

10. VENEZUELA AND THE UNITED STATES: THE EVOLVING BILATERAL RELATIONSHIP

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This chapter looks at trade and investment relations between Venezuela and the United States over the past ten years. Although this bilateral relationship has been a sound and dynamic one, trade irritants have surfaced from time to time. These are examined together with the main trends in reciprocal trade and investment with a view to reaching some conclusions regarding the nature of the relationship in the foreseeable future.

The chapter is divided into three main parts. The first deals with the evolution, direction and composition of trade between Venezuela and the United States and provides some information on the Venezuela-U.S. investment relationship. The second section addresses recent trade disputes, with an emphasis on the mechanisms used to handle them and refers as well to the current negotiations on investment issues. The final section presents, in summary form, the main conclusions of the analysis.

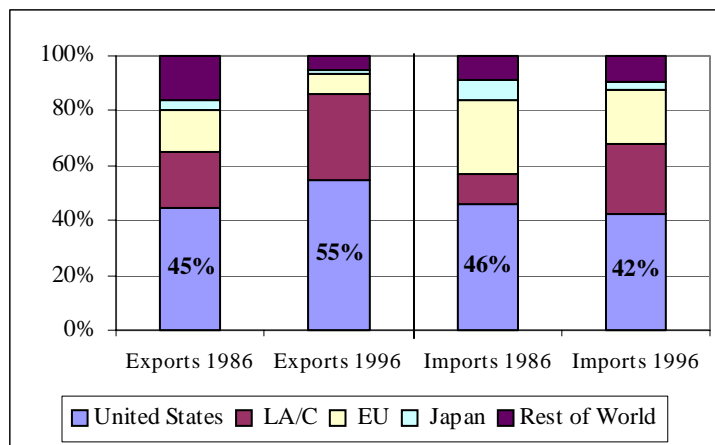
THE EVOLUTION OF BILATERAL TRADE

Venezuela and the United States are important trading partners. Bilateral trade flows (exports plus imports) between the two countries have been growing steadily over the last few years, amounting to about \$18 billion in 1997. This amount represented more than half of total trade between the United States and the Andean Community, and ranked Venezuela second only to Brazil in U.S. bilateral trade relationships with the countries of South America.

Trade Flows

The relative importance of the United States and Venezuelan markets to each other is, however, quite uneven. Overall, the United States is the single most important market for Venezuela for both exports and imports. The reliance of Venezuelan exports on the U.S. market has been increasing over the last few years. As can be seen in Figure 10.1, whereas in 1986 the United States provided a market for 45 percent of Venezuela's total exports, the U.S. share expanded to 55 percent in 1996. This is mainly a result of the steady growth of exports of oil – the product that dominates Venezuela's total exports. On the import side, the picture is somewhat different.

FIGURE 10.1 VENEZUELA: DISTRIBUTION OF EXPORTS AND IMPORTS, 1986 AND 1996 (percent of total exports and percent of total imports)



Source: IMF (1997)

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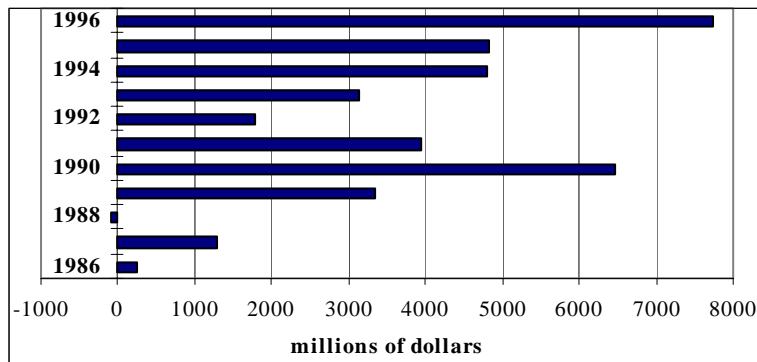
Having represented 46 percent of Venezuela's purchases abroad in 1986, the United States accounted for slightly less – 42 percent -- in 1996. It is interesting to note that the relative decline of the United States as a source of Venezuelan imported goods has been more than matched by the ascendance of the Latin American countries as markets for Venezuelan goods. As shown in Figure 10.1, these markets accounted for over 25 percent of imports purchased by Venezuelans in 1996 – more than double their share in 1986. The Latin American region has also evolved in importance as a destination for Venezuelan exports, growing from 20 percent in 1986 to 31 percent in 1996.

From the U.S perspective, Venezuela follows Mexico and Brazil in significance as a Latin American trading partner. In terms of total U.S. imports from Latin America, Venezuela has maintained a share of 12 percent between 1986 and 1996. A large percentage of these imports are oil-related. In fact, in this period Venezuela became the principal foreign supplier of oil and oil products in the U.S. market, a fact that undoubtedly will influence the bilateral relationship in the years to come.¹

As a market for U.S. exports, Venezuela's regional share decreased from ten percent in 1986 to four percent in 1996. The country that has considerably increased its purchases of U.S. exports to the region is Mexico -- absorbing more than half of the total in 1996. The case of Mexico is notable, as it has also become the supplier of over 50 percent of goods imported by the United States from the region.

Finally, it should be mentioned that Venezuela has consistently maintained a positive trade balance with the United States. As Figure 10.2 shows, Venezuela has had a trade surplus with the United States in all years since 1986. The significant surpluses in 1990 and 1996 both resulted from the combination of two main factors: high oil prices, which considerably enhanced the value of Venezuelan exports to the United States, and the diminished internal demand resulting from the contraction of the Venezuelan economy during these years, which affected imports from all sources, including the United States.

FIGURE 10.2. VENEZUELA-U.S. TRADE BALANCE 1986-1996



Source: IMF, (1997).

Trade Growth

Regarding trade growth, Table 10.1 provides information on Venezuela's trade trends with its most important trading partners in the 1990s. Exports to the United States grew at an average annual rate of six percent between 1990 and 1996. Although this rate of growth is higher than the rate of growth of Venezuela's exports to the world (four percent), it is significantly lower than growth of exports to the Andean Community (28 percent) or to Mercosur (24 percent). In fact, the Latin American economies are proving to be very dynamic markets for Venezuelan exports, particularly for non-oil goods. Exports to the European Union and to Japan have decreased considerably in the period 1990-1996.

Venezuelan imports from the United States have shown more activity, growing at an average annual rate of 13 percent between 1990 and 1996. Again, other countries, particularly in the Latin American region, have increased their supply of goods to Venezuela. Imports from the Andean Community and Mercosur grew at

¹ According to the U.S. Department of Commerce oil and oil products imports from Venezuela totaled \$11.1 billion and \$11.5 billion in 1996 and 1997, respectively.

42 percent and 22 percent, respectively. Imports from Colombia have grown at the highest rate (44 percent), followed by imports from Mexico, which increased by 36 percent over this period, and from Brazil, at 19 percent.

TABLE 10.1. VENEZUELAN TRADE WITH VARIOUS PARTNERS

EXPORTS	1986	1990	1996	1990-1996 Avg. annual growth
	Percent of world imports			
Nafta	48%	50%	57%	6%
<i>United States</i>	45%	46%	54%	6%
Mercosur	1%	2%	5%	24%
Brazil	1%	2%	4%	22%
Andean Community	2%	2%	8%	28%
Colombia	1%	2%	5%	28%
Rest of LAC	17%	15%	16%	6%
EU	16%	13%	8%	-4%
Japan	3%	3%	1%	-6%
IMPORTS	1986	1990	1996	1990-1996 Avg. annual growth
	Percent of world imports			
Nafta	49%	51%	51%	14%
<i>United States</i>	46%	46%	44%	13%
Mercosur	5%	6%	8%	22%
Brazil	5%	4%	4%	19%
Andean Community	2%	3%	9%	39%
Colombia	1%	2%	7%	44%
Rest of LAC	4%	3%	6%	19%
EU	27%	27%	20%	8%
Japan	7%	4%	3%	18%

Source: IMF (1997)

The growing importance of the Latin American markets as outlets for Venezuelan exports and suppliers of Venezuelan imports is due, in large measure, to Venezuela's active participation in the trade and integration arrangements that have blossomed in the region over the past few years. Venezuela has been one of the strongest supporters of the Andean integration effort. It became a member of the Andean Group in 1973 and was instrumental in its recent metamorphosis into the Andean Community. Venezuela's trade with its Andean partners, particularly Colombia, is one of the most dynamic relationships in Venezuela's trade portfolio. Venezuela has also concluded a number of free trade agreements with other Latin American and Caribbean partners, namely Mexico -- together with Colombia in the context of the Group of Three Agreement -- Chile, and the members of Caricom. Venezuela is also a member of the Latin American Integration Association (LAIA), in the framework of which it has subscribed to a number of preferential trade arrangements, most notably with the members of Mercosur. At present, Venezuela, together with the other members of the Andean Community, is negotiating a free trade agreement with Mercosur.

Currently, 86 percent of Venezuela's trade is conducted within the Western Hemisphere. Therefore, Venezuela may attach a high priority to the forthcoming Free Trade Area of the Americas (FTAA) as these negotiations will provide an opportunity to remove existing trade barriers with its main trading partners. Also, given the importance of oil in Venezuela's trade with the United States, Venezuela will certainly place great importance on any FTAA developments relating to the energy sector, and in other sectors in which it has developed a competitive advantage, such as the petrochemical and metallurgical sectors. In these latter sectors Venezuela may presently be at a disadvantage, given the preferential access to the U.S. market which other countries, particularly Mexico -- a strong competitor in this area -- currently enjoy.

Composition of Trade

Trade flows by categories of products between Venezuela and the United States is presented in Table 10.2. Oil and oil products are clearly the most important component of Venezuelan sales to the United States, accounting for more than 85 percent of total exports in all the years considered. The rest is divided evenly between minerals and metals and manufactures. In the minerals and metals category exports are concentrated in aluminum and iron ore. The principal manufactures exported by Venezuela to the United States are represented by some organic chemicals and transport equipment.

The commodity composition of Venezuelan imports from the United States is, to a great extent, the reverse of the export composition. There is very little intra-industry trade between the two countries. As could be expected, oil and oil products are insignificant in total Venezuelan imports from the United States. The manufactures and food and beverages categories dominate the picture. Manufactures have accounted for approximately 70 percent of imports in recent years with machinery and industrial equipment and automobiles accounting for the largest shares within this category. In the food and beverages sector, which have represented approximately 10 percent of imports, the most important traded commodities were corn and wheat.

TABLE 10.2. COMPOSITION OF VENEZUELA-UNITED STATES TRADE

Venezuelan exports to the United States, 1992-1996 (percent of exports to the United States)	1992	1993	1994	1995	1996
Food, live animals, animal and vegetable oils, beverages and tobacco	1%	1%	2%	1%	1%
Crude materials, inedible, except fuels	3%	3%	3%	2%	2%
Mineral fuels, lubricants and related materials	89%	87%	82%	85%	87%
Chemicals and related products	2%	2%	3%	3%	2%
Manufactured goods classified chiefly by material and	4%	5%	8%	7%	6%
Machinery and transport equipment	1%	1%	1%	1%	1%
Commodities not classified elsewhere	1%	1%	1%	1%	1%
Principal items exported to the United States (in millions of dollars)	1992	1993	1994	1995	1996
Crude oil from petroleum or bituminous minerals	4475	4666	4802	5830	7807
Oil (not crude) from petrol & bituminous minerals	2769	2371	1952	2241	3218
Aluminum	103	100	219	264	246
Organic chemicals	96	85	107	132	153
Pig iron, spiegeleisen iron and steel powder etc.	68	98	109	143	151
Parts and accessories of motor vehicles, etc	59	67	88	109	126
Venezuelan imports from the United States, 1992-1996 (percent of imports from the United States)	1992	1993	1994	1995	1996
Food, live animals, animal and vegetable oils, beverages, tobacco	7%	9%	8%	8%	8%
Crude materials, inedible, except fuels	3%	4%	5%	7%	5%
Mineral fuels, lubricants and related materials	1%	1%	3%	3%	2%
Chemicals and related products	12%	12%	13%	15%	14%
Manufactured goods classified chiefly by material and	14%	15%	14%	15%	14%
Machinery and transport equipment	60%	55%	55%	50%	54%
Commodities not classified elsewhere	3%	3%	2%	2%	2%
Principal items imported from the United States (in millions of dollars)	1992	1993	1994	1995	1996
Telecommunications equipment	145	212	139	96	151
Wheat (including spelt) and meslin, unmilled	81	121	97	108	119
Maize (not including sweet corn) unmilled	79	89	85	103	105
Automatic data processing machines & units thereof	130	124	84	111	101
Machinery specialized for particular industries	106	61	55	68	95

Source: US Department of Commerce. 1997

This pattern of trade is replicated in Venezuela's trade with some other countries, such as those of Mercosur and the European Union. Oil exports also account for a large percentage of total Venezuelan shipments to these destinations -- 92 percent to Mercosur and 68 percent to the EU in 1995. However Venezuela's trade patterns

with the Andean Community are radically different. As can be seen in Table 10.3, Venezuela's trade with the Andean countries is concentrated in the manufactures and the minerals and metals categories which, together, accounted in 1995 for 65 percent of exports and 78 percent of imports. The Andean markets -- Colombia in particular -- have, in recent years, played a very important role in the restructuring and expansion of the Venezuelan non-oil external sector. When oil and oil products are not taken into account, the Andean Community is the largest market for Venezuelan exports.

TABLE 10.3. COMMODITY COMPOSITION OF VENEZUELAN TRADE WITH THE ANDEAN COMMUNITY, 1991-1996 (percent of total)

EXPORTS	1991	1992	1993	1994	1995
Food, beverages, tobacco, agriculture	7%	11%	14%	14%	17%
Oil and oil products	16%	14%	8%	23%	16%
Minerals and metals	37%	32%	23%	17%	18%
Manufactured goods	40%	43%	54%	47%	49%

IMPORTS	1991	1992	1993	1994	1995
Food, beverages, tobacco, agriculture	26%	22%	19%	24%	21%
Oil and oil products	1%	1%	1%	1%	1%
Minerals and metals	20%	14%	11%	12%	14%
Manufactured goods	53%	63%	68%	63%	64%

Source: ALADI (1997)

Trade Barriers

With regard to tariffs and non-tariff restrictions, both the United States and Venezuelan markets are relatively open to their reciprocal trade. As discussed below, some Venezuelan exports to the United States have faced, and continue to face, quantitative restrictions or even prohibitions. This is the case of some tuna products and others that have, from time to time, been subject to antidumping and countervailing duties. However, these incidences could be considered exceptions in what otherwise is a healthy and stable trade relationship.

A preliminary analysis of the average trade-weighted tariff faced by U.S. goods entering Venezuela indicates that trade barriers have been reduced significantly. In 1988, the average trade-weighted tariff for goods representing approximately 45 percent of total Venezuelan imports from the United States was estimated at 26 percent. In 1995, this same methodology yielded an estimated average trade-weighted tariff of only 13 percent (Kotschwar, 1998).² Thus, the United States has benefited considerably from the unilateral trade liberalizing measures put into place by Venezuela in the late 1980s and early 1990s, which not only considerably reduced tariff rates, but also virtually eliminated the nontariff barriers that had permeated the trade regime up to the late 1980s.

Average U.S. tariffs are low. Once the Uruguay Round tariff cuts are fully implemented, the U.S. average tariff will settle at an estimated rate of 4.3 percent. Thus, Venezuelan goods face lower duties in the United States than do U.S. exports in Venezuela. However, Venezuela faces more restrictions in the U.S. market than do most other countries in the Western Hemisphere. This is due to the fact that Venezuelan exports do not enjoy the unrestricted access to which North American Free Trade Agreement (NAFTA) exports are entitled, nor the almost unrestricted access granted by the Caribbean Basin Initiative (CBI) and the Andean Trade Preferences Act (ATPA) -- from which Venezuela is excluded.³

² This study analyzes the average tariff rate for the top 123 items in 1988 and 111 items in 1995 that comprised 45 percent of Venezuelan imports from the United States.

³ Although complete free trade already exists between Canada and the United States, the phase out of U.S. tariffs for a number of Mexican products will not be completed until the year 2009. The CBI and ATPA programs extend duty-free treatment to almost all products imported from the beneficiary countries, the most important exceptions being textiles and apparel, some footwear and leather products, and oil.

Venezuela is a beneficiary of the U.S. Generalized System of Preferences (GSP) which is more limited in terms of product coverage than either the CBI or ATPA. The GSP is also less reliable than the other two programs, as under certain conditions products can be excluded from it -- due to "competitive-need" restrictions for products that exceed certain quantitative limits, and through the removal of products through petitions by interested parties. As well, this scheme has some political constraints: it periodically faces the prospect of extinction by the United States Congress.⁴ Moreover, the GSP is increasingly being used by the United States as a negotiating tool, building into the programme some reciprocity criteria that make it less appealing to the beneficiary countries (VanGrasstek, 1997).⁵

Venezuelan experience with the GSP is mixed. As can be seen in Table 10.4, only a small fraction of total Venezuelan exports to the United States are eligible for GSP treatment. Of the top thirty products that Venezuela sells to the United States -- which covers 92.9 percent of exports --- 2.6 percent, enters duty-free into the U.S. market under the GSP. A further 5.9 percent enters duty free due to (Most-Favored Nation) MFN treatment, while 90.9 percent of these top thirty items are dutiable. This high percentage is due to the fact that oil and oil products, which make up the bulk of Venezuelan trade with the United States, are excluded from the GSP. Thus, compared to other countries in the region, Venezuela benefits the least from the GSP. For all practical purposes, Venezuela's trade with the United States moves along a non-preferential path: it is essentially MFN trade.

Investment and Investors

Venezuela's foreign investment regime was revamped as part of the economic reforms that swept the country in the early 1990s. Since 1992, foreign investment in Venezuela has been encouraged within the framework of Andean Community regulations.⁶ These regulations eliminated most restrictions to the establishment of foreign investment and opened previously "reserved" sectors in which no foreign ownership had been allowed. Under the current legal framework, foreign investors are granted national treatment and are free to repatriate capital and dividends. In the banking and insurance sectors, some conditions of reciprocity apply. Two other sectors limit foreign participation. These are television and radio broadcasting and Spanish-language newspapers and services in areas that require the participation of professionals whose practice is governed by national laws.

⁴ When established in 1974, the GSP had a duration of ten years. The Trade and Tariff Act of 1984 extended the program for another 8.5 years. Since 1993, however, it has been renewed on an ad-hoc basis, and it has occasionally been suspended for a few months. The most recent renewal of the GSP took place in August 1997, after a suspension of more than two months during which MFN duties were charged to all GSP beneficiary products. Duties paid became refundable once the program was extended. The present GSP will last until May 31, 1999.

⁵ The Trade and Tariff Act of 1984 provided that GSP beneficiary countries could lose some or all of their GSP privileges if they did not protect intellectual property rights, respect labor rights or resolve investment disputes, among others.

⁶ Foreign investment in Venezuela is regulated by Decisions 291 and 292 of the Andean Community and by Decree 2095 of February 13, 1992.

TABLE 10.4. TARIFF TREATMENT OF THE TOP THIRTY U.S. IMPORTS FROM VENEZUELA IN 1996

HTS number	Product description	Tariff Rates		1996 U.S. Imports GSP	1996 U.S. Imports \$ Million	% of Top 30
		Non-MFN	MFN			
Duty-free from all sources					398.0	3.3
2711120010	Liquid Propane	Free	Free	No	91.6	0.8
2714900000	Bitumen and Asphalt	Free	Free	No	58.8	0.5
0901110090	Coffee, Not Roasted	Free	Free	No	56.8	0.5
2713200000	Petroleum Bitumen	Free	Free	No	50.5	0.4
2601110060	Iron Ore Nonagglomerated	Free	Free	No	41.1	0.3
2601120030	Iron Ore Agglomerated Pellets	Free	Free	No	34.4	0.3
2701120050	Bituminous Coal	Free	Free	No	32.7	0.3
0306130040	Shrimps and Prawns, Frozen	Free	Free	No	32.1	0.3
Duty-free from countries receiving MFN treatment					311.3	2.6
7203100000	Ferrous Products From Iron Ore	\$2.21/ton	Free	No	130.7	1.1
7601106000	Unwrought Aluminum	11%	Free	No	102.0	0.9
7601209090	Aluminum Alloy Unwrought	10.5%	Free	No	40.0	0.3
2523290000	Portland Cement	\$1.32/ton	Free	No	38.6	0.3
Dutiable and ineligible for GSP					10,975.4	91.5
2709001000	Crude Petroleum Under 25°	21¢/bbl	5.25¢/bbl	No	4,676.9	39.0
2709002000	Crude Petroleum 25° or More	21¢/bbl	10.5¢/bbl	No	3,129.9	26.1
2710000530	No. 6-Type Fuel Oil Under 25°	21¢/bbl	5.25¢/bbl	No	616.3	5.1
2710001518	Unleaded Gasoline, Other	\$1.05/bbl	52.5¢/bbl	No	467.3	3.9
2710001530	Jet Motor Fuel, Kerosene-Type	\$1.05/bbl	52.5¢/bbl	No	404.9	3.4
2710001008	No. 2,3 Fuel Oil Not Diesel	21¢/bbl	10.5¢/bbl	No	402.1	3.4
2710001514	Unleaded Gasoline, Reformulated	\$1.05/bbl	52.5¢/bbl	No	379.2	3.2
2710002500	Naphthas, Except Motor Fuel	21¢/bbl	10.5¢/bbl	No	326.0	2.7
2710001004	No. 2 And 3 Fuel Oils: Diesel	21¢/bbl	10.5¢/bbl	No	210.5	1.8
2710000535	Other Heavy Fuel Oils Under 25°	21¢/bbl	5.25¢/bbl	No	137.4	1.1
2710001800	Motor Fuel Blending Stock	\$1.05/bbl	52.5¢/bbl	No	119.3	1.0
2710000550	Other Fuel Oils Under 25° API	21¢/bbl	5.25¢/bbl	No	71.2	0.6
7214200000	Other Bars and Rods of Iron/Steel	20%	3.4%	No	34.4	0.3
Duty-free under GSP					307.7	2.6
2909191010	Methyl Tertiary-Butyl Ether	37%	5.5%	Yes	152.0	1.3
7606123090	Rectangular Aluminum Plates	13.5%	3%	Yes	46.4	0.4
8708704545	Road Wheels, of Aluminum	25%	2.7%	Yes	40.9	0.3
2905112000	Methanol Not For Synthetic Fuel	46%	14.2%	Yes	35.6	0.3
8708998080	Certain Parts of Motor Vehicles	25%	2.7%	Yes	32.8	0.3
Total imports of the top 30 products					11,992.4	100.0
Top 30 as a percentage of all imports from Venezuela					92.9%	

Source: U.S. Department of Commerce

Note: 1996 U.S. Imports from Venezuela totaled \$12.9 billion.

Most recently, investment liberalization has also taken place in the oil sector, where no private investment -- foreign or national -- had previously been allowed. The opening of the oil sector, coupled with the plans to almost double the existing oil production in Venezuela, is creating an economic dynamism in which foreign business -- including U.S. investors --- will play a large role. It is estimated that during the period from 1997 to 2006, total investment in the oil sector could be of the order of \$65 billion. Almost half of this figure is expected to be carried out through various types of joint ventures between PDVSA -- the Venezuelan oil company -- and foreign companies.

The United States is already an active participant in this process. For example, 18 of the 58 enterprises that are currently participating in the first stages of the oil sector opening are U.S. companies. These include Amoco, Chevron, Enron, Exxon, DuPont, Mobil, Conoco, Texaco, among others. Once the current plans are fully implemented, total U.S. investment in the Venezuelan oil sector could reach an order of \$6 billion. This investment will be concentrated in activities such as drilling, capital goods, construction and engineering services, and petrochemical production.⁷

It should also be noted that Venezuela has a significant presence as an investor in the United States -- particularly in the oil sector and, to a lesser degree in the banking sector. Oil investments have been carried out entirely by PDVSA which by 1996 owned six refineries and two companies that commercialize oil and its

⁷ Ministry of Energy and Mines of Venezuela.

derivatives in the U.S. market: Citgo and Uno-Ven. These investments are estimated at \$7 billion with total sales of almost \$13 billion in 1996.⁸

DEALING WITH TRADE ISSUES

In the past few years there have been a number of issues that have strained Venezuela's trade relationship with the United States. These issues include antidumping and countervailing duty proceedings, the exclusion of certain products from the GSP, intellectual property rights, the embargo on some Venezuelan tuna products and the reformulated gasoline case. Some negotiations have also taken place on issues such as investment, intellectual property rights and double taxation. None of these negotiations has yet been concluded.

In general, trade irritants between the two countries have traditionally been dealt with through bilateral consultations. More recently, Venezuela has resorted to multilateral channels to resolve two high-profile disputes with the United States: the tuna embargo and the regulations on reformulated gasoline. Only the latter was resolved through the World Trade Organization (WTO) dispute settlement mechanism. This shift from bilateral to multilateral means for dealing with trade disputes may represent an enduring strategy in Venezuela's relations with the United States and other trade partners.⁹

Reformulated Gasoline

The dispute between Venezuela and the United States regarding reformulated gasoline has been the most recent, the most important and the most difficult trade issue involving the two countries. It has also been the most economically significant given that it affected Venezuela's most important export to the United States. The case included a number of elements: Venezuela's recourse to the WTO dispute settlement mechanism, a U.S. appeal of the affirmative finding of the dispute settlement body, and a long period of bilateral consultations. These latter discussions centered on U.S. implementation of the WTO decisions, something that it eventually did on August 20, 1997, some fifteen months after the final ruling by the WTO.

The dispute came to a head on December 15, 1993, when the United States Environmental Protection Agency (EPA) adopted a final decision on the standards that would be applied for the introduction of reformulated gasoline in the U.S. market. The EPA's rule was adopted following the requirements of the 1990 Clean Air Act which, beginning in 1995, prohibited gasoline that is not certified as reformulated from being sold to consumers in certain areas of the United States. To be certified as reformulated all gasoline -- United States and foreign-produced gasoline alike -- should meet certain requirements set out by the EPA. However, the application of these requirements introduced some elements of discrimination between national and foreign producers, as well as among foreign producers. This led Venezuela first to seek remedy through bilateral channels, and when this failed to achieve any concrete results, to formally initiate a WTO dispute settlement procedure.

To meet the EPA's requirements --related to the gasoline content of certain polluting elements, including sulfur, T90 and olefins-- U.S. refiners could rely on the specifications of their own 1990 gasoline production, that is, they could use their own baselines to comply with the regulations. Foreign refiners such as Venezuela, however, had to use a statutory baseline --not their own baselines-- which for all practical purposes made it much more difficult, if not impossible, for their gasoline to be certified as reformulated. Also, the EPA's requirements differentiated among foreign suppliers by allowing some of them --those that in 1990 had sold 75 percent of their gasoline in the U.S. market-- to use their own guidelines, as the U.S. producers could do.

Venezuela considered this discrimination by the United States. Its gasoline producer, *Petróleos de Venezuela*, or PDVSA, was not able to use its own guidelines because it was a foreign producer, and because it had not previously sold seventy-five percent of its gasoline in the United States. At the time, Venezuela estimated that as a result of the EPA rule, the value of Venezuela's exports of gasoline to the United States would be reduced by at least \$150 million. In addition, PDVSA feared that the investment programme it had already launched to adapt its gasoline to the new requirements was put in jeopardy by these discriminatory measures. In the WTO

⁸ U.S. Securities and Exchange Commission Forms 20-K and 10-K.

⁹ Since its accession to the GATT in 1990, Venezuela has resorted to multilateral dispute settlement mechanisms of the GATT/WTO system on four occasions, three of which involved the United States and one the European Union.

proceedings, Venezuela successfully argued that the U.S. rules on reformulated gasoline were inconsistent with GATT Articles I, III and XI which refer to most favored nation treatment, national treatment between domestic and foreign products, and quantitative restrictions, respectively.

As already indicated, this issue has been resolved, and the United States has recently complied with the WTO ruling on this matter. Two lessons can be learned from this case. The first has to do with the complexities associated with the formulation of trade and trade-related policies in the United States. In the early stages, the discrepancies between the United States and Venezuela were worked out through informal, technical consultations between the two parties. In fact, since mid-1991, when the EPA issued its first rule on reformulated gasoline, various compromise proposals were presented by Venezuela, and accepted by the United States, that would have avoided the discriminatory nature of the EPA's final rules in 1993. However, politics came onto the stage. First, some U.S. companies pressured the EPA to issue more restrictive rules, which it did. Then the United States Senate intervened by inserting a provision into an appropriations bill by means of which the EPA would be denied funding if it introduced any change in its reformulated gasoline rules. It was this provision that left no option other than to initiate a WTO dispute settlement procedure. Thus, the first lesson from this case is that the executive branch of the United States government is just one actor, however powerful, in the formulation of U.S. trade policy. Other actors, particularly the United States Congress, play as important, and frequently a more important role, than the United States government proper.

The second lesson is more related to the Venezuelan experience in its dealings with the United States. Up to its accession to the General Agreement on Tariffs and Trade (GATT) in 1990, bilateral trade issues between the two countries could only be dealt with on a bilateral basis, and many instances could be cited in which no results whatsoever were achieved. The United States is not normally inclined to make concessions on a piecemeal basis, and has very little incentive to show flexibility in its bilateral negotiations. For developing countries, like Venezuela, the multilateral framework always offers a better option. As the reformulated gasoline case illustrated, none of the alternatives found through bilateral consultations ultimately proved to be viable. The only solution was provided by the WTO, which, under the strengthened rules approved during the Uruguay Round, has a much more efficient and reliable trade dispute settlement mechanism. For Venezuela, reliance on this mechanism to deal with its trade disputes --with the United States as well as other countries-- has been the most important benefit it has derived from its participation in the multilateral trading system.

The Tuna Embargo

In March of 1991, Venezuela was subject to an embargo on its yellow fin tuna exports to the United States. As of this writing, this embargo is still in force, although a recent multilateral agreement reached within the context of the Inter-American Tropical Tuna Commission (IATTC) would pave the way for a long-awaited resolution of this issue. The agreement will enter into force once ratified by at least four signatory countries. After so many years, it is very difficult to estimate the economic consequences for the Venezuelan fishing industry.

The tuna embargo, which, in addition to Venezuela, affected Mexico, Colombia, Panama and Vanuatu as well as some "intermediary"¹⁰ countries such as Costa Rica, Italy and Japan, originated in the decision of a California court following amendments introduced by the United States Congress to the Marine Mammal Protection Act (MMPA). These amendments allowed the ban of the sale, purchase, transport, or shipment within the United States of any tuna caught using the so-called "*pursue-seine*" or "encircle" method, that have been known to entangle dolphins in the process. Although the alleged purpose of the embargo was to protect dolphins, the trade implications were clearly beyond the obligations of the United States in the multilateral trading system.

Thus, this case was brought to the dispute settlement mechanism of the GATT -- first by Mexico in 1991, then by the European Union in 1992. Venezuela participated in both proceedings as an "interested party." Although the two panel decisions determined that the embargo, as practiced by the United States was contrary to GATT Article XI (1)¹¹ and were not justifiable by Article XX,¹² neither of these reports were approved by the

¹⁰ Those countries importing yellow fin tuna from the countries subject to this embargo.

¹¹ Article XI of the GATT proscribes against adopting quantitative restrictions on imports.

¹² The United States argued that its restrictions were permitted as exceptions to the general obligations by Article XX (b), (d) and (g), which provide that measures "(b) necessary to protect human, animal or plant life or health....(d) necessary to secure compliance with laws or regulations which are not

GATT Council and consequently had no effect. Thus, efforts shifted to bilateral consultations and, notably, to the IATTC where, eventually, a compromise was reached to reduce the number of dolphins killed by tuna boats in the eastern tropical Pacific to less than 5000, by 1999. This compromise was made possible by changes introduced in U.S. legislation in 1997 that authorized a redefinition of the “dolphin safe” label on tuna cans sold in the U.S. market.

As in the case of the reformulated gasoline issue, the difficulties in resolving the issue had much to do with the fact that there were a number of different interests playing a role. In the tuna case, interests diverged among groups such as the commercial fisheries industry, labour unions, consumers, environmental organizations and conflicting views even existed between the Democratic Party and the current administration. This reflects the complexity that exists in addressing trade issues involving the United States.

AD/CVD Cases

The imposition of antidumping (AD) and countervailing duties (CVD) by the United States has been a source of concern to Venezuela for quite some time. These measures have affected and continue to affect a number of Venezuelan exports, particularly in the basic metals sector. AD and CVD measures have the effect of disrupting trade in those products that are targeted, as the higher duties that result from the AD/CVD determinations increases --in some cases, considerably-- the price of the Venezuelan products in the U.S. market. Occasionally, just the initiation of an AD or CVD case has made the Venezuelan exporters stop altogether their shipments to the United States, as it makes little sense to afford the high legal and other costs associated to AD/CVD cases when the value of exports is relatively low.

As further discussed by Gary Horlick and Eleanor Shea in Chapter 13, there have been sixteen anti-dumping cases initiated by the United States against Venezuelan exports, the first ones dating back to the early 1980s. Except in one case, which involved some cement products, all the investigations on Venezuelan imports have affected products in the metal industries, mainly steel and aluminum products. Of all AD cases, only four resulted in the actual imposition of antidumping duties of which three are still in force. In addition, Venezuela has faced twelve CVD cases in the United States. As can be seen in Table 10.5, which summarizes all the trade remedy procedures involving Venezuelan products, it has been a common practice by U.S. petitioners to initiate AD and CVD cases simultaneously on the same products. CVD investigations have resulted in the imposition of duties in four cases of which only one, affecting ferrosilicon exports from Venezuela, is still in force (OAS, 1997). Also, there is a recent case, involving Venezuelan imports of steel wire rod, on which countervailing duties were imposed after a preliminary determination by the Department of Commerce found that the Venezuelan exporter, a state-owned steel enterprise, had received various government subsidies.¹³

In general, Venezuela is not a frequent user of AD/CVD measures. Legislation in this area was implemented following the trade liberalization reforms undertaken by the country in the early 1990s.¹⁴ The use of AD/CVD measures by Venezuela against imports from the United States is almost negligible. Since the implementation of unfair trade practices legislation, only one case has involved U.S. products. In April 1994, Venezuela imposed anti-dumping duties against imports of polystyrene from the United States; the duties will remain in force until 1999. So far, other than this case, AD duties have been applied against certain textiles imported from China and some steel products from Poland and Romania. Currently, AD investigations involve imports from Argentina, Mexico, Peru, Poland and China. There has only been one CVD case that resulted in the imposition of duties against imports of cheese from the European Union.

inconsistent with the provisions of this Agreement [...and] (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.” The panel found that the United States failed to prove its case, as it had not demonstrated that it had exhausted all reasonable GATT-consistent options.

¹³ Federal Register: August 4, 1997 (Volume 62, Number 149).

¹⁴ Law on Unfair Competition Practices in International Trade (*Ley sobre Practicas Desleales del Comercio Internacional*), 26 May 1992, Official Gazette 4441, 18 June 1992; and Presidential Decree 2883 (*Reglamento de la Ley sobre Practicas Desleales del Comercio Internacional*), 5 April 1993, Official Gazette 4567, 26 April 1993.

TABLE 10.5. U.S. AD AND CVD CASES AGAINST VENEZUELA

DATE FILED	PRODUCT NAME	CASE NUMBER
12/18/84	CERTAIN WELDED CARBON STEEL PIPE AND TUBE	A-307-401
02/28/85	CERTAIN WELDED CARBON STEEL PIPE AND TUBE	A-307-502
02/28/85	CERTAIN WELDED CARBON STEEL PIPE AND TUBE PRODUCTS	C-307-501
8/4/85	CARBON STEEL WIRE ROD	A-307-505
8/4/85	CARBON STEEL WIRE ROD	C-307-506
10/24/85	WELDED STEEL WIRE FABRIC PRODUCTS	A-307-507
10/24/85	WELDED STEEL WIRE FABRIC PRODUCTS	C-307-508
10/30/86	PORTLAND HYDRAULIC CEMENT INCLUDING CEMENT CLINKER	A-307-601
07/14/87	ELECTRICAL CONDUCTOR ALUMINUM REDRAW ROD	C-307-702
07/14/87	ELECTRICAL CONDUCTOR ALUMINUM REDRAW ROD	A-307-701
03/29/89	ALUMINUM SULFATE	A-307-801
03/29/89	ALUMINUM SULFATE	C-307-802
05/21/91	GRAY PORTLAND CEMENT and CEMENT CLINKER	A-307-803
05/21/91	GRAY PORTLAND CEMENT and CEMENT CLINKER	C-307-804
09/24/91	CIRCULAR WELDED NON-ALLOY STEEL PIPE	A-307-805
09/24/91	CIRCULAR WELDED NON-ALLOY STEEL PIPE	C-307-806
05/22/92	FERROSILICON	A-307-807
05/22/92	FERROSILICON	C-307-808
10/22/93	PHTHALIC ANHYDRIDE	A-307-809
10/22/93	PHTHALIC ANHYDRIDE	C-307-810
12/11/93	SILICOMANGANESE	A-307-811
02/28/94	CARBON STEEL BUTT-WELD PIPE FITTINGS	A-307-812
02/26/97	STEEL WIRE ROD	A-307-813
02/26/97	STEEL WIRE ROD	C-307-814

Source: U.S. Department of Commerce (1997)

Beyond the actual imposition of AD/CVD measures, either by the United States or by Venezuela, the most contentious bilateral issue in this area took place during the Venezuelan GATT accession negotiations in 1990. The issue was related to the application of the "injury test" by the United States in CVD cases involving Venezuelan products. The injury test is a key element in AD/CVD proceedings, as the imposition of duties could only proceed on the determination that actual or potential injury could be caused to domestic producers by the dumping or subsidies practices of foreign producers. In this sense, the injury test acts as a mechanism to protect exporters from the use and abuse of AD/CVD measures as it is never easy to demonstrate the causality effects of subsidized or dumped imports. In fact, many AD/CVD cases initiated in the United States against Venezuela were terminated when no injury was found to U.S. producers.

During the course of the negotiations, the United States made clear to Venezuela that it would lose the injury test in CVD cases once it became a GATT contracting party --notwithstanding the fact that GATT rules guaranteed to all its members such privilege-- unless it made a commitment to eliminate all export subsidies to manufactured goods over a short period of time, something that no developing country had agreed to so far within the context of the GATT. Thus, Venezuela found itself in a very peculiar situation. By joining the GATT and therefore assuming a higher degree of discipline in the conduct of its overall trade policy, Venezuela may have actually faced worse market access conditions with regard to its most important trading partner. This paradoxical situation was the result of a mix of factors related to both the U.S. approach to the multilateral disciplines on subsidies and countervailing duties, and the traditional framework governing United States/Venezuelan trade relations.

The United States began applying the injury test in countervailing duty cases only after its adoption in the late 1970s of the Tokyo Round agreements, which included the Subsidies Code.¹⁵ However, it implemented a policy of not applying the Code, which meant not applying the injury test, to any GATT contracting party that

¹⁵ The application of the injury test in antidumping cases was already part of US law.

had not made a commitment to phase out export subsidies on manufactured goods. Also, in the complex set of conditions imposed by the United States Congress to accept the Tokyo Round agreements, a clause was included whereby some non-GATT contracting parties would also be entitled to the injury test. Venezuela was one of the countries that benefited from this clause as the United States determined, on the basis of a bilateral 1939 Reciprocal Trade Agreement which remained partially in force¹⁶, that Venezuela was eligible to receive the injury test in countervailing duty cases involving dutiable merchandise imports. It was this determination that was now in jeopardy.

This controversy almost led Venezuela to altogether suspend its GATT accession negotiations, as opposition mounted within the private sector, which saw its expectations to greater access to the U.S. market suddenly in peril. Eventually, the negotiations continued and were successfully concluded in September 1990. However, no agreement was reached between the United States and Venezuela on this issue. Venezuela did not make any specific commitment regarding the use of export subsidies other than reiterating its rights and obligations under the GATT. In fact, at this time Venezuela was eliminating these and other subsidies practices through its economic reforms—however, it did, indeed, lose the injury test as became evident in the first CVD case initiated after the completion of the GATT accession negotiations.

In retrospect, this issue was not as relevant as it seemed to both countries at the time. When Venezuela was acceding to the GATT, the Uruguay Round was already in its final stages. It was clear at that time that an agreement would be reached among all the participants to strengthen the multilateral disciplines on subsidies -- which made the “non commitment” position of Venezuela all but irrelevant. It was also evident that one likely outcome of the negotiations would be the end to the “grandfather rights” upon which the United States had withheld the granting of the injury test to some GATT contracting parties --which made the losing of the injury test a rather temporary issue. At present, following the implementation of the Uruguay Round commitments by both the United States and Venezuela, the issue is on the bilateral agenda. Venezuela is obligated to discipline the use of export subsidies in accordance with its multilateral commitments, and the United States applies the injury test in CVD cases involving all countries, including Venezuela.

Finally, it should be pointed out that AD/CVD cases are not, at present, a seriously contentious issue between the United States and Venezuela. A reason for this may be the fact that Venezuelan exports to the United States are more than ever concentrated in the petroleum sector which so far has not been the object of AD or CVD investigations. As non-oil exports have become less and less important they may be seen as posing no threat to U.S. producers and are, consequently, less of a target for AD/CVD petitions. Another, explanation may lay in the combined action of, on the one hand, the Venezuelan government moving forward in the elimination of export subsidies, and on the other the Venezuelan producers disciplining their market practices to avoid the high costs associated with the defense of AD cases as well as the risk of losing their access to the important U.S. market altogether.

The GSP

In a previous section, reference was made to the influence of the GSP on Venezuela's trade with the United States. Here it is examined as a source of friction and occasional bilateral negotiations. Venezuela was excluded from the GSP when it was instituted in 1974 and, from time to time, Venezuelan imports have been subject to the “competitive-need” limits of the programme. Both the designation of Venezuela as a beneficiary country and the restoration of GSP benefits for particular products, as well as petitions by interest groups to suspend the benefits of the programme alleging trade-related restrictions by Venezuela, have had to be dealt with through bilateral, time-consuming and sometimes difficult negotiations.

The exclusion of Venezuela from the initial GSP was related to its membership in the Organization of Petroleum Exporting Countries (OPEC). As memories of the oil embargo of 1974 were still fresh, the Senate added a provision to the pending GSP bill that prevented all OPEC countries from being designated as beneficiaries of the programme. That Venezuela had not participated in the oil embargo did not matter as the text of the new law made no provision to differentiate among the OPEC countries. It took six years and several

¹⁶ This agreement had been abrogated in part by Venezuela in 1971, but the unconditional Most-Favored-Nation (MFN) provision of the agreement remained in force through an exchange of notes that took place in June 1972.

negotiating instances --in which Venezuela acted in concert with Ecuador, which had similarly been excluded from the GSP-- to resolve this issue. The Trade Agreements Act of 1979 allowed for a waiver of the OPEC criterion if a country pledged not to participate in any future oil embargo. To this effect, Venezuela reached an agreement with the United States and was designated as GSP beneficiary country as of March 30, 1980 (VanGrasstek, 1997, pp. 7-9).

From time to time, Venezuelan products have been excluded from the GSP benefits. This has taken place in at least two occasions recently. A product is excluded from the GSP when it reaches the “competitive-need” limits (CNLs) established by the programme. The CNLs apply when the value of imports of any particular product from a beneficiary country in any given year amount to half or more the value of total U.S. imports of that product, or exceed a certain dollar value that is adjusted annually. Products can be redesignated to the GSP if imports subsequently drop below the CNLs, but this normally entails detailed and long negotiations between the United States and the interested country (VanGrasstek, 1997, p. 10). The Venezuelan products excluded from the GSP in recent years were a few categories of aluminum products and ceramic roofing tiles. These accounted for only a fraction of Venezuelan imports into the United States, and both products were later redesignated to the GSP, but not before bilateral consultations that took three and four years, respectively, to achieve concrete results.

Finally, it should be mentioned that a potentially more conflicting issue regarding the functioning of the GSP is its use as a negotiating tool by the United States. The GSP annual reviews present the United States negotiators the opportunity to raise policy issues of concern to them or to interested private parties, which are entitled to bring complaint regarding a country’s alleged trade restrictions, under the threat of reduced GSP benefits. At least two complains have been filed against Venezuela, none of which were of consequence as they were either rejected or simply reviewed and withdrawn by the U.S. authorities. Still, concern about the new reciprocal nature of the formally non-reciprocal GSP, prompted Venezuela to join with six Latin American countries and other GSP beneficiaries to formally complain about linking the GSP benefits to issues such as intellectual property rights and investment which were “being dealt with in the Uruguay Round” (GAO, 1995).

Pending Negotiations

Recently, bilateral negotiations between the United States and Venezuela have focused on issues such as intellectual property rights, investment, and double taxation. None of these negotiations have yet been completed in spite of the numerous meetings that have taken place since the early 1990s, and as of this writing they may as well have been suspended, *sine die*.

Although the reasons for this lack of progress may vary, some are related to the different priorities attached by each country to some of the issues under negotiation. A case in point has been the link established by the United States between intellectual property and investment issues. In the course of these consultations, U.S. negotiators made clear that no investment agreement should be finalized in the absence of a corresponding agreement on intellectual property rights. This proved difficult for Venezuela to accept, given that its property rights regime is governed by the Andean Community regulations agreed to by the five members of this integration arrangement. The fact that the Andean Community regime is in concordance with current international trends in this area, does not seem to have had an impact on the negotiations.¹⁷ Most recently, the focus of the debate shifted Venezuela’s full implementation of the Trade-Related Intellectual Property Rights (TRIPs) Agreement created during the Uruguay Round – to which Venezuela and the United States are already bound.

Other issues have also prevented the completion of a bilateral investment treaty among these two countries. Notable among them is the US insistence that Venezuela commit to some trade-investment related measures that may go well beyond what has already been agreed in the areas at the multilateral level. Thus, although the liberalization of the Venezuelan investment regime in the early 1990s -- discussed in a previous section of this chapter -- set the groundwork for an understanding on this issue with the United States, no further progress in this area is in sight.

¹⁷ Decisions 291 of the Andean Community IP regime widens the coverage of intellectual property to include pharmaceutical products, expands the timeframe for patent protection to twenty years and recognizes well-known trademarks.

Ironically, as a result of this situation, U.S. investors in Venezuela are at a disadvantage vis-à-vis investors from other countries, mostly European countries. This is so because Venezuela has signed bilateral investment treaties with a large number of countries in Europe and in Latin America that set a legal framework to deal with investors from the signatory countries. This legal framework is not available to U.S. investors, who find themselves in the odd position of being treated less favorably than those from other countries, notably with regard to the resolution of disputes.

Again, the lack of progress in these negotiations proves the difficulties in bilateral dealings with the United States. As a consequence of its global strategic interests, the United States is not prepared to make fundamental changes in its negotiation position when dealing with individual countries. This is why the multilateral framework is a preferred route to reach understandings with the United States.

CONCLUSIONS

The analysis in the various sections of this chapter has touched upon the main trends in the trade and investment relations between Venezuela and the United States over the last few years. It has also referred to some of the issues that from time to time have effected these relations. On balance, it could be said that the two countries have developed a quite solid and stable trade relationship that only incidentally has been strained by trade irritants and diverging views in some areas. The manner in which some of these issues have recently been addressed, seems to suggest that it will be in Venezuela's interest to place a greater emphasis on multilateral mechanisms than on bilateral channels to deal with future negotiations or discrepancies with the United States.

A few points could be highlighted from the analysis contained in the chapter. *First*, the United States has traditionally been, and continues to be, Venezuela's most important trading partner. This is particularly so in the case of exports, as the U.S. share of Venezuela's total exports has increased significantly in the last few years. No country in the Latin American region, other than Mexico, has such a high export reliance on the U.S. market. On the import side, although the United States is still the principal supplier of Venezuelan imports, its relative importance has declined.

Second, oil --crude oil as well as oil products-- is by far the most important component of Venezuelan exports to the United States. This is perhaps the only area in which Venezuela is of strategic economic significance for the United States. Since 1995, Venezuela has been the most important supplier of petroleum products to the United States, replacing Saudi Arabia. The importance of oil in Venezuela's trade with the United States makes any U.S. policy or measure that may affect trade flows in this sector a very sensitive issue for Venezuela. Such was the case when the United States adopted some rules regarding the introduction of reformulated gasoline in the U.S. market.

Third, the Venezuelan market is of less importance to the United States than it used to be. This is due to the fact that U.S. exports to Venezuela have grown at lower rates than to other countries in the region, notably Mexico and Brazil. The share of Venezuela as a supplier of U.S. goods from Latin America has not changed throughout the period.

Fourth, the laws governing United States-Venezuelan trade relations are the laws of the multilateral trading system, now embodied in the WTO. For sixty years and up to 1990 the legal framework for trade between the two countries was provided by the Bilateral Friendship and Navigation Treaty subscribed in 1939 and partially abrogated in 1974 when Venezuela joined the Andean Group. Since Venezuela's accession to the GATT in 1990 and subsequently to the WTO, the rules of the multilateral trading system take precedence in matters related to trade between Venezuela and the United States. As Venezuela has successfully used the WTO dispute settlement mechanisms to deal with its trade disputes with the United States, it might prefer the multilateral channels rather than the bilateral ones to deal with trade disputes that may arise in the future.

Fifth, some pending issues remain on the Venezuela-United States bilateral trade agenda. These issues include intellectual property rights, investment and double taxation. It is unlikely that negotiations on all these issues will be concluded in the immediate future. They could eventually be dealt with in the context of the future FTAA negotiations as it is highly probable that these negotiations will result in rules and disciplines in most of these areas. Some will also be considered within the WTO framework.

And *sixth*, Venezuela participates in various trade and economic integration initiatives in the region, and has also expressed a strong interest in the forthcoming FTAA negotiations. The importance of its trade partnership

with the United States will place these negotiations on top of Venezuela's trade agenda. Given the composition of its trade with the United States, a major issue for Venezuela in the FTAA negotiations will be the treatment to be accorded to the energy sector.

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