (latest data available) up from $15.7 billion in 2007. U.S. FDI in Venezuela is concentrated largely in the nonbank holding companies, manufacturing, and finance/insurance sectors.

IMPORT POLICIES

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

Under AC rules, following a member's formal withdrawal only tariff-related decisions and resolutions remain in force and expire after a period of five years from the date of withdrawal. All Venezuela's obligations under the AC tariff liberalization regime should remain in place until the end of 2011. Over the years, AC 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 AC, Venezuela has continued to follow AC norms. In November 2006, Venezuela's Supreme Court accepted a petition requesting an interpretation of the current validity of AC norms. As of February 2010, the court had not issued a ruling on the matter.

Tariffs

In December 2005, Venezuela signed a framework agreement to join the Southern Cone Common Market (MERCOSUR). MERCOSUR membership is contingent upon approval by the legislatures of all MERCOSUR countries. In December 2009, the Brazilian senate voted to approve Venezuela's membership. The last hurdle to Venezuela's full membership in MERCOSUR is obtaining Paraguay's formal approval. In mid-2009, Paraguay's legislature deferred its review of Venezuela's request for full membership in MERCOSUR. Under the terms of its accession, Venezuela will have four years from its date of accession to adopt the MERCOSUR Common External Tariff (CET) and to provide duty-free treatment to its four MERCOSUR partners on all goods, with sensitive products allowed a two year extension.

While the AC applies higher tariffs on fisheries, textiles, and agricultural goods, MERCOSUR applies higher duty levels to vehicles, vehicle parts, leather, textiles, and shoes. Under the AC's Common Automotive Policy (CAP), assembled passenger vehicles constituted an exception to the 20 percent maximum CET and are subject to 35 percent import duties. The CAP was set to expire at the end of 2009; however, it was automatically renewed for an additional 10 years.

Nontariff Measures

Currency controls introduced in 2003 continue to pose a significant barrier to most trade with Venezuela with the possible exception of agricultural goods and pharmaceutical products. These controls are overseen by the Foreign Exchange Commission, or Comision de Administracion de Divisas (CADIVI). The official exchange rate was fixed at 2.15 bolivars (Bs)/$1 from March 2005 through January 10, 2010. On January 11, 2010, the government devalued the currency and set two exchange rates, one at 2.6 Bs/$1 (which applies to certain priority imports) and one at 4.3 Bs/$1 (which applies to non-priority imports and most other categories of foreign exchange requests). Importers who receive CADIVI pre-approval may import goods and then apply for CADIVI approval to purchase dollars at the relevant official rate to pay for the imports. There is also a parallel foreign exchange market, whereby bolivars and dollars are exchanged via swaps of securities (usually Venezuelan government bonds). The parallel exchange rate fluctuated between 4.9 and 7 Bs/$1 from January 2009 through February 2010.

Until the latter half of 2008, CADIVI continued to increase the amount of foreign exchange it approved for imports, even as the official exchange rate became increasingly overvalued. Imports rose from $17 million in 2004 to $49 million in 2008. However, the process for obtaining CADIVI pre-approval to import goods and then an approval to purchase dollars at the official rate began to impose an increasing barrier to trade for a number of reasons. For example, there was an increase in the number of bureaucratic steps necessary to be eligible for CADIVI pre-approval (including requirements for licenses from various ministries). There was also an increase in the waiting period to receive CADIVI pre-approval to make the import and then approval to purchase the dollars after the import was made. Importers report lengthening delays for such approvals, and unpredictability and inconsistency in their granting.

When oil prices fell sharply in the latter half of 2008, the Venezuelan government sharply reduced overall CADIVI approvals from an average of $187 million per working day in October 2008 to a daily average of $112 million over the first nine months of 2009. Approvals for imports are focused on priority items such as food and medicines, and the wait time for approval for other items has increased substantially. Many companies have moved to the parallel foreign exchange market to obtain foreign currency to pay for imports. As it is significantly more expensive to obtain dollars on the parallel market, the reduction in CADIVI approvals has had the effect of substantially raising the cost of non-price controlled imports and introduced important uncertainties into the import process.

Burdensome documentation requirements are another significant disincentive to importation. Beginning January 1, 2008, all automobile importers were required to solicit a license from the Ministry of People's Power for Light Industry and Commerce (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." The law also prohibits the importation of passenger cars with engines larger than three liters, thus discriminating against companies selling predominantly larger cars. As of March 2010, the Venezuelan government is still considering the requests made by automobile companies for the importation of assembled vehicles in 2010. Venezuela prohibits the importation of used cars, buses, and trucks, and used tires, as well as used clothing.
The government also imposed import quotas on vehicles in January 2008 in a bid to increase the number of automobiles assembled in Venezuela, and carmakers are subject to limited allocations of dollars to import components they need to carry out production in Venezuela. The new automotive regime adds the

requirement to produce dual fuel (gasoline and natural gas) vehicles. The original law mandated that all new vehicles sold in Venezuela after December 1, 2008, be dual fuel. The rule was twice postponed and then changed. As of April 1, 2009, 30 percent of vehicles sold are to be dual fuel, and each Venezuelan assembler must produce at least 2 dual fuel models. As of February 2010, however, the ability of the assemblers to meet this requirement is unclear. In addition, the gradually rising requirement for local content in domestically assembled vehicles was changed to a flat 50 percent requirement and will be applicable beginning in 2013. A new requirement for motors to be assembled in Venezuela by 2010 was also added. Assemblers have stated that the 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 will make local motor assembly prohibitively expensive. Venezuela's withdrawal from the AC also means that parts produced in other Andean countries are no longer considered to be local content.

In addition, Venezuela also protects some industries within its agricultural sector through the use of licenses and sanitary permits to restrict imports. The Venezuelan government applies fixed farm gate prices for producers of corn, rice, sorghum, sugar, milk, and beef. These prices, though reviewed periodically, and only when the industry applies sufficient pressure, still generally lag behind increases in input costs. Since 2007, selected basic commodities are granted agricultural subsidies based on acreage or volume.

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 is restrictive for products for which the government is trying to increase domestic output such as raw materials for processing. The Venezuelan government has denied import licenses for both in-quota and over-quota quantities, even though importers are often willing to pay the over-quota tariff for additional quantities of some products. Automatic issuance of licenses of 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.

Trade in some basic agricultural and processed food products is facilitated by inclusion on the CADIVI priority import list. In 2008, CADIVI created two different mechanisms to expedite dollar approvals for imports worth less than $50,000 and for selected agricultural and food products. In both cases, inclusion on a priority list of products is the basis on which to receive the benefit, avoiding delays in the issuance of CADIVI dollars. Nevertheless, importers of many basic commodities, horticultural products, and agricultural inputs must request a "certificate of nonproduction" or a "certificate of insufficient production" before trade can take place. These two documents state that there is no, or not enough, production to meet domestic demand, and on receipt, the importer can request foreign exchange and obtain import licenses, import permits, and possibly tax exoneration from other government offices. Some goods may require a certificate from more than one ministry, increasing processing time. The number of ministries and agencies involved and the constant shifting of responsibilities among them has hampered the issuance of import permits, 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 to mitigate food shortages.

The government has delayed the issuance of import licenses for yellow corn and for oilseeds and oilseed products until the entire domestic crop has been purchased at the set price when there is a surplus. When there is a deficit, imports are readily authorized. Since September 2007, the government of Venezuela has banned non-food use of corn and has controlled product movement through "mobilization guides," which results in a *de facto* export ban. Products such as coffee and sugar, and other basic food items, cannot be exported while domestic demand is not satisfied, since a resolution was promulgated in February 2009.

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 six month period. Since then, some products were added or removed from the initial list, and there were certain periods when this policy lapsed. 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 list was last updated in October 2008, with customs duties for live cattle imports exonerated to allow more cattle into the country for processing.

The Venezuelan government has created a large food distribution network for the low and middle economic classes. Both the Venezuelan Agricultural Corporation (CVA) and the Corporación de Abastecimiento y Servicios Agrícolas are the leading state trading entities. At the same time, Mercado de Alimentos, C.A. and Productora y Distribuidora Venezolana de Alimentos are the food marketing branches of the network, offering products at prices that are at or below those of controlled products. Venezuela's state-owned oil company, Petroleos de Venezuela (PDVSA)), has also become an important food importer through its PDVAL subsidiary. Venezuela's food program is focused on providing a government-subsidized basic basket of products, including dry milk, precooked corn flour, black beans, rice, vegetable oils, sardines, pasta, sugar, bologna, margarine, deviled ham, eggs, mayonnaise, and sauces. Government purchases of food products can be imported or domestically produced. The government's food network competes with private industry, although the private sector also supplies products to this chain. The private sector has complained that all government entities have an unfair advantage because they have guaranteed access to official dollars, import licenses, and permits and, as government entities, they import products without tariffs and custom duties.

GOVERNMENT PROCUREMENT

Venezuela's government procurement law covers purchases by government entities, national universities, and autonomous state and municipal institutions. It is not clear to what degree the public procurement law applies to joint ventures in which a state entity has a controlling interest. The law requires a contracting agency to prepare a budget estimate for a procurement based on reference prices maintained by MILCO. The law forbids discrimination between domestic and foreign suppliers. However, the law also 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 provides preferences to domestic goods and suppliers. These measures can include price preferences for domestic goods and suppliers, reservation of contracts 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-sized domestic enterprises. The Venezuelan government is increasingly awarding contracts directly, thus avoiding competition required by the government procurement law. There are allegations that companies from certain countries are favored while those from other countries, including the United States, receive discriminatory treatment.
A presidential decree published in March 2008 raised additional concerns. The decree established a National Service of Contractors, with which firms must register in order to sell to the government. Bids will not be accepted without prior registration. Some observers assert that the registration requirement allows additional screening for political acceptability of a company.

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

EXPORT SUBSIDIES

Exporters of selected agricultural products – 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. The government has not published further information for export subsidies.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Venezuela was listed on the Priority Watch List in the 2009 Special 301 report. Key concerns cited in the Report relate to the deteriorating environment for the protection and enforcement of IPR in Venezuela. Copyright piracy is increasing and proposed copyright legislation, if implemented, would severely undercut the existing Venezuelan copyright law, as well as bilateral and international standards of IP protection. Concerns remain regarding the revocation of existing patents on pharmaceuticals. 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. Although weak enforcement of IPR remains a problem, Venezuela's tax and customs authority has made some progress on raising awareness of IPR issues through public anti-piracy and "zero tax evasion" campaigns.

SERVICES BARRIERS

Venezuela maintains restrictions on a number of service sectors, including professional services, audiovisual, and telecommunications services. In any enterprise with more than 10 workers, foreign employees are restricted to 10 percent of the work force, and Venezuelan law limits foreign employee salaries to 20 percent of the payroll.

Professional Services

Foreign equity participation in professional firms is restricted to a maximum of 19.9 percent. Only Venezuelan citizens may provide accounting and auditing services to government institutions and related institutions, such as banks and hospitals. In addition, only Venezuelan citizens may act as accountants for companies in which the government has at least a 25 percent ownership interest. A foreign lawyer cannot provide legal advice on foreign or international law without being fully licensed as a lawyer in Venezuela.

Foreigners are required to establish a commercial presence for the provision of engineering services. Foreign consulting engineers must work through local firms or employ Venezuelan engineers.

Audiovisual Services

Venezuela limits foreign equity participation to less than 50 percent for enterprises engaged in Spanish language media, including 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, as well as a requirement that a percentage of film copying be done in Venezuelan facilities.

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 (1994-1999), but under President Chavez (since 2000) privatization has been halted and the government has re-nationalized certain key sectors of the economy. In 2007, the government nationalized certain electricity and telecommunications providers. In 2008, the government nationalized certain cement companies and an aluminum company, and first proposed the nationalization of a commercial bank. In 2009, this bank was nationalized, in addition to a food production plant and 76 oil field services companies.

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). Sales to foreign investors of interests in subsidiaries and affiliates of PDVSA are permitted following approval by the government.

Since 2004, 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 hydrocarbons sector and raised concerns of companies operating in Venezuela.

In 2006, the government transferred operating service agreements to mixed companies in which PDVSA holds a majority stake. 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-controlled 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 viewed the government's actions as expropriations and attempted to negotiate with Venezuelan authorities regarding compensation. Both companies have filed international arbitration claims against the Venezuelan government. The United States is monitoring the process closely, has consulted with the affected U.S. companies, and has stated its expectation that U.S. companies will receive fair treatment, including timely, adequate, and effective compensation where a tribunal finds that an expropriation has occurred.

In October 2008, PDVSA announced a new bid round for two projects containing a total of four blocks of the country's heavy crude reserves in Eastern Venezuela. In early December 2008, a project containing three blocks was added to the announced tender. On February 10, 2010, two winning consortia were announced for two of the three projects. The winning consortia must now negotiate mixed company agreements with PDVSA (with 60 percent majority of PDVSA ownership) before development of these blocks can begin. Both the 2001 Hydrocarbons Law and the 1999 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. National oil companies from politically strategic partner countries seem to be the preferred partners for the development of many new projects.

The previous government had passed legislation in 1998 aimed at introducing domestic and foreign competition into the domestic gasoline market. The law allowed foreign and private Venezuelan investors to own and operate service stations, although the government retained the right to set product prices. The current government has not raised gasoline prices in several years, and currency devaluations and a high inflation rate eliminated service station profit margins. An Organic Law on the Restructuring of the Internal Liquid Fuels Market came into effect on September 18, 2008. The law mandates government control of domestic transportation and wholesale of liquid fuels and set a 60 day period for negotiations with the affected companies. Affected companies have not yet been paid, but negotiations are still ongoing. All establishments that carry out retail activities of liquid fuels were to be re-branded as PDVSA. As of November 2009, few gas stations have been re-branded. The law does not define the term "liquid fuels," which creates uncertainty as to whether it will apply to products other than gasoline or diesel fuel, such as motor oils or lubricants.

In May 2009, the Venezuelan government promulgated a law reserving to the state those assets and services related to the performance of primary activities identified in the 2001 Hydrocarbons Law. Specifically, the assets and services included: (1) those involved in the injection of water, steam, or gas into petroleum reservoirs; (2) those related to gas compression; and (3) assets and services associated with the hydrocarbons industry on Lake Maracaibo in western Venezuela. This included boats for the transportation of personnel, divers, and maintenance; cranes and crane barges; tugs; flat barges; light vessels; cutting barges; barges for laying pipeline and sub-aquatic cable; vessel maintenance facilities; docks; and any type of dikes. Seventy-six companies, including several U.S.-owned firms, were nationalized pursuant to this law and none have received compensation to date.

In June 2009, the government promulgated the Organic Law for the Development of Petrochemical Activities to regulate the execution of petrochemical activities and to reserve to the state activities defined as primary and intermediate activities as well as all facilities and works required to carry out these activities. As a result, only the state and companies in which the state has at least a 50 percent ownership stake may carry out primary and intermediate petrochemical activities.

Electric power generation, transmission, and distribution are open to private participation under Venezuelan law. However, 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 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, named in February 2005, CVG announced a review of all existing contracts between CVG companies and third parties. A draft mining law is still pending in the National Assembly that seeks to repeal "inactive" concessions to foreign countries and to structure the mining sector under a joint-venture model.

Supply contracts by CVG companies are still pending review by the Ministry of 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.