

VENEZUELA

In 1996, the U.S. trade deficit with Venezuela was nearly \$8.2 billion, an increase of slightly less than \$3.1 billion from the U.S. trade deficit of about \$5.1 billion in 1995. U.S. merchandise exports to Venezuela were more than \$4.7 billion, an increase of \$100 million (2.2 percent) from the level of U.S. exports to Venezuela in 1995. Venezuela was the United States' twenty-fourth largest export market in 1996. U.S. imports from Venezuela were about \$12.9 billion in 1996, an increase of nearly \$3.2 billion (32.9 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Venezuela in 1995 was nearly \$3.4 billion, an increase of 12.7 percent from the level of U.S. FDI in 1994. U.S. FDI in Venezuela is concentrated largely in the manufacturing and wholesale sectors.

Venezuela's economic climate improved dramatically in 1996 as the government abandoned the foreign exchange and price controls it had enacted in 1994 to cope with a financial crisis in the banking sector. Under the banner "Agenda Venezuela," the Government of Venezuela introduced in April 1996 a series of reforms designed to put the Venezuelan economy back on a free-market footing. The government significantly reduced the long-standing subsidy on gasoline -- resulting in an immediate five-fold increase in pump prices -- and re-started its stalled privatization program.

IMPORT POLICIES

Tariffs

As a result of the Uruguay Round, Venezuela bound most of its rates at 35 to 40 percent. Venezuela's average applied tariff rate is approximately 10 percent.

Venezuela, along with Colombia and Ecuador, implemented an Andean Pact common external tariff (CET), which took effect on February 1, 1995. The CET has a four-tier structure, with levels of 5, 10, 15, and 20 percent for most products. In accordance with the Andean Pact CET, Venezuela is harmonizing its national tariff schedule with those of Colombia and Ecuador, with some exceptions taken by each country. (Bolivia retains its two-tier tariff structure of 5 and 10 percent, and Peru maintains a two-tier tariff structure of 15 and 25 percent.)

Venezuela also adopted a harmonized automotive policy with Colombia and Ecuador -- which entered into effect on January 1, 1995 -- establishing CET rates of 35 percent for passenger vehicles, 15 percent for mass transit and cargo vehicles, and 3 percent for kits. The policy includes regional content requirements.

Venezuela has continued its efforts to conclude trade arrangements with other countries in Latin America and the Caribbean. Venezuela extends preferential tariffs on a limited variety of products to member states of the Latin American Integration Association (ALADI). Venezuela already has a partial free trade

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agreement with Chile. It has concluded a free trade agreement with Mexico and Colombia (the "G-3" Agreement), which entered into force January 1, 1995, under which most tariffs are to be reduced to zero by the year 2007. Venezuela also has a preferential agreement with the Caribbean Common Market (CARICOM), under which CARICOM will start reducing tariffs on Venezuelan goods in 1998. Venezuela, jointly with Colombia, in 1994 signed a framework agreement on free trade with several Central American countries, but has not yet negotiated schedules on tariff reduction and trade liberalization. In conjunction with other Andean Pact members, Venezuela is in the initial stages of negotiating a free trade accord with the Southern Common Market (MERCOSUR).

Venezuela maintains tariffs of 20 percent ad valorem on imports of beer, wines, and all distilled spirits. In addition to the tariffs and a 1 percent customs service fee, a 10 percent luxury tax and a 16.5 percent "wholesale" tax are levied on all imports of alcoholic beverages, while a 15 percent duty is imposed on imports of compound preparations and undenatured ethyl alcohol used in the production of spirits. Wines from Argentina, Chile, and Mexico are subject to the same set of taxes, but to lower duties of 4.0, 0, and 7.2 percent respectively, due to the existence of partial free trade agreements. Eliminating these barriers could increase U.S. exports by \$1-5 million.

Venezuela also maintains 20 percent ad valorem duties on canned soups, mixed vegetable juice, biscuits, and cookies; a reduction in the tariff would result in a potential increase of \$1-5 million in U.S. exports. The reduction of the 20 percent tariff on film and cameras would result in a potential increase in U.S. exports of \$5-10 million in each category.

According to U.S. industry, Venezuela modified its application of its import duties on computer software such that the 15 percent import duty on pre-packaged software is assessed over the entire value of the software package, resulting in a marked increase in the cost of commercializing software in Venezuela.

Non-Tariff Measures

The Government of Venezuela applies a "wholesale" tax on most goods and services, at both the wholesale and import level. The wholesale tax is adjusted annually within a range of 5 to 20 percent, with the current rate set at 16.5 percent. A special consumption tax on "luxury items" varies by product within a range of 10 to 20 percent.

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

Venezuela has applied the Andean Pact's price band system for agricultural products since April 1, 1995. Under the system, the ad valorem CET rates for yellow corn, feed grains, oilseeds, oilseed products, sugar, rice, wheat, milk, pork and poultry meat, and derivative products are adjusted according to the relationship between "marker" commodity reference prices and established floor and ceiling prices. These variable duties can drive up effective tariff rates and impede the expansion of trade and investment in Venezuela. The Government of Venezuela also halts the issuance of phytosanitary permits for grain imports to protect domestic producers during the domestic sorghum harvest.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Venezuela's denial of certain sanitary and phytosanitary certificates lacks a scientific basis and is discriminatory. Venezuela refuses to issue certificates for imports of U.S. poultry, poultry products, hogs, and pork products on the basis that there is a history of avian influenza and porcine respiratory and reproductive syndrome in the United States. Venezuelan agricultural authorities, however, have failed to establish that these diseases do not already exist in Venezuela. The result has the effect of banning importation of these products. If the ban was lifted, U.S. exports of poultry, poultry products, pork and pork products could amount to \$5-20 million a year. According to the U.S. cosmetic industry, Venezuela maintains qualitative restrictions which, if lifted, would increase U.S. exports by less than \$5 million a year.

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

GOVERNMENT PROCUREMENT

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

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

EXPORT SUBSIDIES

Venezuela has reduced the number of export subsidies it provides, but retains a duty drawback system established in June 1994. Exporters can also get a rebate of the 16.5 percent wholesale tax paid on imported inputs. Foreign as well as domestic companies are eligible for these drawback privileges, but U.S. firms located in Venezuela complain of long delays in receiving rebates. Exporters of selected agricultural

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products -- coffee, cocoa, some fruits, and certain seafood products -- receive a tax credit equal to 10 percent of the export's f.o.b. value.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Despite significant improvements in the area of intellectual property rights (IPR), Venezuela does not yet provide adequate and effective protection. Enforcement of copyright law has improved over the past year with the creation of a special anti-piracy police unit, but overall, IPR enforcement remains inadequate. There is still widespread piracy of well-known trademarks, videos, satellite signals, and other protected works. Moreover, the Venezuelan court system has proven to be an unreliable means for pursuing IPR claims. As a result of its laws and practices, Venezuela has been on the "Watch List" under the Special 301 provision of the 1988 Trade Act since 1989. Venezuela has ratified, but not yet fully implemented, the provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Venezuela is a member of the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works.

Patents and Trademarks

Two Andean Pact decisions on the protection of patents and trademarks and of plant varieties have been in effect in Venezuela since January 1, 1994, and October 29, 1993, respectively. The decisions are comprehensive and offer a significant improvement over previous standards of intellectual property protection provided by the Andean Pact countries. For example, they provide a 20-year term of protection for patents and reversal of the burden of proof in cases of alleged patent infringement. The provisions of the decisions covering protection of trade secrets and new plant varieties are generally consistent with world class standards for protecting intellectual rights. However, these decisions remain deficient with respect to patents and trademarks. The deficiencies include overly broad compulsory licensing provisions, working requirements, restrictions on biotechnology inventions, denial of pharmaceutical patent protection for patented products listed on the World Health Organization's Model List of Essential Drugs, lack of transitional ("pipeline") protection, and lack of protection against parallel imports.

Copyrights

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

A National Copyright Office was established in October 1995 and is responsible for controlling, overseeing, and ensuring compliance with the rights of authors and other copyright holders. It can issue opinions, serve as an arbitrator, and impose fines for copyright infringements. In July 1996, the government formed a special anti-piracy unit (COMANPI) to act as an enforcement arm of the copyright office. The eight-officer police unit has the power to seize goods, make arrests, or close establishments for violations of the law. However, it can only act based on a complaint by a copyright holder; it cannot carry out an arrest or seizure

on its own initiative. COMANPI works closely with private sector representatives of the U.S. copyright industry, who provide the unit with intelligence information, financial backing, and training.

Since it began operations in August 1996, COMANPI has made 28 raids and seized 96,400 pirated videotapes and thousands of pirated audio cassettes. It also has seized 318 video-taping machines and dozens of other devices that had been used in underground laboratories to make pirated copies of copyrighted material. Inadequate border controls against the import of pirated material, however, are hampering efforts to improve copyright protection still further. A customs bill to strength border enforcement is pending before the Venezuelan Congress.

Protection of encrypted satellite signals remains practically nonexistent. Venezuela is within the footprint of U.S. satellite television transmission and unauthorized reception and distribution of U.S. signals is widespread. Similarly, there is a high rate of cable television piracy. The regional cable operators association (TEPAL) has estimated that half of the pay television subscribers in Venezuela receive unauthorized transmission of U.S. satellite signals. COMANPI, in cooperation with local representatives of the U.S. copyright industry, plans to focus on this problem in 1997.

SERVICES BARRIERS

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

Basic Telecommunications Services

In the recently concluded WTO negotiations on basic telecommunications services, Venezuela made commitments on all basic telecom services. It will provide market access and national treatment for these services as of November 27, 2000. Venezuela adopted parts of the reference paper on regulatory commitments.

INVESTMENT BARRIERS

The state continues to control key sectors of the economy, including oil, gas, iron ore, and much of the coal and petrochemical industries; parastatals dominate others, like steel and aluminum. The government, however, plans to privatize several major state enterprises during the first half of 1997, including a four-company aluminum complex, an iron and steel company, and a ferrosilicon plant. Foreign investment continues to be restricted in the petroleum sector. The exploration, exploitation, refining, transportation, storage and foreign and domestic sales of hydrocarbons are reserved to the Venezuelan government or to its entities under Article V of the Hydrocarbons Law. However, the government may enter into agreements with private companies as long as the agreements guarantee state control of the operation, are of limited duration, and have the prior authorization of the legislature meeting in joint session.

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Over the past four years, the oil sector has been opened to increasing amounts of foreign investment through joint ventures and equity associations. In 1996, the government awarded foreign investors equity participation in eight concessions for the exploration and production of light and medium crude. Several equity associations between PDVSA and private companies involving natural gas and heavy crudes also have been approved by the congress. In addition, some 15 "marginal" oil fields have been opened to national and foreign investors under service contracts, with another 20 fields slated for bidding in 1997. As part of PDVSA's plans to double its oil production over the next 10 years, PDVSA expects a total of \$65 billion to be invested in the oil sector over the next 10 years, with at least \$12 billion coming from U.S. firms participating in joint ventures and equity associations.

Venezuela also limits foreign equity participation to 19.9 percent in enterprises engaged in television, radio, Spanish language press, and professional services subject to national licensing legislation. The level of foreign investment is unrestricted in other sectors of the economy. However, the Government of Venezuela retains wide discretionary power to declare a sector "basic," and to impose a 49-percent ceiling on foreign investment in such designated sectors. Foreign investors in the mining sector are subject to Venezuela's 1944 Mining Law and a complex set of executive decrees which require them to secure a concession from the government. Finally, in any enterprise with more than ten workers, foreign employees are restricted to 10 percent of the work force, and Venezuelan law limits foreign employee salaries to 20 percent of the payroll.

Venezuela also maintains several other investment-distorting measures. Preferential tax credits and credit access are accorded to export-oriented firms; other investment tax credits are directed to producers and purchasers of locally-produced capital goods. Under the Andean Pact Common Automotive Policy, Venezuela, Ecuador, and Colombia impose strict regional content requirements in the automotive assembly industry. The local content requirement for passenger cars was 30 percent in 1996 and is scheduled to rise to 33 percent in 1998. Some foreign exchange requirements remain in place.