

VENEZUELA

TRADE SUMMARY

In 1999, the U.S. trade deficit with Venezuela was \$5.9 billion, an increase of \$3.1 billion from the U.S. trade deficit of \$2.8 billion in 1998. U.S. merchandise exports to Venezuela were approximately \$5.4 billion, a decrease of \$1.1 billion (17.6 percent) from the level of U.S. exports to Venezuela in 1998. Venezuela was the United States' 24th largest export market in 1999. U.S. imports from Venezuela were about \$11.3 billion in 1999, an increase of \$2.0 billion (21.4 percent) from the level of imports in 1998.

The stock of U.S. Foreign Direct Investment (FDI) in Venezuela in 1998 was \$5.7 billion, an increase of 5.9 percent from the level of U.S. FDI in 1997. U.S. FDI in Venezuela is concentrated largely in the manufacturing, petroleum and wholesale sectors.

IMPORT POLICIES

Tariffs

Venezuela has concluded several trade arrangements with other countries in Latin America and the Caribbean. Consequently, Venezuela extends preferential tariffs on a limited variety of products to member states of the Latin American Integration Association (ALADI). Venezuela signed a partial Free Trade Agreement with Chile in 1993. In 1997, the two countries agreed to expand the scope of the treaty by including all goods traded. Together with Colombia, Venezuela has also concluded a Free Trade Agreement with Mexico (the "G-3" agreement), which entered force on January 1, 1995. Under this accord, the G-3 countries will eliminate most tariffs on trade with each other by 2004. In addition, Venezuela has a preferential agreement with the Caribbean Common Market (CARICOM). Venezuela, jointly with Colombia, signed a framework agreement on free trade with several Central American countries in 1994, but has not yet

negotiated schedules on tariff reduction and trade liberalization. Venezuela is also currently negotiating a free trade agreement with the Southern Common Market (MERCOSUR) in conjunction with other Andean Community members.

These preferential trade arrangements at the regional level put U.S. exports to Venezuela at a disadvantage. For instance, Venezuela imposes a 20 percent *ad valorem* duty on imports of U.S. beer, wines and distilled spirits, while imports of the same goods from Argentina, Chile, and Mexico are subject to far lower duties. Under the G-3 Agreement, duties on almost all imported alcoholic beverages from Mexico will be reduced to zero by 2004. Venezuela also imposes a 15 percent duty on imports from the United States of undenatured ethyl alcohol and other compounds used in the production of spirits. U.S. industry estimates that reducing the tariff on U.S. spirits could increase U.S. exports by \$2-8 million.

The Andean Community tariff on soybeans and its byproducts is variable (set by a price band system), but it is usually 15 percent. Soybean oil from Paraguay, Argentina and Brazil is subject to lower duties of one, eight, and 10 percent, respectively, because of trade preference agreements. Soybean meal from Paraguay is subject to a 3.75 percent tariff. U.S. industry estimates that eliminating the preferences could increase U.S. exports by \$50-100 million.

Similarly, Venezuela imposes a 15 percent duty on fresh and dried fruit from the United States. All fresh and dried fruit from Chile and the Andean Community enter Venezuela duty free. Elimination of these preferences could increase U.S. exports by \$5-10 million, according to U.S. industry estimates.

Non-tariff Measures

Venezuela prohibits the importation of used cars, used tires, and used clothing. No other

quantitative import restrictions exist for industrial products.

Agricultural Import Licenses

The Ministry of Agriculture implemented a yellow corn import licensing system in February 1997, ostensibly to administer its WTO tariff-rate quota for sorghum and yellow corn. However, this measure also had the effect of enforcing absorption requirements for domestic sorghum. Under this system, feed manufacturers must purchase a government-assigned amount of domestic sorghum at the official (i.e., higher than world market) price in order to obtain import licenses for yellow corn.

The Ministry of Agriculture imposed a ban on the import of onions, potatoes, and forage seeds from the United States in late 1998. The Ministry maintains a ban on the import of citrus products as well, citing the danger of disease.

STANDARDS, TESTING, LABELING AND CERTIFICATION

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 expensive, increasing the cost of U.S. exports vis-à-vis domestic products. COVENIN requires certification from independent laboratories located in Venezuela.

GOVERNMENT PROCUREMENT

Venezuela passed a new government procurement law that came into effect on November 1, 1999. The law increases transparency in the competitive bidding process for contracts offered by the central government,

national universities, and autonomous state and municipal institutions. The law requires a contracting agency to prepare a budget estimate for a given purchase based on reference prices maintained by the Ministry of Production and Commerce. This estimate is to be used in the bidding process. Technically, the law forbids discrimination against tenders based on whether they are national or international. However, the law also states that the President can mandate temporary changes in the bidding process “under exceptional circumstances” or in accordance with “economic development plans” to promote national development or to offset adverse conditions for national tenders. These measures can include margins of preference in price, contracts reserved for nationals, and other requirements in areas of domestic content, technology transfer, the use of human resources, and incentives to purchase from companies domiciled in Venezuela. The full effects of the new law will not be felt until implementing legislation has been enacted and until it becomes clear how often the Executive intends to exercise the discretionary powers it has acquired. 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. Exporters can get a rebate of the 15.5 percent wholesale tax paid on imported inputs.

Foreign as well as domestic companies are eligible for these drawback privileges. U.S. firms located in Venezuela complain of long delays in receiving rebates. Exporters of selected agricultural products – coffee, cocoa, some fruits, and certain seafood products – receive a tax credit equal to 10 percent of the export’s value.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Venezuela does not yet provide full protection for intellectual property (IP). There is still widespread counterfeiting of products with well-known trademarks, as well as piracy of videos, satellite signals, and other protected works. Moreover, the Venezuelan court system has proven to be an unreliable venue for pursuing claims concerning intellectual property infringement, particularly those initiated prior to 1994 when Andean Community Decision 344 came into effect. Because of these deficiencies, Venezuela has been on the “Watch List” under the Special 301 Provision of the 1988 Trade Act since 1989.

The Government created a new Intellectual Property Office (SAPI) in March 1997. SAPI became operational in May 1998 and made a promising start in fighting trademark counterfeiting. Under SAPI, the Government expanded the mandate of a special anti-piracy police unit (COMANPI) to include the enforcement of patents and trademarks as well as copyrights. SAPI has recently extended patent protection to certain varieties of genetically engineered vegetables in accordance with Andean Decision 345. SAPI is currently pursuing an ambitious program to modernize the organization’s computer system. Nonetheless, neither SAPI nor COMANPI has been given sufficient resources to combat the extent of piracy in Venezuela.

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. Although TRIPS became applicable for Venezuela on January 1, 2000, concerns remain regarding its full implementation of the Agreement.

Patents and Trademarks

Andean Community (CAN) Decisions 344 and 345, which took effect in 1994, are comprehensive and offer a significant improvement over the previous standards of protection for patents and trademarks provided by Venezuela’s 1955 Industrial Property Law. Decision 344, for example, improves protection for famous trademarks, prohibits the coexistence of similar marks, and provides for the cancellation of trademark registrations based on “bad faith.”

Despite the improvements Decision 344 made to the protection of intellectual property, problems remain in Venezuela’s trademark regime. Current procedures permit local pirates to produce and sell counterfeit products even after the genuine owners of those trademarks have undertaken (often-lengthy) legal proceedings against the pirates. Trademark counterfeiting is common in the clothing, toy, and sporting goods sectors. Enforcement remains inadequate. Sysco Corporation, Reebok Shoes and Home Depot are all examples of U.S. companies that have pursued litigation to protect the exclusive right to the use of their trademarks in Venezuela.

In addition, both Decisions 344 and 345 appear to raise TRIPS consistency issues. For example, they do not contain provisions for enforcing the protection of intellectual property. During 1999, the Venezuelan Government worked within the Andean Community to update Decision 344 and with the Venezuelan legislature to modify Venezuela’s 1955 Industrial Property Law. Both efforts were geared toward making the language consistent with the WTO TRIPS Agreement. Unfortunately, both of these projects had yet to be completed by the WTO’s January 1, 2000 deadline for full TRIPS compliance. Work continues in each of these areas.

Copyrights

Andean Community Decision 351 and Venezuela's 1993 Copyright Law are modern and comprehensive and have substantially improved protection for copyrighted works in Venezuela. The Copyright Law extended protection to a wide range of creative works, including computer software, satellite signals, and cable television. Despite consistent action on the part of COMANPI, piracy of computer software and videos is still common.

SERVICES BARRIERS

Venezuela maintains restrictions 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.

Venezuela limits foreign equity participation (except from other Andean Community countries) to 19.9 percent in enterprises engaged in television and radio broadcasting, Spanish language newspapers, and professional services whose practice is regulated by national laws. Finally, in any enterprise with more than 10 workers, foreign employees are restricted to 10 percent of the work force, and Venezuelan law limits foreign employee salaries to 20 percent of the payroll.

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; a requirement that at least half of the television programming must be dedicated to national programs; and a requirement that at least half of the FM radio broadcasting from 7 a.m. to 10 p.m. be dedicated to Venezuelan music.

Basic Telecommunications Services

As part of the 1997 WTO Basic Telecommunications Agreement, Venezuela committed itself to offering market access and national treatment to certain voice telephony services as of November 27, 2000, when the monopoly granted to the privatized national telephone company (CANTV) ends. At the close of 1999, CANTV retained a monopoly only for basic telephone service. However, Venezuela does not yet permit unlimited market access for certain key basic telecommunications services, including packet-switched data transmission network services. Regulations on Internet telephony are forthcoming.

Financial Services

In the 1997 WTO Financial Services Agreement, Venezuela made commitments on banking, foreign exchange houses, capital markets, life insurance, reinsurance, and brokerage. Venezuela did not make a commitment on pensions or on maritime, aviation and transportation insurance, and it reserved the right to apply an economic needs test as part of the licensing process. Local insurers must insure imports receiving government-approved tariff reductions or government financing, or those that are government-owned.

INVESTMENT BARRIERS

The state continues to control key sectors of the economy, including oil, gas, petrochemicals, and much of the mining and aluminum industries. Venezuela had begun an ambitious program of privatization under the Caldera administration, but throughout 1999, the pace of privatization slowed. Efforts to sell the state aluminum industry and further sections of the electrical power generating industry continue, however.

Foreign investment continues to be restricted in the petroleum sector. The new constitution reserves ownership of the State Oil Company

VENEZUELA

(PDVSA) to the Venezuelan Government. However, it does allow the sale of subsidiaries and affiliates of PDVSA to foreign investors, a measure that should preserve the “oil opening” begun under the Caldera administration. The Venezuelan Government created the oil opening to promote massive new petrochemical joint ventures and to bring heretofore inactive fields into production. Almost 60 foreign companies representing 14 different countries participated in this process. PDVSA and foreign oil companies signed 33 operating contracts for marginal fields after three rounds of bidding.

The government passed legislation in 1998 aimed at introducing domestic and foreign competition into the domestic gasoline market. The new laws allowed Venezuelan investors and those from abroad to own and operate service stations, though the government retained the right to set gas prices. By ministerial decree, Venezuela also introduced competition in the natural gas sector by allowing domestic and foreign private sector companies to process, store, transport, distribute and market methane and ethane.

A range of other natural resources – including iron ore, coal, bauxite, gold, nickel, and diamonds – are being opened to greater private investment. In 1996, CVG, the state-owned mining firm, announced its first joint venture with a foreign company to develop the Las Cristinas gold mine. President Chavez personally announced the beginning of mine operations in May 1999. Low gold prices, however, have forced CVG and its partners to put their project on hold. Acting under the Enabling Powers granted the President in April 1999, the Venezuelan Executive passed legislation that updates Venezuela’s 1945 mining law in order to encourage greater private sector participation in mineral extraction. Finally, Venezuela has vast hydroelectric resources that it has developed to power the nation’s industries. The country passed a national electricity law to provide a legal

framework and to encourage private investment in this sector in 1999.

Venezuela maintains several other investment-distorting measures. Under the Andean Community Common Automotive Policy, Venezuela, Ecuador and Colombia imposed local content requirements in the automotive assembly industry in order to qualify for reduced duties on imports. Such requirements are prohibited by Agreement on Trade-Related Investment Measures (TRIMS). Under this Agreement, Venezuela was obligated to eliminate TRIMS by the year 2000. The latest Andean Automotive Policy Council determined in December 1999 that it would not eliminate all content requirements, but instead has decided to increase at least one requirement gradually to 34 percent by the year 2006. This revised automotive policy may be inconsistent with Venezuela’s WTO obligations under the TRIMS Agreement. The United States is working in the WTO to ensure that WTO members meet these obligations.