Issues and Requests Relating to Foreign Trade and Investment - Venezuela

	Category	No	Issue	Issue Details	Requests	References
1	Restrictions on Entry of Foreign Capitals	(1)	Condemnation / Nationalisation	- Government of Venezuela (GOV) accelerated nationalisation of enterprises in various business fields, heavy industries, financing, retailing, etc. under its policy to socialize the nation, including foreign capital enterprises in these sectors, Amended Law on defence of people in the access to goods and services (INDEPABIS) promulgated in January 2010 simplified the GOV's nationalisation procedures so that GOV may nationalise private enterprises without advance declaration of condemnation. It is a matter of concern that hereafter condemnation or nationalisation abruptly takes place. In addition, since 2006, GOV decided to operate upstream petroleum industries only by a joint venture company (JVC) in which Venezuela's State owned petroleum company, namely, Petroleos de Venezuela, S.A. (PDVSA) owns more than 60% of equity interest. It is a risk that operation of the projects depends solely upon the PDVSA's intention. - GOV has accelerated condemnation or nationalisation of enterprises in key industries (natural resources, energy, steel, finance, foods, communication, etc.) In recent years, GOV has expanded the scope of condemnation or nationalisation into other sectors (distribution, etc.), including the idle properties. Measures must be taken to avoid such properties' requisition or nationalization.		- Amended Law on Defence of People in the Access to Goods and Services (INDEPABIS= (Instituto para la Defensa de las Personas en el Acceso a los Bienes y Servicios)
				(Actions) - GOV restricts to less than 50% of total capital the private capital can invest into oil and petrochemical sector, and GOV prohibits such investment into iron ore development.		
9	Restrictive Export/Import Trade, Duty, and Customs Clearance	(1)	Import Restrictions	- Import restrictions under foreign exchange control regulations. Movement of foreign exchange is restricted only to certain limited governmental Agencies, exclusive of private enterprises that can barely move foreign exchange.	- It is requested that GOV deregulates restrictions on foreign exchange.	
12	Exchange Controls	(1)	Stringent Foreign Exchange Restrictions	**- To purchase foreign exchange (USD), there are two methods: (1) Filing application to Foreign Exchange Administrative Commission (CADIVI) and (2) Participation in the State Controlled Foreign Exchange Market SICAD (Fund Procurement Scheme in Auction Format, SICAD I, SICAD II). However, it is difficult to procure foreign currency, frustrating payments in foreign currency. It has led to the massive social problems**	- It is requested that GOV: -- streamlines, expedites and -- deregulates the stringent procedures for foreign currency allocation approvals.	- SICAD

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				by way of import stagnation, chronic shortage of goods and products, decline in the domestic productivity, etc. - In regard to import settlement of account, Foreign Exchange Administrative Commission (Comisión de Administración de Divisas=CADIVI) compels vexatiously complex procedures in acquisition of and payment in foreign currency. - CADIVI provides, as means of foreign exchange (USD) procurement: In addition to the existing (1) Foreign Exchange Quota Allocation, from March 2013, (2) SICAD (Procurement System in Auction Format), and (3) SICAD II (Procurement System closely resembling Free Exchange Market) have been introduced. However, exchange rates substantially differ among (1), (2) and (3). Moreover, there remain various problems such as restrictions in the use of foreign exchange so procured.	- It is requested that GOV deregulates the restrictions.	
				(Actions) - The New Foreign Exchange Control System, introduced in February 2002, requires application to and approval of CADIVI, for an FFE to procure foreign currency at the official parity rate, for the purpose of making external remittance of the profits gained from imports. - Since 2009, GOV's foreign exchange allocation has dropped by about 40% due to the nosedive of the petroleum price. As a result, it has become difficult to obtain CADAVI's licence for external remittance in foreign currency of cost of imports and profits. Enterprises have been forced to procure foreign currency through buying and selling in "the parallel market". - On 19 May 2010, the new "Regulations on Purchase and Sale Transactions of Foreign Currency Denominated Securities through the Transaction System for Foreign Currency Denominated Securities (SITME)" was promulgated, amending the "Regulatory Measures To Control Illegal Foreign Exchange". Banco Central de Venezuela (BCV) under SITME will exclusively determine the buying and selling rates of foreign currency bonds, including the operation for procurement of foreign currency in "the parallel market". By this Amendment, the transaction method in the buying and selling of foreign currency bonds has been shifted to intervention by the banks under the supervision of BCV (in exclusion of intervention by the securities companies).		
		(2)	Foreign Exchange Policy not reflecting the Prevailing Market Conditions	- Official parity rate is affixed at 6.3BsF to USD1.00, provided, however, that prevailing rate has escalated nearly 10-times of official parity rate. An enterprise's business performance being evaluated at official parity rate does not reveal its actual business performance. - **Since 2003, under the chronic shortage of foreign currency, GOV had severely restricted imports in USD/foreign currency. Especially after the demise of former President Hugo Chavez in January 2013, the official parity rate against USD remained the same at 6.3, whereas the market rate soared "in excess of 170 (as of January 2015)", forming a wide gap. In January 2014, CADIVI released renovation of foreign exchange control, expanded USD import, and the SICAD's average exchange rate of "11.3" has been turned to the actual exchange rate. While the official**	- It is requested that GOV introduces foreign exchange system that reflects the actual market conditions. - Despite the adverse economic climate described in the left column, member firm's subsidiary (MFS) continued its Business Continuity Plan (BCP). It scaled down its organisation, minimising to the extreme all outgoing expenses to ensure	

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				rate still remains at "6.3", the plural exchange rates system remains. Forceful foreign exchange control has fomented the domestic inflation, with estimated rate of inflation at 80% or more. It would exceed 120% by 2015, should it remain the same without policy changes. **Drop in crude oil prices in the latter half of 2014 has further tightened the dollar procurement.**	markup, and manages to continue its business.	
				(Actions) - On 8 January 2010 GOV devalued the Bolivar "Fuerte" into the dual official rates:- BsF.2,60 (for imported food & medicine) and BsF.4,3 (for the rest.). - On 13 January 2010, GOV published the itemised list of articles for which the dual official rates of exchange apply. - Since 2010, GOV introduced "Regulations on Purchase and Sale Transactions of Foreign Currency Denominated Securities through the Transaction System for Foreign Currency Denominated Securities (SITME)", repealing the transactions system through the securities exchange. - After demise of President Chavez in January 2013, the official parity rate had been established at US$1.00 to 6.3BsF, while the SICAD (Sistema Complementario de Administración de Divisas) Average for January 2014 at US$1.00 to 11.3BsF had become the effective exchange rate (forming the two-tier market scheme at 6.3 and 11.3).		
		(3)	The Risk of Currency Devaluation	- Enterprises are faced with a perpetual devaluation risk for the local currency, BsF (VEF). MFS is compelled to maintain the assets and liabilities balance in USD so that the assets are greater than the liabilities on a long-term basis, in order to avoid the foreign exchange loss in the account report in the local currency. Namely, MFS must hold down import within the limit of USD actually procured. In order to minimise foreign exchange loss in the consolidated account report in USD with its parent in Japan, MFS has been endevouring to minimise the net assets in the local currency.President has announced, "there would be no devaluation in 2014."		
		(4)	Rigidity in Foreign Exchange Control	- In addition to fixed exchange rate of US$1.00= VEF 6.3 (Venezuelan Bolivar) as of January 2015, under central bank's control, official means of foreign exchange procurement, SICAD (introduced in March 2013) and SICAD II (introduced in March 2014) are in operation.	- It is requested that GOV: -- repeals restrictions on the SICAD eligibility and the purposes of foreign exchange procurement, -- promotes liberalisation in exchange rate, and -- makes transparent the nebulous foreign exchange allocation rules.	

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				- Eligibility is restricted by business sector, while under SICAD II, high level of all-in swap rate is set at USD 1=VEF 50 (Venezuelan Bolivar) that incorporates, in substance, the impact from the exchange rate devaluation.	- It is requested that GOV: -- repeals restrictions on the SICAD eligibility and the purposes of foreign exchange procurement, -- promotes liberalisation in exchange rate.	
15	Price Controls	(1)	Growing Intensity of Government Control from Cost to Retail Price	- GOV, with no grasp or knowledge of either the Industrial Characteristics or Value Chain, carelessly compels/controls from cost, markup to final retail price. It had given serious damages to the economic activity of enterprises, driving them into a-sales-below-cost syndrome in certain cases. There is strong concern that the maintenance of business operation and employment would be more difficult. - GOV's Price Control is implemented in a compulsory, haphazard manner without any solid plan whatsoever at unrealistic prices. It suppresses profitability of private sectors business. Business activity in the private sectors has been dwindling year after year.	- It is requested that GOV takes steps to: -- steer economy into more realistic direction, and -- give priority to a Systematic Treatment on the Foreign Exchange Issue, rather than Control, which is a Symptomatic Therapy.	- "A Law of Fair Costs and Prices (Gazette No. 39.715, 2011)" enacted under Presidential Enabling Act, Details not yet prepared (which is also problematic).
16	Employment	(1)	Difficulty in Dismissal	- Employers are unable to dismiss workers whose wage is less than treble of the minimum wage without justifiable reason, which in effect is very difficult to prove. - Dismissal in effect is not possible. Virtually workers are unconditionally protected, regardless of violation in the rules of employment or acedia in work attitude...This kind of practice worsens the situation further.	- While it is necessary to protect workers from unfair dismissal, it is important and necessary that Ministries and Agencies acquaint themselves with the world standard.	- Labour Law
				(Actions) - Pursuant to Article 125 of Labor Law of 1997, in case of forced dismissal, employers must pay the double amount of the applicable Severance Indemnity Table. - Pursuant to Article 27 of Labor Law of 1997, more than 90% of the employees must be Venezuelan with more than 80% of the total wages paid to Venezuelan in an enterprise with more than 10 workers. - Since promulgation in 2002 of "Special Decree No.8,732 Prohibiting Dismissal of Employees" that prohibits in principle dismissal or downward adjustment of the terms of employment for employees after 3-months or more employment, the re-extension of this Decree has been repeated. - In May 2003, GOV announced the 30% raise in the statutory minimum wage for FY2003. Also, the Decree on Prohibition of Unfair Dismissal since May 2005 has been re-extended for several times.		

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				- Pursuant to "Doing Business 2009" by World Bank, Venezuela's rankings on the ease of doing business was 174th out of 181 countries, on "Dismissal of Employment", in particular, was 180th out of 181 countries, and on rigidity of employment (firing) was at the bottom of 100 countries. - In December 2011, the Special Decree Prohibiting Dismissal has been re-extended with exclusion of the monetary requirement for "Three Times of the Minimum Wage" or less.		
		(2)	Rigorous Labour Standard and Safety Standard	- Enterprises must expend much cost and effort to satisfy the very stringent labour standards and safety standards.		
		(3)	Inflexible Labour Market	- To protect workers of the low-income bracket, the labour market is extremely inflexible.		
		(4)	Restricted Employment of Foreign Workers	- The number of alien employees must be kept within 10% of total number and the amount of remuneration for the alien employees must be kept within 20% of that of the total employees in the case of enterprise with 10-employees, or more. - GOV restricts employment of foreigners within 10% of total number and of total wage of employees. MFS takes measures in accordance with this requirement.	- It is requested that GOV repeals the restrictions. - It is requested that GOV deregulates / repeals restrictions on employment of foreign workers.	- Labour Law, Article 17 - Labour Act, Article 27
		(5)	Frequent Labour Disputes	**- In automotive industry, labour disputes occur frequently. It gravely impacts continuation of production.**		
		(6)	Raised Minimum Wage	- Increase of minimum wages three times a year weighs heavily upon fixed costs.		
		(7)	Stagnant Employment	- An effective deployment of workforce by reflecting each worker's aptitude, by reorganisation, etc. is not executable, due to the rules governing the ratio between indigenous employees vs. expatriates, de facto prohibited dismissal, etc.		- New Labour Law - Decree Prohibiting Dismissals
		(8)	Nebulous and Delayed Work-Visa Acquisition Procedures	- It takes an extraordinary long period for acquisition of work permit/work visa. More precisely, in the case of enterprises with more than 10-employees, the number of foreign employees must be within 10% of the total employees, and the total amount of wages of foreign employees must be less than 20% of the total amount of total employees, etc. In case where an FFE desires to despatch expatriates in excess of the stipulated limits, such FFE must obtain Special Labour Permit, as an exceptional measure. It took Member Firm's Subsidiary (MFS) 2-years to obtain the work visa after filing application, while the examination within Ministry of Labour continued.	- It is requested that GOV takes steps to simplify drastically the requisite procedures.	

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				- It takes "years" to acquire Labour Transient Visa (TR-L) after filing application under the procedures specified by GOV.	- It is requested that GOV expedites the work visa acquisition procedures.	
20	Monopoly	(1)	Nationalisation Policy inhibits Competition	- Due to the nationalization of industries, inefficiency predominates in all markets, where fair competition is totally absent.Since December 2013, "Price Control on Home Electric Appliance" has come into force. The Price Control Measures extend to rental fees of office buildings.		
23	Inefficient Administrative Procedures, Regimes and Practices	(1)	**Aggravated Inefficiency in Administrative Procedures**	- After the demise of former President Chavez, inefficiency has spread all across the administrative procedures, while abrupt changes are frequent in systems and schemes. After enactment of the Enabling Act in November 2013 under the new Maduro Administration, opaqueness has veiled all over politics and economics. - While GOV makes decision, it will not be followed up by promulgation of substantive implementing rules. It is not enforceable and all come to a standstill.		
		(2)	Amendments, Corrections, Resubmissions required by Personal Discretion of Individual Government Employees	- In all fields requiring submission of documents, including without limitation, financial report, descriptive changes in registration, and labour issues, it had become a routine, whereby government employees more often than not compel amendments, corrections, and resubmissions on documents prepared exactly in accordance with the legislative provisions. Government employees at their sole discretion change on the spot implementing rules of the legislative provisions. Non-compliance with the changes of implementing rules would not advance the procedures. Applicants in many cases must deal with the extraneous work.	- It is requested that GOV takes steps to review and overhaul integration of the laws and the implementing rules.	
		(3)	Labour Inspection Authority's Absence of Fairness and Restrictions under new Labour Law	- Labour inspection authority tacitly approved illegal strikes, disabling resolution of the problems through intervention of jurisprudence and administration. The successive Elections in 2012-2013 must have prompted the Administration's action, anxious to gain workers' votes. It has also prolonged the construction work period, which has served as a major cause for the aggravated profitability. Furthermore, New Labour Act since 2012 has triggered increased the overall labour cost, due to the increased difficulty than ever before in dismissal of workforce, and the restricted outsourcing and work-hours.	- It is requested that GOV advances development of laws and regulations.	- Venezuelan Oil Industry Agreement - Labour Act (2012), etc.

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24	Indigested Legislation, Abrupt Changes	(1)	**Abrupt Changes in Legislative Schemes**	- Since 2012, National Assembly adopted the "Enabling Law," which empowers President Hugo Chavez to enact and amend laws in the manner favourable to the President and Government on a broad range of issues without sufficient legislative debate or approval. - No sufficient time is allowed, following the law amendments. Law amendments made without reference to the old laws and phenomena compel extraneous workload and expenses upon the interested parties.	- It is requested that GOV takes steps to conduct prior consultation with all relevant parties (including interested parties).	- Presidential "Enabling Law"
				(Actions) - On 30 December 2015, President Nicolás Maduro introduced amended Income Tax Law and high value financial transaction tax right before the lapse of Enabling Law. The Amended Income Tax Law raises from 34% to 40% the corporate income tax of financial institutions, while amending the timing of entry for the revenue from provision of assets/services from the time of payment to the time transaction is concluded, and non-application of inflationary adjustment on special tax payers and financial institutions.		
		(2)	Unprepared Legislative Systems	- While GOV decides its policy, substantive implementing details remain undefined and unexecuted. As a result, everything comes to a standstill.		
26	Others	(1)	Exacerbated Inflation	**- Hyperinflation in excess of 50% continues, pushing up radically prices on all kinds of goods and services, causing operational cost increase, in FY 2013 as much as [52.7%]. On the other hand, GOV puts the cap of about 30% on gross profit for electric home appliances, squeezing P/L.**	- It is requested that GOV implements polity to control inflation.	
				(Actions) - IMF forecasts of the inflation rates in Venezuela: 190% - 2015, 210% - 2016 against the results of 68.5% in 2014.		