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TRADE SUMMARY

The U.S. trade deficit with Venezuela was \$10.7 billion in 2002, an increase of \$1.1 billion from \$9.6 billion in 2001. U.S. goods exports in 2002 were \$4.4 billion, down 21.2 percent from the previous year. Corresponding U.S. imports from Venezuela were \$15.1 billion, down 0.9 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 \$3.2 billion in 2001 (latest data available), and U.S. imports were \$728 million. Sales of services in Venezuela by majority U.S.-owned affiliates were \$3.6 billion in 2000 (latest data available).

The stock of U.S. foreign direct investment (FDI) in Venezuela in 2001 was \$10.7 billion, up from \$9.5 billion in 2000. U.S. FDI in Venezuela is concentrated largely in petroleum, manufacturing and services sectors.

IMPORT POLICIES

Tariffs

Venezuela is part of the Andean Community. At the Andean Presidents' Council held January 31, 2002, the five member countries of the Andean Community agreed to establish by January 2004 an Andean free trade zone, a common external tariff (CET), and a customs harmonization policy. The CET agreement establishes a unified tariff schedule that will come into effect at the end of 2003. On October 14, 2002 the member Ministers of the Andean Community met to deliberate on a new CET. They agreed upon rates for 62 percent of items and pledged to agree on a CET for the remaining 38 percent by December 15 of 2002. The CET has a five-tier tariff structure of zero, five percent, ten percent, fifteen percent and twenty percent.

Venezuela supports its agricultural producers through guaranteed minimum prices, the restrictive use of import licenses and high import tariffs through the Andean Community's price band system. Venezuela implemented the Andean Community's price band system in 1995 for certain agricultural products, including feed grains, oilseeds, oilseed products, sugar, rice, wheat, milk, pork and poultry. Yellow corn was added to the price band system in 1996 and

processed poultry was added in 2001. *Ad valorem* rates for these products are adjusted according to the relationship between market commodity reference prices and established floor and ceiling prices. When the reference price for a particular market commodity falls below the established floor price, the compensatory tariff for that commodity and related products is adjusted upward. Conversely, when the reference price exceeds the established ceiling, the compensatory tariff is eliminated. Floor and ceiling prices are set once a year based on average prices during the past five years. Venezuela publishes these prices each April.

For example, the Andean Community tariff on soybeans and byproducts is usually at least 15 percent and recently has exceeded 40 percent. Soybean oil from Paraguay, Argentina and Brazil is subject to lower duties of one percent, eight percent or ten percent, respectively, because of trade preference agreements. Soybean meal from Paraguay is subject to a 3.75 percent tariff that is "negotiated" annually, and soybean meal imported from Bolivia is duty-free. U.S. industry estimates that eliminating these preferences could increase U.S. exports by up to \$100 million.

Management of tariff-rate quota (TRQ) commitments by the Government of Venezuela has negatively affected trade in basic agricultural commodities as well as processed products. In some cases, the Venezuelan Government has ruled that imports are prohibited once the TRQ in-quota quantity has been imported, even though importers are willing to pay the over-quota tariff for additional product. U.S. agricultural exporters advise that the Government of Venezuela also fails to open the quotas on time, and for some products, such as pork, has refused to "activate" the quota at all.

Under the Andean Community'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.

Non-Tariff Measures

Venezuela's failure to grant import licenses, for what it claims are phytosanitary concerns, as part of "absorption agreement" requirements, or for other reasons, is having an increasingly

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negative impact on imports. Venezuela announced in late 2001 that it would not grant import licenses for corn until all domestic white corn had been marketed, resulting in an effective import ban. Venezuela also has restricted the issuance of import licenses for sorghum, soybean meal, yellow grease, pork, poultry, beef, apples, grapes, pears, onions, potatoes, cotton, oilseeds, and some dairy products.

Although the Government of Venezuela has no published requirements on absorption agreements, it has been common practice for years to require the purchase of domestic production before issuing import permits. Imports of yellow corn are dependent upon the purchase of local sorghum and/or white corn. Soybean imports are dependent upon the purchase of "locally produced" soybean meal, and the government has proposed tying grape and black bean imports to the purchase of local product. The use of absorption requirements is extremely subjective, since Venezuela lacks a good statistical system to track levels of domestic crop production.

Venezuela also requires that importers obtain sanitary and phytosanitary (SPS) certificates from the Ministries of Health and Agriculture for most pharmaceutical and agricultural imports. In 2002, the government increasingly appeared to use this requirement to restrict agricultural and food imports without providing evidence of a scientific basis, which raises concerns about the consistency of these practices with World Trade Organization (WTO) requirements.

This discretionary use of import licensing and permitting procedures to curtail agricultural imports has become a major problem for the United States and other countries. Venezuelan Government officials have been notified by various countries that these and other licensing practices appear to violate their WTO commitments. As a result, in November 2002, United States Trade Representative initiated formal WTO consultations with Venezuela on its agricultural import license procedures for several products.

Venezuela prohibits the importation of used cars, used tires and used clothing. No other quantitative import restrictions exist for industrial products.

Venezuelan officials continue to discuss plans to improve customs procedures to better control the entry of illicit merchandise. The Venezuelan Commission on Antidumping and Safeguards has started investigations on the importation of steel and paper products as well as clothing and footwear. It appears that deficient customs procedures and contraband were contributing factors in those industries' calls for protection.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Some Venezuelan importers of U.S. products have alleged that the Government of Venezuela applies product standards more strictly to imports than to domestic products. The certification process is expensive, increasing the cost of U.S. exports relative to domestic products. The Venezuelan Commission for Industrial Standards normally requires certification from independent laboratories located in Venezuela but at times accepts a certificate from established standards institutes abroad.

With regard to labeling, U.S. industries have raised concerns regarding Venezuela's newly enacted labeling regulation for clothing and footwear. The regulations as proposed by Venezuela's Autonomous National Service for Standardization, Quality, Metrology and Technical Regulations (SENCAMER) were notified to the WTO Technical Barriers to Trade Committee on July 31, 2002 and the notice was published in the Official Gazette of Venezuela in August 2002. The regulations, which became effective in December 2002, establish the register of domestic manufacturers and importers of clothing and footwear and minimum labeling requirements for all clothing and footwear products marketed in Venezuela. Of primary concern to U.S. manufacturers is the requirement that labels must be customized to include detailed information about the importer of the goods.

GOVERNMENT PROCUREMENT

Venezuela's government procurement law covers purchases by 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

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bidding process. 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 domestic price preference; reservation of contracts for nationals; requirements for domestic content, technology transfer and/or the use of human resources; and other incentives to purchase from companies domiciled in Venezuela. For example, recent government decree 1,892 establishes a 5 percent preference for bids from companies with over 20 percent local content. In addition, half of that 20 percent of content must be from small to medium size domestic enterprises.

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 - receive a tax credit equal to 10 percent of the export's value.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Venezuela is a member of the World Intellectual Property Organization (WIPO). It is also a signatory to the Berne Convention for the Protection of Literary and Artistic Works, the Geneva Phonograms Convention, the Universal Copyright Convention, and the Paris Convention for the Protection of Industrial Property. Through Andean Community Decision 486, Venezuela has ratified the provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). However, recent application of Decision 486 to cases of "second-use" patents and data protection has caused a weakening of Venezuela's IPR protection, even as enforcement of IPR laws remains lax.

The Venezuelan Industrial Property Office (SAPI) has been successful in improving its service to the business community, but protection of IPR is hindered by the lack of adequate resources for the Venezuelan copyright

and trademark enforcement police (COMANPI) and for the special IPR prosecutor's office. The Venezuelan Government is also working to get a new Industrial Property Law approved by the National Assembly, as well as to promote the ratification of the WIPO treaties. Unfortunately, pirated music and videos remain readily available on the black market. In the 2002 Annual Review, Venezuela has remained on USTR's Special 301 "Watch List."

Patents and Trademarks

Venezuela provides the legal framework for patent and trademark protection through Andean Community Decision 486 and the 1955 National Industrial Property Law. Andean Community Decision 486 takes major steps towards bringing Venezuela into WTO TRIPS compliance. However, without corresponding local laws, Venezuela is not completely TRIPS compliant. Andean Community Decision 345 covers patent protection for plant varieties.

While the government introduced legislation in early 1996 to update the 1955 Industrial Property Law and to bring Venezuela into compliance with TRIPS, the draft legislation was sidelined by President Chavez's constitutional reform process. However, the National Assembly is debating a new Industrial Property Law, which may address many of the outstanding TRIPS issues. A new customs bill, which includes provisions for TRIPS-consistent border controls to impede the importation of pirated goods, became law in November 1998, and a revision is currently pending.

U.S. companies are concerned about 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. Under pressure from the Andean Community and in line with some changes in leadership at SAPI, Venezuela has revoked previously issued patents. Also in February 2002, Venezuela's food and drug regulatory agency (INH) began approving the commercialization of new drugs which were the bioequivalents of already patented drugs, thereby denying the originator companies involved any data protection. In effect, the Government of Venezuela now allows the test data of patented drugs, most of which require lengthy and expensive development, to be used by others seeking approval for their own pirate version of the same product.

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Copyrights

The Venezuelan copyright and trademark enforcement branch of the police (COMANPI) continues to provide copyright enforcement support with a small staff of permanent investigators. A 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.

Andean Pact Decision 351 and Venezuela's 1993 Copyright Law provide the legal framework for the protection of copyrights. The 1993 Copyright Law is modern and comprehensive and extends copyright protection to all creative works, including computer software. A National Copyright Office was established in October 1995 and given responsibility for registering copyrights, as well as for controlling, overseeing and ensuring compliance with the rights of authors and other copyright holders. However, COMANPI, the Copyright Office's enforcement arm, can only act based on a complaint by a copyright holder; it cannot carry out an arrest or seizure on its own initiative, thereby leading to weaker enforcement.

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 individuals who meet Venezuelan certification requirements. In addition, only Venezuelan nationals may be licensed as architects. Some (particularly government-related) accounting and auditing functions require Venezuelan citizenship, and only Venezuelan nationals may act as accountants for companies with public stock greater than 25 percent. Also, foreign professionals wishing to work in Venezuela must revalidate their credentials at a Venezuelan university on the condition of reciprocity. A foreign lawyer cannot provide legal advice on foreign or international law without being licensed in the practice of Venezuelan law. A foreign firm also cannot use its international firm's name nor hire or form a partnership with Venezuelan lawyers.

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 for public tenders, which gives preferential treatment to Venezuelan companies if they have the capability to carry out the work and/or if the project is financed by public funds. Foreign capital is restricted to a maximum of 19.9 percent in professional enterprises (Decree 2095).

Venezuela limits foreign equity participation (except from other Andean Community countries) to 20 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. At least half of the television programming must be dedicated to national programs, and at least half of FM radio broadcasting must be dedicated to Venezuelan music.

Financial Services

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 reserved the right to apply an economic needs test as part of the licensing process. Only local insurers may insure imports that receive government-approved tariff reductions or government financing.

New rules governing civil aviation, maritime activities and transportation insurance also have been issued in the package of 49 laws passed under enabling powers by President Chavez. Many of the laws still need implementing regulations and the entire package has been

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challenged in the Supreme Court and the National Assembly is reviewing 14 of the most contentious laws. The impact of the legislation is, therefore, still unclear.

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, but President Chavez gradually has halted further privatization. In early 2000, the U.S. power generating company, AES Corporation, successfully took control, by means of a stock swap, of La Electricidad de Caracas (EDC), the local electrical company that provides power to the Caracas metropolitan area.

Foreign investment continues to be restricted in the petroleum sector. The exploration, production, refining, transportation, storage, and foreign and domestic sale of hydrocarbons are reserved to the State. However, private companies may engage in hydrocarbons-related activities through operating contracts or through equity joint ventures with state owned PDVSA. The new Venezuelan Constitution reserves ownership of the state oil company (PDVSA) to the Venezuelan Government. However, it does allow the sale of subsidiaries and affiliates of PDVSA to foreign investors. In the early 1990's, the Venezuelan Government created an "oil sector opening" to promote new petrochemical joint ventures and to bring inactive oil fields back 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. Venezuela's government has actually sought foreign investment to develop offshore natural gas deposits near the Orinoco delta.

The recent Hydrocarbons Law has raised concerns in the industry as it mandates a minimum 50 percent national participation in future projects and increases most royalties from 16.67 percent to 30 percent.

The government passed legislation in 1998 aimed at introducing domestic and foreign competition into the domestic gasoline market. The law allows foreign and non-governmental Venezuelan investors to own and operate service

stations, though the government retains the right to set product prices.

A range of other natural resources - including iron ore, coal, bauxite, gold, nickel and diamonds - is gradually being opened to greater private investment by means of strategic alliances. 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 operations in May 1999. Low gold prices, however, forced CVG and its partners to suspend the project. In 2001, the concession was revoked on grounds of CVG's alleged inability to comply with the contract by not developing the reserves as stipulated. In April 1999, the Venezuelan Government updated the 1945 Mining Law in order to encourage greater private sector participation in mineral extraction.

Under the Andean Community Common Automotive Policy, Venezuela, Colombia and Ecuador impose local content requirements as a condition for reduced duties on imports. The local content requirement for passenger vehicles was 32 percent in 1997. It was raised to 33 percent for 1998, and was then lowered to 24 percent for 2000. Under the WTO Agreement on Trade-Related Investment Measures (TRIMS Agreement), the three countries were obligated to eliminate local content requirements by the year 2000. However, in December 1999, the Andean Automotive Policy Council determined that it would not eliminate the local content requirement as it had initially indicated, but instead decided to increase it gradually to 34 percent by the year 2009. This automotive policy may be inconsistent with Venezuela's WTO obligations under the TRIMS Agreement.