

## VENEZUELA

### TRADE SUMMARY

In 2001, the U.S. trade deficit with Venezuela was \$9.6 billion, a decrease of \$3.5 billion from the U.S. trade deficit of \$13.0 billion in 2000. U.S. goods exports to Venezuela were approximately \$5.7 billion, an increase of \$134 million (2.4 percent) from the level of U.S. exports to Venezuela in 2000. Venezuela was the United States' 25<sup>th</sup> largest export market in 2001. U.S. imports from Venezuela were about \$15.2 billion in 2001, decrease of \$3.4 billion (18.2 percent) from the level of imports in 2000.

The stock of U.S. foreign direct investment (FDI) in Venezuela in 2000 was \$8.4 billion, an increase of 14.7 percent from the level of U.S. FDI in 1999. U.S. FDI in Venezuela is concentrated largely in the petroleum, manufacturing and finance sectors.

### IMPORT POLICIES

#### Tariffs

Venezuela is a member of several regional trading arrangements with other countries in Latin America and the Caribbean. Venezuela has a free trade agreement with Colombia and Mexico (the "G-3 Agreement"). Under terms of the G-3 accord, the countries intend to eliminate almost all tariffs on trade in goods by 2004. Most significantly, Venezuela is part of the Andean Community.

At the Andean President's Council held January 31, 2002, the five member countries of the Andean Community agreed to establish an Andean free trade zone, a common external tariff (CET), and a customs harmonization policy by January 2004. The CET agreement establishes a unified tariff schedule that will come into effect at the end of 2003. The CET reportedly will be zero duty on capital goods, five percent on industrial goods and raw materials, ten percent on manufactured goods

with some exceptions, and twenty percent on "ultra-sensitive goods."

Venezuela also has a preferential trade agreement with the Caribbean Common Market covering a variety of agricultural and textile products. In addition, Venezuela is currently negotiating a free trade agreement with the Southern Common Market in conjunction with other Andean Community free trade members and has started negotiations with several Central American countries.

These preferential trade arrangements at the regional level reportedly put U.S. exports to Venezuela at a competitive disadvantage. The most significant disadvantage for agricultural products is the Andean Community's common external tariff system. These tariffs are variable and use a complicated price band mechanism to calculate the applied tariff. 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, eight, or 10 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.

Misunderstanding and misapplication of tariff rate quota (TRQ) commitments by the Government of Venezuela has affected negatively 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. The Government of Venezuela also fails to open the quotas on time, and in some cases, such as pork, has refused to "activate" the quota at all.

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### Non-Tariff Measures

Venezuela's failure to grant import licenses, either for what it claims are phytosanitary concerns, as part of "absorption agreement" requirements, or for other reasons, is having an increasingly 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, yellow grease, pork, poultry, grapes, onions, potatoes, oilseeds, and some dairy products. In addition, the newly appointed Minister of Agriculture recently announced a study to determine if the adoption of import license requirements is warranted for coffee, sugar, vegetables and root vegetables.

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 in December 2001 the government proposed tying grape imports to the purchase of local grapes. The use of absorption requirements is extremely subjective, since Venezuela lacks a good statistical system to track levels of domestic crop production. Corn imports have been prohibited since September 2001 due to an oversupply of the local white corn.

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

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. Also, the Venezuelan Commission on Anti-Dumping and Safeguards has started investigations on the importation of steel and paper products.

### 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 requires certification from independent laboratories located in Venezuela but at times accepts a certificate from established standards institutes abroad.

### 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 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

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domestic content, technology transfer and/or the use of human resources; and other incentives to purchase from companies domiciled in Venezuela.

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 leads much of South America in the protection of intellectual property rights. While Venezuela continues to improve the enforcement of its intellectual property protection laws, sales of counterfeit products with well-known trademarks and copyright piracy are still prevalent. For instance, a major U.S. apparel manufacturer has experienced significant problems with counterfeit products in Venezuela. Since 1989, the lack of enforcement resources has caused Venezuela to be placed on the "Watch List" of countries that do not adequately protect intellectual property rights under the Special 301 provision of the 1974 Trade Act, as amended.

Venezuela is an active member of the World Intellectual Property Organization. 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.

### **Patents and Trademarks**

Venezuela provides the legal framework for patent and trademark protection under Andean Community Decision 486, which substitutes for

Decision 344, and the 1955 National Industrial Property Law. Venezuela's adoption of the Andean Community Decision appears to bring Venezuela substantially into compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Andean Community Decision 345 covers patent protection for plant varieties.

The National Assembly is debating a new Industrial Property Law, which should address the few outstanding TRIPS issues. A new customs law, which includes provisions for TRIPS-consistent border controls to impede the importation of pirated goods, became law in November 1998.

The Andean Community's September 2000 adoption of Decision 486 as the IPR regime for the region helped bring Venezuela closer to compliance with the WTO TRIPS Agreement. However, U.S. pharmaceutical companies are concerned that Decision 486 is not sufficiently explicit regarding the confidentiality of data included with marketing approval applications, thereby opening the way to the possible erosion of protections for such information. They also express concern regarding an Andean Tribunal decision against Peru during 2001 that a company that had patented a compound for one use cannot subsequently patent that compound for a second use. This decision would put the Andean Community at odds with international norms and possibly with the WTO TRIPS Agreement. Venezuela and Ecuador have similar cases before the Tribunal.

### **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

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facilities for seized goods, has forced COMANPI to work with the National Guard and private industry to improve enforcement of copyrighted material.

The legal framework for the protection of copyrights is provided by Andean Pact Decision 351 and Venezuela's 1993 Copyright Law. 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.

### 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 of tender which gives preferential treatment to Venezuelan companies if the company has the capability 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.

### Basic Telecommunications Services

As part of the 1997 WTO Basic Telecommunications Agreement, Venezuela committed itself to offering market access and national treatment to telephony services. Venezuela passed the Telecommunications Act in June 2000, which ended the monopoly previously granted to the privatized national telephone company (CANTV). By the end of 2000, public

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auctions had been held which allowed foreign companies to provide wireless telephone services throughout the country. CONATEL, Venezuela's Telecommunications Commission, is to release its 2002 Telecom Plan where it will present the calendar of auctions for the frequency spectrum for Local Multipoint Distribution System (LMDS) and "third generation" (3G) telecommunications

### 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 can 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 challenged in the Supreme Court and is under review by the National Assembly. The impact of the legislation is, therefore, still not clear.

### 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

technology. U.S. telecommunications companies are active participants in these auctions, and have been awarded several significant frequency bands. Venezuela had a significant 13 percent growth rate in the telecommunications sector in 2001.

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 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.

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 2/3 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.

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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 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.