

GOBIERNO DE CHILE

**JOINT FEASIBILITY STUDY ON A FREE  
TRADE AGREEMENT  
BETWEEN CHILE AND CHINA**

**Santiago, October, 2004**

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## **I. INTRODUCTION**

### **I.1. Main Characteristics of the Chilean Economy**

#### **I.1.A. Macroeconomic Features**

A high and sustained economic growth and major social developments were the most distinctive characteristics of the Chilean economy in the 90s; noteworthy was the reduction of poverty. The governments of the coalition of parties of the Democratic Concertation, since 1990, supplemented growth-oriented economic policy with targeted social policies and investment in human capital. Although growth abruptly slowed down at the end of the decade due to external factors, during the first four years of 2000, and based on the macroeconomic fundamentals that created the sustained growth of the nineties, a period of economic recovery can be seen.

The national development strategy is based on a social market economy open to international trade, where the export sector is the main driving force of growth. At the same time, the core elements of the economic policy over the past 15 years have been based on macroeconomic stability, elimination of domestic market distortions and a gradual lowering of barriers to foreign trade. Under such conditions, the Chilean economy has achieved a high level of competitiveness and opening to the world economy.

Chile's macroeconomic stability and its general socioeconomic performance have been acknowledged by the main international risk rating agencies. In 2003, both Moody's and Standard and Poor rated the Chilean economy as the less risky in the whole of Latin America and in an equal standing with many countries with high development levels.

#### **a. Gross Domestic Product**

The economic activity has shown high dynamism and sustained growth over the last two decades, and particularly after the recession that hit the country in the early 80s. According to the Central Bank of Chile, in the period 1990-2003, the economy grew at an annual rate of 5,4 percent; in 2003 the gross domestic product reached 69,400 million dollars with a per capita income of \$4,690 dollars. In terms of buying power, this per capita income is equivalent to \$12,700 dollars. As a result, these indexes basically doubled in the course of the decade. At the end of the 90s, economic growth first slowed down (3.4 percent in 1998) and then dipped (-1.1 percent in 1999). In the year 2000, the Chilean economy has begun a reactivation process, where in 2003 GDP growth reached 3,2%. Moreover, it is estimated that GDP growth for 2004 will be in the order of 4.9%.

The fastest growing sectors were commerce, hotel and restaurants, followed by manufacturing, financial services and mining. During 1999 their share in total economic activity represented 19.0, 16.3, 14.9 and 11.1 percent, respectively. Among the rest of the economic sectors, transport and communications attained increasing importance over time,

reaching 10.2 percent in 1999. Construction, in turn, fared well until 1997; however, the financial crisis of the last two years adversely affected this sector in 1998 and 1999.

b. Inflation

The endemic problem of persistently high inflation rates that characterized the Chilean economy in the past has been reined in and is no longer a main public issue. One of the most significant bases of the inflation control policy has been the independence of the Central Bank. In the early 90s, the Central Bank established a policy aimed at the gradual reduction of the inflation rate, announcing the inflation goal to be reached annually, which has been strictly met ever since.

As from 1994 the inflation rate fell to a one-digit figure, nearly reaching the levels exhibited by developed economies. While in 1990 inflation stood at 27.3 percent, in the period 1995-1999 it was less than 6 percent, falling to only 2.3 percent in 1999. Although in 2000 inflation showed a moderate increase, reaching 4,5%, in 2001 and 2002 it continued its descending path, reaching in 2003 a record low of only 1,1%. The inflation goal has been deemed to be the nominal anchor of the economy, becoming a determinant sign for private stakeholders. For the next years, the inflation goal established by the Central Bank stands at 2-3 percent.

c. Export Sector

The driving force behind economic growth has been the export sector. With growth rates well above GDP, exports more than doubled between 1990 and 2003. Considering that there is a direct relation between economic growth and the development of foreign trade, trade (exports plus imports) grew in value terms around of 50 percent of the GDP and for more than 70 percent if we include the service sector. The opening of the Chilean economy to international markets has been beneficial. From 1990 to 2003, exports of goods grew at an average of 10 percent, reaching a peak in 2003, with an amount that exceeds 20.000 million dollars.

Between 1990 and 2003 Chile continued to open to international markets. The nominal foreign tariff was reduced from a flat 15 percent to an 11 percent rate in 1992, with unanimous Congress agreement. As from 1999, the flat tariff rate is scheduled to drop 1 percent each year until 2003, when it will remain at 6 percent. It should be noted that flat tariffs are a central aspect of the non-discriminatory market economy that characterizes Chile's economic policy. Moreover, it should be noted that the export growth for the first semester of 2004, in comparison to that same period in 2003, was equivalent to 47%, setting an historic record in the amount of total exports.

d. Foreign Investment

As a result of liberalization and opening, direct foreign investment has exhibited a significant growth. In the period 1990 – 2003 direct foreign investment totaled 48,300 million dollars. This figure compares favorably with the 3,600 million dollars of direct foreign investment recorded in the period 1984 - 1989. It should also be mentioned that

even in 1999, with a negative GDP growth rate, direct foreign investment reached \$9,200 million dollars and net flows \$4,500 million dollars, reflecting the confidence that foreign investors still have in the Chilean economy. To summarize, direct foreign investment in 1990 represented 4.3 percent of GDP and 13.4 percent in 2003.

The increasing flows of exports and foreign investment have been the two cornerstones of the Chilean economic globalization in the 1990 – 2003 period. Reserves reached 15.850 million dollars in 2003, an amount that represents more 10 months of imports, while net foreign debt (foreign debt minus international reserves) dropped in relation to the annual value of Chilean exports to international markets from a 3.5 ratio in the period 1984-1989 to 0.8 in the period 1990-2003.

e. Investment and Savings

The great dynamism of the Chilean economy in the 90's was spurred by the high investment rates recorded during the period, which also constitute the best guarantee of future growth, although at the end of this period there was a fall due to the economic slump as a result of the Asian crisis. While in the period 1984-1989 investment represented only 21.3 percent of GDP, in 1990-2003 this rate reached an average 31 percent. Very important indeed was also the high rate of domestic savings in the 90s and the first four years of the new millennium, with an average of 25 percent over the GDP for the period 1990-2003, one of the highest in Latin America.

f. Employment and Salaries

The reduction of inflation, high GDP growth rates and export increases went hand-in-hand with high investment and domestic savings rates, which favored a high employment rate, considered by many experts to be close to full employment. While in the period 1984-1989 the average unemployment rate was 11.5 percent, in the period 1990-1999 it fell to 7.3 percent. However, as a result of the Asian crisis, unemployment climbed considerably in 1999, reaching its highest level in October 1999 (11.3 percent). The unemployment rate has remained relatively high 2004, standing at 10.2 percent<sup>1</sup> for the second trimester. Nevertheless, as a result of economic reactivation and recent pro-employment measures fostered by the government, together with interest rate cuts ordered by the Central Bank, it is expected that this situation will be reversed towards the end of the year 2000.

Equally important has been the rise in real salaries, for these have grown at an average 3.7 percent in the period 1990-2003, which translates into a 40 percent increase for the ten-year period. It should be noted that from 1990 to 1997 real salaries rose at 4.1 percent annually, while over the period 1984-1989 the annual growth rate was only 1 percent.

On the other hand, average labor productivity also rose significantly in the 90s. In the period 1984-1989 it grew at only 1.4 percent annually; while in the period 1990-1997 the average annual growth rate was 5.1 percent, with a peak of 9.3 percent in 1995.

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<sup>1</sup> Official figure from National Institute of Statistics (INE)

Productivity growth has been a decisive factor in the competitiveness of the national industry, particularly when considering the important revaluation of the local currency over the period 1990-1997. As a result of this important productivity growth, the rise of real salaries has not affected the inflation goals set by economic authorities.

The evolution of employment and productivity are two of the most positive characteristics of recent economic performance, with an emphasis on social progress. Indeed, these have been the main mechanisms whereby the benefits of economic growth have been transferred to the poorer sectors of the Chilean society. The population below the poverty line fell from 45 percent in 1987 to only 22 percent in 1998, a reduction that constitutes the most significant progress among all Latin American countries for this period. Moreover, in the most recent survey shows that this tendency has been further established, in where the population below the poverty line for 2003 was equivalent to 18.8 percent.<sup>2</sup>

### I.1.B. Trade Policy Regime: Formulation and Implementation

#### a. General legal and Institutional Framework

The Constitution of 1980 defines Chile as a unitary and democratic republic. For administrative purposes, the country is divided into 13 regions (Region I to XII, running from north to south, and the Metropolitan Region). The regions consist of provinces, which are subdivided into municipalities.

Executive power is exercised by the President of the Republic who is also the Head of State and is elected by universal suffrage for a term of six years. The President appoints cabinet ministers.

Legislative power is exercised by the National Congress, which comprises a House of Representatives and a Senate. The House of Representatives is composed of 120 members elected for a four-year term. The Senate is composed of 48 senators, of which 38 are directly elected, as well as non elected Senators, which include: the former Presidents of the Republic who have completed a continuous six year period, as senators for life (currently one); two former ministers, appointed by the Supreme Court; the former Commanders in Chief of the Air Force, Navy, Army, and the Police, all appointed by the National Security Council; one former Rector of or recognized by the State University, appointed by the President of the Republic; one former General Controller of the Republic, appointed by the Supreme Court; and one former minister, appointed by the President of the Republic. Members of both chambers may be re-elected. The next presidential and congressional elections are scheduled for December 2005.

Judicial power is vested in the Supreme Court of Justice, 16 regional courts of appeal, and other courts established by law. The 21 Supreme Court judges are appointed by the President and confirmed by a two-thirds majority in the Senate. The Supreme Court appoints members of the lower courts.

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<sup>2</sup> CASEN survey, performed by Planification Ministry (MIDEPLAN)

## b. Trade Policy Objectives and Formulation

Chile's trade policy follows a number of objectives, the most important being: stimulating the efficiency and competitiveness of national producers; reducing the level of effective protection and any existing anti-export bias in the tariff structure; and fostering regional economic cooperation. The authorities consider secured and permanent access to foreign markets, together with the capacity to attract foreign investment, essential to Chile's economic growth. To this end, efforts towards the negotiation of new preferential trade agreements have intensified in recent years.

Trade policy formulation is under the responsibility of the Executive, with the General Directorate of International Economic Affairs, in the Ministry of Foreign Affairs', taking the lead role in trade negotiations. Other Ministries involved in the formulation of trade policy include the Ministries of Finance, Economy, and Agriculture. Chile's mission to the WTO is under the competence of the Ministry of Foreign Affairs.

The Interministerial Committee for International Economic Negotiations, created in 1992, advises the President in matters regarding international economic negotiations. The Minister of Foreign Affairs chairs the Committee; its members are the Minister of Finance, the Minister of the Presidency, and the Minister of Economy. Two additional committees were created to support the Interministerial Committee: the Negotiation Committee, and the Committee for the Participation of the Private Sector.

The government is in permanent dialogue with the private sector in various fora, being the Public & Private Council for Export-led Development, the most important. This Council brings together representatives of the private sector, organized in the Confederation of Production and Commerce, with all major public institutions involved in trade policy formulation and administration. Its main work areas include trade facilitation and export promotion. Furthermore, it should be noted that the private sector plays a vital role in the negotiation of Chile's preferential trade agreements.

In this regard, it should be mentioned that the function of the Committee for the Participation of the Private Sector, a permanent advisory body also established in 1992, is to inform the private sector of the progress of international negotiations and learn the views of the sector. This Committee is chaired by the Minister of Economy and also comprises the Ministers of Foreign Affairs, Finance, the Presidency, Agriculture, the Director General of International Economic Affairs of the Ministry of Foreign Affairs, two representatives of the private sector, two representatives of labor unions, and three experts in the field of international negotiations.

Finally, the Export Council, created in April 2003, brings together representatives of the private and public sectors; its main objective is to make recommendations on export policy formulation. The Council has four working groups: on trade facilitation, international integration, support of exporters, and on promotion of exports and tourism.

### c. Main Trade Laws and Regulations

The Constitution takes precedence over all other laws. The principal laws and regulations governing foreign trade are listed in Table 1.

The WTO Agreements were adopted by Chile through Supreme Decree No. 16 of 5 January 1995 of the Ministry of Foreign Affairs. They form an integral part of national legislation, with the status of an ordinary law, and may be invoked before Chilean courts. WTO Agreements take precedence over domestic legislation if they contain a greater degree of specificity, when covering the same subjects, or if they establish a new set of rules covering subjects not dealt with by domestic legislation, or when they regulate institutions or subjects setting rules whose legal sense and effects are in contradiction with the sense and effects of prior domestic legislation. Moreover, when the WTO Agreements were enacted after the prevailing relevant domestic legislation, the principle of tacit derogation applies. However, this does not detract from the validity of the provisions of an existing law that do not conflict with or contradict newer laws (Article 52 and 53 of the Civil Code).

**Table I.1**  
**Main Domestic Laws and Regulations Relating to Foreign Trade, June 2004**

<b>Name or description</b>	<b>Domestic statute</b>	<b>Date of issue</b>
<b>General legislation</b>		
Constitution of Chile	n.a.	8.8.1980
Incorporation of WTO Agreements into domestic law	Supreme Decree No.16 of the Ministry of Foreign Affairs	5.1.1995
Law on the Importation of Goods	Law No. 18.525	30.6.1986
Reduction of MFN tariffs	Law No. 19.589	14.11.1998
<b>Preferential trade agreements</b>		
Chile – Canada Preferential Trade Agreement		.
Chile – Costa Rica Preferential Trade Agreement		
Chile – El Salvador Preferential Trade Agreement		
Chile – EU Preferential Trade Agreement		
Chile – Mexico Preferential Trade Agreement		
Chile- United States of America Preferential Trade Agreement		
Chile – Korea Preferential Trade Agreement		
<b>Customs procedures</b>		
Customs Law	Decree with Force of Law No. 2/97 of the Ministry of Finance	12.11.1997
Regulations on the Application of GATT Article VII	Decree No. 1134	20.6.2002
<b>Tax and tariff concessions</b>		
Simplified duty drawback system	Law No. 18.480	19.12.1985
Deferred payment of customs duties	Law No. 18.634	5.8.1987
General duty drawback system	Law No. 18.708	11.5.1988

Name or description	Domestic statute	Date of issue
Modification of export promotion programs	Law No. 19.589	14.11.1998
<b>Contingency measures</b>		
Law on the Importation of Goods	Law No. 18.525	30.6.1986
Domestic legislation on safeguard measures	Law No. 19.612	31.5.1999
<b>Intellectual property</b>		
Intellectual Property Law	Law No. 17.336	2.10.1970
Law establishing Rules Applicable to Industrial Privileges and Protection of Industrial Property Rights	Law No. 19.039	25.1.1991

n.a. Not applicable.

Law No. 18.525 of 19 June 1986, establishing Rules on the Importation of Goods, is Chile's main trade law. The Law has been amended and modified a number of times since 1997 and contains regulations on customs valuation, customs duties, contingency measures, and the price band system. Moreover, the Customs Law (Decree Law No. 2/97 of the Ministry of Finance) of 12 November 1997, which consolidates a number of former legal instruments, contains provisions on export and import procedures. Law No. 19.589 of 14 November 1998 provided for a reduction of Chile's MFN tariffs and revised some export promotion programs with a view to bringing them into line with Chile's WTO commitments.

A law on miscellaneous WTO-related matters entered into force as of November 4, 2003. The law No. 19,912 aims to bring various individual provisions of Chile's legislation into line with the WTO Agreements. It contains provisions on customs valuation, technical regulations, taxation, and intellectual property. The law provides for notification procedures for technical regulations and conformity assessments. It also provides for the abolition of the dispatch tax on goods imported duty-free, and of the trade-related investment measures in the automotive sector. Furthermore, it amends Chile's intellectual property legislation by specifying protection for computer programs, data compilations, and textile designs.

#### I.1.C. Market Structure and Industrial Organization

Chile has an open economy with low tariff levels and a liberal trade and investment environment. Domestically, competition is enforced through the application of the Competition Law, which is becoming increasingly important in maintaining market efficiency and reaping the benefits of an open economy.

Chile's Competition Law was first introduced in 1958. It has recently introduced an institutional reform as well as a review of the substance of its Competition Law. First, publication of Law 19.610 in 1999 led to the institutional strengthening of the enforcement agency, the National Economic Prosecutor's Office (FNE). As a result, the economic and human resources of the FNE have increased. For example, the FNE increased its staff from 28 to 56 after 1999.

Furthermore, a new law (Law 19.911, published in 2003) fulfils the need for increased independence of the decision-making body and for a more technical assessment of cases. The institutional reform replaces the former Antitrust Commissions with a Competition Tribunal and clearly separates the functions of the enforcement agency, the FNE, and the decision-making body, the new Tribunal. The Tribunal is a special judicial body fully independent of the FNE. To ensure its independence, its members can only be removed by the Supreme Court on legally established grounds. Its members are now remunerated and have a fixed period in office. The Tribunal is no longer supported by the FNE and has its own budget and staff (lawyers and economists). The Tribunal has the power to sanction and provide remedies (including interim measures) and is also responsible for merger decisions. At the same time, the enforcement power of the FNE has been strengthened. It now has clear powers to seek depositions of persons during an investigation and the authority to sign international cooperation agreements.

The new law explicitly sanctions abuse of dominant position such as resale price maintenance, tying or territorial distribution by dominant firms and predatory practices.<sup>3</sup> In addition, the new law eliminates criminal sanctions with respect to anticompetitive practices but substantially increases the amount of the fines that can be imposed. This is to prevent competition cases being tried by criminal judges with no expertise in competition cases while providing sufficiently deterrent fines.

Chile is involved in international cooperation in the competition policy arena at various levels. In this regard, Chile has agreed upon a Memorandum of Understanding with Canada regarding the application of their competitive laws, and the FNE is under negotiation with four countries to reach a memorandum of understanding or agreements on enforcement cooperation, coordination and technical assistance. Chile participates in OECD, UNCTAD and ICN activities, and in 2003, Chile voluntarily was subject of a Peer Review by the Latin American Competition Forum organized by the OECD and the IADB.

#### I.1.D. State-Trading Companies, State-Owned Enterprises Reform

Chile has notified one enterprise, Comercializadora de Trigo (COTRISA), as a state trading company.<sup>4[1]</sup> Although COTRISA is authorized to deal in various cereals, it has in practice dealt almost entirely in wheat. It purchases wheat from Chilean producers on a non-discriminatory basis and does not usually engage in import or export transactions. According to the authorities, COTRISA bought 9,210 tons of wheat in 2001, equivalent to 0.5% of national production, and 50 tons in 2002.

Despite Chile's long-lasting privatization policy, a number of important enterprises remain state-owned, most notably Chile's National Copper Corporation (CODELCO), the National Mining Company (ENAMI), and the Banco Estado.

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<sup>3</sup> It should be noted that even though there was no explicit prohibition, abuse of dominant position was already sanctioned by the Antitrust Commission prior to the reform that took place in 2003 on the basis of a generic reference in Article 6 of Law DL211.

<sup>4[1]</sup> WTO document G/STR/N/7/CHL, 10 October 2001.

With most sectors already in private hands in 1997, including telecommunications and electricity, since then Chile's privatization process has concentrated on water management and seaports (Table III.6).

**Table I.2**  
**Privatization of State-Owned Enterprises Since 1997**

State-owned interests	Sector	Action	Date
<i>Divestiture</i>			
Edelaysen S.A.	Energy	Sold to SAESA (Copec Group) for US\$43 million	1998
Esval S.A.	Water supply and distribution	45% of stock sold to Anglian Water for US\$132 million	1998
Transmarchilay S.A.	Transport	Sold to CPT Agencia Maritima for US\$5.6 million	1999
Emos S.A.	Water supply and distribution	40% of stock sold to Suez Lyonnaise des Eaux and Aguas de Barcelona for US\$670 million	1999
Essal S.A.	Water supply and distribution	51% of stock sold to Iberdrola Energía for US\$90 million	1999
Essel S.A.	Water supply and distribution	44% of stock sold to Thames Water and Electricidad de Portugal for US\$102 million	1999
Essbio S.A.	Water supply and distribution	44% of stock sold to Thames Water for US\$243 million	2000
Esaam S.A.	Water supply and distribution	Transfer of exploitation right to Thames Water for US\$180 million	2001
Emssa S.A.	Water supply and distribution	Transfer of exploitation right to Aguas Patagonia de Aysen, price to be determined	2002
<i>Concession</i>			
Portuaria Valparaiso	Seaport	Concession for 20 years to Cosmos HHLA	1999
Portiaria San Antonio	Seaport	Concession to various private enterprises	1999
Portiaria Talcahuano San Vicente	Seaport	Concession to Sudamericana Vapores and SSA for 15 years for US\$44.3 million	2000
Portiaria Iquique	Seaport	Concession to SAAM Urbaser for 20 years	1999

Source: Chilean authorities.

### I.1.E. Banking System and Credit Policies

#### a. General Overview of the Banking System

The modern Chilean banking system dates from 1925 and has been characterized by periods of substantial regulation and state intervention and by periods of deregulation. After the Chilean financial crisis of 1982 and 1983, the Central Bank and the Superintendency of Banks and Financial Institutions (SBIF, for its acronym in Spanish), established strict controls on the funding, lending and general business matters of the banking industry in Chile. The SBIF regulates the banking sector and the Central Bank, which has an autonomous role from the government, oversees exchange rate policy and regulates international capital movements and certain bank operations.

As of December 2003, Chile's banking system was comprised of 25 privately owned banks and one state-owned bank, Banco Estado. In June 2003, the Chilean banking system had a total amount of outstanding loans equal to US\$46.8 billion.

Commercial banks in Chile face growing competition from several sources, which has led to consolidation in the banking industry. Competition in the extension of credit has come increasingly from department stores and foreign banks.

#### b. Banking Regulation

According to the Chilean Constitution, the main objectives of the Central Bank are to maintain the stability of the Chilean peso and the orderly functioning of Chile's internal and external payment systems. To fulfill this purpose the law gives the Central Bank the authority to set reserve requirements for banks, to regulate the amount of money and credit in circulation, to operate as a lender of last resort and to establish regulations and guidelines regarding financial institutions, the formal exchange market and bank deposit-taking activities. These attributes allow the Central Bank a wide range of policy tools for controlling monetary and exchange rate policy.

The SBIF monitors and oversees Chile's banks. Additionally, the SBIF authorizes the incorporation and licensing of new banks and has broad powers to issue, interpret and enforce banking regulations (both legal and regulatory). The SBIF must also approve any bank's merger, amendment to bylaws, or capital increase, and any acquisition of 10% or more of the equity interest in a bank.

Chilean banks may conduct only those activities allowed by the General Banking Act. Banks may lend and accept deposits and, subject to limitations, invest and perform financial services. The General Banking Act limits investments by banks to real estate investments for their own use, gold, foreign exchange and debt securities. Directly or through subsidiaries, banks may also engage in certain specified activities, such as securities brokerage services, mutual fund management, factoring, securities, financial leases and insurance brokerage services (except for pension funds insurance).

### c. The Chilean Insurance System

Insurance companies are Chile's second largest institutional investors, based on total volume of assets. Although the total asset volume of insurance companies has exhibited an overall growth tendency, its increase has not been as large as that of the pension funds during the same period. As of June 30, 2003, the combined value of the portfolios of insurance companies stood at US\$14.7 billion.

The Insurance Companies Act of 1979 introduced a framework for the regulation of insurance companies. The basic principles established include market determination of rates and commissions, equal access to foreign insurance companies, minimum capital and solvency criteria and rules for setting up reserve funds. As a general rule, life insurance companies can have liabilities equal to a maximum of 15 times their capital and reserves, while non-life insurance companies are limited in the amount of their liabilities to five times their capital and reserves.

Under the Insurance Companies Act, any person or entity offering insurance, whether directly or indirectly, must first obtain authorization from the Superintendence of Assets and Security Institutions (SVS). Neither individuals nor legal entities may enter into insurance contracts in Chile with an insurer not licensed to operate in Chile.

In regards to the composition of the market, as of June 30, 2003, there were 23 insurance companies operating in non-life insurance and 32 companies in the life insurance sector. The Chilean insurance market is open to foreign investors, who must operate through a Chilean corporation and must have equity over approximately US\$2.5 million. Likewise, as of June 30, 2003, foreign insurance companies controlled more than 56% of the local non-life insurance market and nearly 53% of the local life insurance market.

### d. Mutual Funds

Mutual funds were first created in Chile in the 1960s. Their legal framework was comprehensively reformed in 1976. The Chilean mutual fund system faced serious difficulties during the financial crisis of the early 1980s.

Currently, there are three types of mutual funds: mutual funds investing in short-term fixed-income securities, mutual funds investing in medium- and long-term fixed-income securities, and mutual funds investing in variable-income securities, including corporate stocks and similar investments. As of June 30, 2003, 200 mutual funds were chartered in Chile, of which 57 were of the short-term fixed-income type, 49 of the medium- and long-term fixed-income type and 94 of the variable-income type.

In 2001, legal initiatives intended to deregulate the mutual fund industry were introduced, giving the funds greater flexibility in investment policy, and at the same time imposing higher standards of transparency and disclosure. Also in 2001, a general funds manager was introduced, allowing mutual funds, investment funds and housing funds to be organized

under a unique managing structure, a fact that will permit taking advantage of economies of scale in the administration of funds.

e. Investment Funds

By the end of 2003, a total of 35 investment funds were operating in Chile. As of June 30, 2003, total assets of these funds equaled US\$1.4 billion, distributed principally among real estate investment funds, venture capital investment funds, securities investment funds and international investment funds.

Investment funds, like mutual funds, will also be positively affected by the general Funds Manager structure approved as part of the capital markets reform.

f. Foreign Capital Investment Funds and Foreign Investment Venture Capital Funds

The Foreign Capital Investment Funds (Fices) are pools of assets funded by investors outside Chilean territory for the purpose of investment in publicly offered securities in Chile, and managed by a Chilean corporation on behalf of and at the risk of the contributors. With respect to the entry of foreign capital into the country, the Fices are principally governed by Decree Law 600. The capital contributed to a Fice may not be removed from the country within five years after its initial entry into Chile. However, profits may be repatriated at any time, subject to a single tax at a flat rate of 10%.

Fices principally invest their resources in corporate shares, which at June 30, 2003 represented 95.0% of their total investments. In June 2003, the 12 existing funds have combined assets amounting to US\$ 0.5 billion.

Another category of fund is the Foreign Investment Venture Capital Funds (Ficer), which effectively allows investors outside Chile to make venture capital investments within Chile. Currently there are no Ficer funds operating. In 2000, several changes to the laws regulating Fices and Ficers took effect, aimed at deregulating these investment vehicles.

As of 2001, Fices and Ficers are exempt from capital gains tax on the sale of highly traded equity and bonds made in authorized stock exchanges in Chile, provided that the holders of shares in the respective funds are non-residents of Chile.

g. The Chilean Pension System

Chile began a comprehensive reform of its social security system in the early 1980s through the adoption of the Private Pensions Funds Act, as amended, to eliminate many of the problems associated with the former social security system. Under the Private Pensions Funds Act, a privately administered system of individual pension plans replaced the social security system. Under the pension system previously in place, contributions from current workers had been used to fund the pension payments of current retirees, although there was a limited correlation between the amount contributed and the amount received by each worker upon retirement.

The current pension system is based on individualized accounts with fully funded, vestable and portable benefits. Since its inception, it has averaged real annual returns on the assets under management of 10.3%, nearly twice the growth rate of the GDP. In December 2003, the pension funds had aggregated financial resources equaling approximately US\$48.4 billion.

#### I.1.F. Employment Policies, Laws and Salaries

##### a. Employment Policies

Labor policies have emphasized, since 2000, modernization in order to respond to the challenges of a more open economy and a more active society.

In particular, the major goals of governmental are, first:

- To build-up greater degrees of “social capital” in order to stimulate significant progress in the relationship between employers and employees, resulting in better productivity and quality. Secondly,
- to create a new of labor relationship, in accord to the necessity to respond to the challenges globalization and accelerated technological changes which determines the need to adapt to the transformation in all the productive systems. In order to achieve the latter it is essential in Chile’s vision is to have strong bilateral labor relations, leaving behind historic paternalism. It is also essential in this vision a counterpart of employers able to assume the challenge of a pact on flexibility. Trade Unions could and should be a mayor player, but companies should then allow workers to negotiate a participation of the surplus and the way that those incomes are generated.

##### b. Laws

###### *i. Constitutional Guarantees*

The Chilean Constitution guarantees the fundamental right for freedom of association. This consists of the right to establish unions without prior authorization and the right to engage in collective bargaining. The Constitution states that law will regulate the exercise of these rights, but that under no circumstances can legislation establish requirements, which, in practice, render the exercise of these fundamental rights null and void.

###### *ii. Trade Union Organization*

There are different types of unions and mainly the so-called *sindicato de empresa* [company union] predominates. This is a union made up of workers from the same company. In addition to the unions known as basic unions, there are higher levels of organization, which bring together several basic unions, federations, and confederations, which are structured based on the association of unions from the same sector of the economy or unions from the same territorial zone. There are also the *centrales sindicales* [nation wide labor union].

Legislation recognizes the freedom to form or join a union and, conversely, the freedom to withdraw from a union.

The employment of no individual may be conditional upon belonging or not to a union.

When workers decide to form a union, they must simply hold a meeting attended by a minimum number of people as established by law. They acquire legal status by the sole act of submitting their articles of incorporation and the minutes of the meeting to the compliance agency. In other words, they do not require prior authorization to be recognized as a union. Two or more unions are allowed to exist in a company, and this does in fact occur.

It is important to note that union leaders enjoy protection so called "*fuero*". This is in fact a protection measure under which a union leader cannot be fired without prior authorization from a Labor Court Judge, and such authorization can only be given where there is serious non-compliance with the leader's labor obligations. This protection is in effect during the leader's term and for up to six months following the end of his or her term as leader.

*iii. Collective Bargaining*

Collective bargaining is totally decentralized and is conducted by each company, and even by establishments within the same company. There is no bargaining at the sector or branch level. Although the law allows collective bargaining to include various companies, employers resist this mechanism.

With respect to the collective bargaining procedure, the Labor Code provides for two modalities: the first is bargaining regulated in the code itself, which establishes stages and formalities and in which the employer is obligated to take part in the bargaining. This bargaining concludes in a collective agreement, which is called a collective contract.

The other modality is a mechanism, which has no formal requirements; the parties bargain when they wish but neither party can force the other to bargain nor to arrive at an agreement. There are no deadlines or regulation and there is no right to strike; however, if the agreement is signed, compliance is fully obligatory.

This modality has been very important in businesses, which have more mature labor relations based on cooperation. However, the first type of bargaining predominates, which is characterized by a high degree of regulation.

Collective agreements only apply to workers who participate in the bargaining, and the employer has the unilateral authority to extend this contract or agreement to other workers, although this is not automatic.

iv. *Particularities of the Public Sector*

Public servants, i.e., those who work for government in ministries, municipalities and other public agencies are not included in labor regulations. Exceptionally it does apply to workers in State-owned companies, who are abiding by the standards of the Labor Code for the private sector. Government workers or public servants did not have the right to take part in a union organization until 1994. In March of that year, when law No. 19296 was passed which recognized their right to establish union-type organizations known as "associations of officials".

It should be noted that in the past, government workers had their own organization and bargained with respect to rights exercised on the margins of the Labor Code. During the military regime, this practice was fully restricted. With the return of democracy, a process was initiated for definitive recognition of the rights derived from freedom of association.

As already indicated, public servants were granted the right to organize and ILO Convention 151, in regard to this topic has also been ratified. Each year, government and organizations of these workers meet to negotiate matters of wages and working conditions, which then become draft legislation.

v. *The Right to Strike*

Strikes are legally limited to the extent that they can only take place during the collective bargaining process regulated in the Labor Code. Strikes cannot be used in bargaining, which we have referred to as "voluntary" or "non-regulated". During the strike, the employer may hire replacement workers as of the fifteenth day of the strike, but the law allows the employer to hire replacement workers as of the first day of the strike provided that the last offer made to the workers gives them the same benefits they had at the time of bargaining, adjusted for inflation and if he gives workers a special bonus of "replacement". The purpose of this mechanism is to encourage a minimum acceptable offer for workers and to avoid a misuse of the replacement system. The replacement workers are temporary, for as long as the strike lasts.

vi. *Penalties for Practices that Violate the Exercise of the Rights of Freedom of Association and Collective Bargaining*

Since 1991, Law 19,069 in the Labor Code included a set of standards, which penalize any action, particularly by employers, which violates the right to freedom of association or which affects collective bargaining. Any worker or organization which feels that these rights are being violated through bad faith actions of the employer (for example, offering better benefits to workers who withdraw from the union or refusing to bargain with representatives of the workers, or other actions--the Law lists many) may appeal to the Labor Court Judge who, by means of brief and simple proceedings, must request a report from the compliance agency, the so-called Labor Directorate, institution which is also entitled to act, and determine whether there are unfair practices on the part of the employer and, if so, order that those practices be terminated. A fine will also be applied.

*vii. Role of Government*

The role of government through the Ministry of Labor refers specially to labor policies and to regulations. Besides the Ministry, a special agency is in charge of compliance legislation, so called Dirección del Trabajo (Labor Directorate), which has units distributed throughout the national territory, by means of Labor Inspection Offices.

The Labor Directorate entity has three major responsibilities: the first is monitoring compliance with labor standards, which includes aspects referring to health and safety in the workplace. To fulfill this task, the Directorate sends officials to workplaces to ensure compliance with the standards. If these officials discover violations, they apply the fines set out in the law. These actions known as monitoring are done on the initiative of the Labor Directorate or at the request of the worker or union affected, but the tendency is to carry out preventive monitoring. The other major area of action is promoting freedom of association. To this end, a set of policies and actions has been established to promote union organization, favor collective bargaining and help in the development of labor relations. To this end, the Directorate has programs aimed at raising awareness of labor rights, carries out training activities and develops materials such as guides and books.

Technical assistance is also provided to labor leaders and to business owners, particularly from the small - and medium-sized business sector. Guidance is given prior to collective bargaining and statistical information is provided on previous bargaining. During collective bargaining and in particular during a strike, assistance is offered to the parties to re-establish the bargaining, which has been interrupted.

Law assigns to the Labor Director the authority to interpret social legislation and regulations. This legal delegation allows the administrative labor authority to specify the meaning and scope of labor standards, which constitutes an important source of interpretation of law in our country and a permanent reference both for workers and employers, and even for the courts of justice themselves.

*viii. International Commitments*

Chilean government has addressed labor issues in several agreements with its trade partners according to its different realities. The latter has been reflected with different modalities with Canada, the EU, MERCOSUR, Brazil, OCEDE and the USA.

In labor, special issues have been addressed in all agreements containing these provisions, issues of freedom of association, collective bargaining, forced labor, child labor, non discrimination, and acceptable labor conditions, especially in minimum wages, safety and health and work hours. These areas have been covered very successfully in cooperation activities, formerly with Canada, and most recently with the EU and the USA.

In recent past years, China and Chile had most interesting exchanges about its labor relations and social security systems, including, health and safety and pension institutions, with some officials from both countries visiting each other.

d. Salaries

They are regulated by parties of labor relations, on individual or collective bases. State only regulates minimum wages, normally once a year through legislation, and after consultations with national labor and employer organizations.

I.1. G. Environmental Policies and Laws

a. The Main Principles of Chilean Environmental Policy

Chile's environmental policy is based on the concept of sustainable development, which serves as the fulcrum of a strategy aimed at reconciling environmental protection with economic development in the context of social equity and transparency in the public sector.

The Chilean Constitution of 1980 grants all Chileans the right to live in a pollution-free environment, and notes that it is the State's responsibility to ensure that this right is not threatened and to guarantee the preservation of nature. It also identifies the conservation of the environmental heritage as one of its social functions.

The above-mentioned mandate establishes a fundamental difference between the environment and other areas or sectors of the country's institutional or political life. In effect, when it comes to addressing issues associated, for example, with administering economic policy, Chile has a series of general guidelines in place that are more or less established by consensus, but that lack an explicit mandate within a legal hierarchy. The issue of the environment, in contrast, is directly addressed in the Constitution and defined as one of the State's responsibilities. Environmental policy is based on seven principles that grants coherence to and permeate the legal, institutional and instrumental aspects used in the government's environmental management activities.

**The principle of gradualness** acknowledges that environmental management should be implemented progressively, given that reverting the course of environmental deterioration and reconciling development and progress with the protection of the environmental heritage requires implementing a structural reform that goes beyond short-term measures. The environmental problems that the country is facing are the result of decades of policies in which the environment, in global form, was not given importance.

**The principle of realism** establishes that in this management effort the objectives should be reachable, given the magnitude of current environmental problems, the form and opportunity for addressing them, and the resources and means available to do so. The environment has to compete against other areas for State resources, which means that realism must remain a basic element of environmental policy.

**The preventive principle** involves avoiding situations of deterioration before they are produced and thus avoiding reactive approaches. This principle is incorporated in: a) issues of environmental education; b) the environmental impact assessment system, which establishes that every project that has the potential to impact the environment has to be submitted for

evaluation prior to its execution; c) pollution prevention plans that allow the authority to create or demand a plan for prevention in areas that are found to be approaching maximum permitted levels; and d) responsibility standards that look to modify individual behaviors related to the environment, establishing a system that would make those who damage the environment responsible for their acts and requiring that they compensate the injured party and restore the damaged environmental component, where appropriate.

**The “the polluter pays” principle** establishes that the person who pollutes must incorporate the investments and measures necessary for avoiding pollution as part of the cost of the goods or services provided so that they are covered by the direct beneficiaries of those goods and services and not by society.

**The principle of responsibility** holds that the party responsible for environmental damage should pay reparations to the victim and restore the deteriorated component.

**The principle of efficiency** holds that the measures adopted to confront environmental deterioration should involve the lowest social cost possible and privilege instruments that allow for optimal allocation of resources. It is known that a clean environment and renewable natural resources whose capacities are not reduced constitute a competitive advantage that the country should make the most of and consistently maintain with its economic strategy.

**The principle of citizen participation** is key for programs and procedures such as the Environmental Impact Assessment System, the Procedure for Dictating Environmental Quality and Emissions Standards, and the National Environmental Commission Advisory Councils and Regional Environmental Commissions. These programs play a key role in the decentralization of decision-making processes regarding the projects that may impact the environment and in formal and informal education. This principle should be interpreted in a broad sense, allowing for direct participation of affected parties and the various stakeholder groups. In other words, technical organisms, the public and private sectors, public and private investors, scientific agencies, non-governmental organizations, and the citizenry in general are included in decision-making processes.

#### b. The Environmental Agenda

Some patterns related to the principles mentioned above emerge from the environmental management strategy that has been developed over the past few years. They refer to a set of coherent approaches that guide the management of renewable natural resources, pollution control programs and actions, and the protection of the urban environment. They can be summarized as follows:

- § Prioritizing tasks
- § Assigning real costs to the use of public goods
- § Minimizing social costs
- § Using market instruments
- § Maintaining the State’s role in the conservation of the environmental heritage
- § Respecting the right to property

- § Envisioning environmental quality as a comparative advantage
- § Promoting cooperation between the public and private sectors

These points support the establishment of environmental priorities. From this perspective, the approach that has been used over the past few years could be summarized in four priority areas: i) public health, ii) defining limits to sustainable resource use, iii) equality for all people in regard to environmental quality objectives, and iv) State intervention when environmental quality diminishes in an extreme manner.

This series of aspects and general approaches allows for the creation of an environmental agenda whose basic pillars include environmental legislation that can be applied with adequate tools and an environmental institutional structure that is capable of responding to the challenges presented by the new international and local requirements in this area. In addition, parameters for supporting the fulfillment of these goals, which can be considered to be of intermediate reach, have been established, including:

- § **Institutional capacity building** focused on addressing the challenges presented, resolving the most urgent problems and managing the gradual process of inserting the issue of the environment in varied activities, sectors and regions. It is important to keep in mind that in order to be effective, environmental topics must be addressed from a multi-sector perspective. The environmental institutional structure is based on two basic principles in this respect: recognition of the environmental attributes of different ministries and public services, involving them in environmental issues within their purview; and a capacity for coordination within the executive branch.
- § **The creation of instruments** that can be used to efficiently manage environmental problems and ensure adequate protection of natural resources. Numerous instruments or tools have been created to this end, including the environmental impact assessment system, environmental quality standards, resource management plans, pollution control plans, etc. The goal is to use all of these to produce an effective tool for meeting the other goals.
- § **Improvement of management and protection of natural resources**, particularly the exploitation of fishing resources and sustainability of forestry resources. The goal is for these both sectors to experience significant growth in exports.
- § **Protection of biodiversity**, which includes the large number of species used as sources of genetic improvement for varieties that are used in agriculture, human and animal nutrition, the production of ornamental flowers, and chemicals for industrial or medicinal purposes. Biodiversity also forms part of the country's basic renewable natural resources, and is to a great extent the basis of the productive forestry, agricultural, fishing, tourist and recreational sectors. It also includes Chile's wealth of important materials for the production of ecosystem- and flora and fauna-related components.

- § **Control and reduction of air, water and solid waste pollution, particularly in the Metropolitan Region.** This problem is the result of transportation sector activities and stationary sources and is observed to a lesser extent in urban centers such as Concepción, Temuco, Talcahuano and Valparaíso. Special attention has also been paid to controlling air pollution from stationary sources in the mining and industrial sectors.
- § **Prevention of negative environmental effects derived from new investment projects** as one of the priority objectives to be introduced in Environmental Impact Assessments (EIAs) in decisions regarding authorization of new public and private investment projects.
- § **Active participation in global efforts to reduce air, water and soil pollution and to protect renewable natural resources,** specifically through commitments made through international agreements, treaties, and actions derived from the same.
- § **Protection of the urban habitat,** which is of special importance in overcoming poverty and the search for settlement practices in keeping with real improvements in quality of life. In this context the policy approaches outlined below have been identified from the document that is being prepared for the United Nations Conference on Human Settlements, Habitat II. These principles are related to: i) access to decent housing and environment as a necessity that cannot be postponed given that it is an essential factor in overcoming poverty; ii) comprehensive land use planning and urban development as essential factors for achieving sustainable urban settlements; iii) management of sustainable human settlements in which the participation of civil society in the solution of local needs is promoted; and iv) deepening State de-concentration and decentralization processes through the transfer of decision-making faculties and resources to local and regional government levels.

I.1.H. Introduction to Modalities of Negotiation and Tariff Reduction in the FTAs Negotiated

a. Asia Pacific

For years, Chile has been expanding its trade in the Asia Pacific region. For example, Japan is Chile's second trading partner, while China and Korea are among Chile's five or six main destination markets. The FTA concluded with South Korea in February 2003 and entered in force in April 2004, is the first trans-Pacific agreement of its kind, and places Chile in a privileged position to strengthen its economic ties with Pacific Asia and act as a bridge between Asia and South America.

Chile intends to continue expanding its commercial presence in Pacific Asia. It is currently negotiating a Closer Economic Partnership with New Zealand and Singapore, the so-called P3 (Pacific Three) Agreement, and it is holding initiatives with Japanese agencies and with business associations to facilitate reciprocal access of exports.

b. The Americas

During the first half of the 1990's, Chile developed a network of agreements for economic complementarity with many of the Latin American countries, following the Latin American Integration Association. These are agreements negotiated under the Enabling Clause, which regulate only trade in goods and contain limited disciplines. Later Chile negotiated agreements with Canada, Mexico, and four Central American countries: Costa Rica, Nicaragua, Guatemala and El Salvador. These agreements have common disciplines, but market access was negotiated bilaterally.

Chile's most important initiative in the Americas is unquestionably the FTA with the United States, which was concluded at the end of 2002 and entered in force in January 2004. The US is Chile's main trading partner and its main foreign investor. The FTA will make it easier to increase the value added of Chilean exports, and it is expected to help to boost investment and deepen our capital market. It also establishes clear and transparent rules for settling trade disputes. This FTA also shows that a developing country can reach a mutually satisfactory and comprehensive agreement with a developed country, an agreement which does not merely focus on market access, but also attaches importance to institutional matters that contribute to transparency and improved conditions of competition which, over time, will benefit all countries that trade with Chile.

c. Europe

Chile has consolidated its relations with most of Europe. Thus, 1 February 2003 saw the entry into force of the FTA between Chile and the European Union, an agreement which covers not only trade issues, but political and cooperation areas as well. In the political area, the agreement seeks to promote, disseminate and defend democratic values, while in the area of cooperation, it seeks to contribute to the application of the objectives and principles of the Agreement, including, in particular, the following areas: science, technology and information society; culture, education and audiovisual media; and social cooperation. In the economic and trade area, the Agreement seeks progressive and reciprocal liberalization of market access for goods, services and government procurement. At the same time, it establishes disciplines to stimulate the development of trade in areas such as intellectual property, technical standards, sanitary and phytosanitary measures, competition policy and customs procedures. It also introduces a dispute settlement mechanism.

Alongside this deepening of its relations with the EU, in March 2003 Chile signed an FTA with the European Free Trade Association (EFTA), which, at the time this report was being prepared, was before the Chilean Legislature. The Agreement with EFTA is as comprehensive as the agreement with the EU. It regulates trade in goods and services, government procurement, and various trade disciplines, including the reciprocal elimination of anti-dumping duties and a dispute settlement mechanism to resolve any disagreements between the parties.

#### d. Regional Foras and Negotiations

Alongside these bilateral agreements in the three continents, Chile has continued to participate actively in regional bodies. These include, in particular, the Free Trade Area of the Americas (FTAA) and the Asia Pacific Economic Cooperation Forum (APEC). In the framework of APEC, Chile continues to contribute – as established in its Individual Action Plan – to the achievement of the Bogor goals by 2010. Currently Chile is serving as Coordinator of APEC in 2004, and in that capacity, it hopes that the work conducted by APEC will serve as an input in the different areas of negotiation within the WTO. Similarly, Chile has participated actively in the negotiation of the FTAA. For Chile, the FTAA represents an opportunity to negotiate on important subjects such as services, investment and government procurement with its MERCOSUR and Andean Community neighbors – with which, at this point, it has only tariff agreements under the LAIA – which represent important destinations for its investments and supply of services. Chile would also like to have a good common institutional framework for the settlement of any trade disputes.

#### e. Trade and Environment

Chile is an increasingly competitive open economy, with an important foreign trade sector consisting mostly in exports of natural resources from the mining, fishing, fish farming, forestry, and agricultural sectors, but with a growing diversification process of them.

Chile considers that a good comprehension of the ties between trade and environment optimizes the benefits of free trade and mitigates possible negative impacts on sustainability. It also considers that a country can ensure growth rates that help to improve the quality of life for its people, and, at the same time, protect the environment.

Evidence of the above, is the experience of the past decade when Chile made environmental progress in a context of high economic growth rates.

The beginning of the second decade of environmental management coincides with the consolidation of the country's exporting vocation while a growing concern for the environment arises in the productive sector. There is awareness about what taking care of the environment signifies to the country's competitiveness of its corporations and products. An example of this, among others, is the growing certification of companies by ISO Standards, the development of national certification seals, Clean Production Agreements, and the development and adoption of corporate social responsibility policies.

Chile has negotiated free trade agreements with most of its trade partners, acknowledging the importance of incorporating the environmental dimension in this process of economic internationalization, with the aim of being able to compete in and expand into international markets. Today markets are not only structured around price and quality, but also around the adherence, inter alia, to environmental standards in production processes. Chile is aware of its duty to achieve economic growth as well as an environmentally sound and healthy country, in order to be acknowledged as a reliable supplier of goods and services in

international markets. At the same time, it is paying attention to possible current or potential environmental trade barriers.

Free trade agreements that include environmental issues can be a good starting point by setting adequate incentives for improved environmental management and limiting risks of eventual trade barriers.

Chile has signed 3 free trade agreements that include the environmental dimension in different ways. These agreements are detailed below.

*i. Canada – Chile Agreement on Environmental Cooperation (CCAEC):*

This Agreement was signed, along with the Free Trade Agreement and the Labor Cooperation Agreement, in 1997, with the aim of generating the conditions necessary for making the economic development of both countries compatible with the protection and improvement of environmental conditions.

The agreement privileges cooperation as a tool, emphasizing the importance of the exchange of experience, knowledge and technology in this area. It allows for ample citizen participation.

Likewise, it reaffirms the right of each Party to establish its own level of environmental protection, policies, and priorities, and, at the same time, it incorporates the commitment to effectively enforce its own environmental laws, to maintain high levels of environmental protection, to make an effort to improve said levels, and to avoid decreasing said protection as a way to attract foreign investment.

*ii. Political, Economic and Cooperation Association Agreement between Chile and the European Union (2003)*

Its Preamble states that the Agreement should be implemented consistently with environmental protection and conservation; to promote sustainable development; and, conserve, protect, and improve the environment by means of efficient environmental management and an adequate participation in the multilateral environmental agreements.

The Chapter on Cooperation emphasizes the need for carrying out social development, economic growth, and environmental protection hand in hand; and its Article 28 states that the purpose of the cooperation is to promote conservation and improvement of the environment, to prevent pollution and the degradation of natural resources and ecosystems, and to promote the rational use of the latter, all in the interest of sustainable development. Its essential points include the relationship between poverty and environment; the environmental impact of economic activities; the development of projects; the exchange of information, technologies and experiences; environmental education; citizen participation; technical assistance; and regional research programs.

iii. *FTA Chile – United States (Chapter 19) and Environmental Cooperation Agreement.*

The Free Trade Agreement seeks an approach directed towards sustainable development. For this reason labor and environmental subjects were incorporated into it, minimizing the risk that they be used as protectionist barriers, but with the commitment to comply with the legislation of these matters, with a spirit of cooperation and with methods to solve controversies according to their specific nature.

The agreement recognizes the importance of strengthening the capacity to protect the environment and promote sustainable development, along with strengthening trade and investment relations between both countries. Thus, it undertakes the commitment to make an effort for liberal trade policies and environmental policies to mutually reinforce each other, and to promote the optimal use of resources in accordance with the goal of sustainable development

It acknowledges the right of each Party to establish its own levels of environmental protection, policies, and priorities in environmental development, as well as, consequently, adopting and modifying, its environmental legislation, and taking into consideration ample citizen participation in the implementation of the agreement.

For the first time, the FTA includes a clause that will help to promote good environmental behavior from the productive sector, hence the Parties promise to encourage corporations that operate in their territory to voluntarily incorporate corporate responsibility principles in their policies.

Along with the FTA, in which 8 environmental cooperation projects are identified in chapter 19, an Environmental Cooperation Agreement was signed that will regulate this type of activities in the future.

## **I.2 Trade**

Chilean global trade, exports plus imports, reached 38.290 million dollars in 2003. The latter not only shows a record high in trade flows, but also is a clear sign that the Chilean external sector is well over the slump it suffered in 1998 and 1999, as a result of the Asian financial crisis. The figure exhibited by external trade in 2003 represent a growth rate that contribute to almost double trade flows over the past ten years (94%) and to an annual average growth of roughly 16%.

TABLE I.3

## CHILE'S FOREIGN TRADE, 1994 - 2003

(millions of dollars and %)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Exports (FOB)	9.198,7	11.604,1	15.394,6	17.017,0	14.753,9	15.914,6	18.425,0	17.668,1	17.676,3	20.627,2
Imports (CIF)	11.149,1	14.903,1	16.810,0	18.111,6	17.087,4	14.022,0	16.842,5	16.233,9	15.753,2	17.663,6
Trade Balance	(1.950,4)	(3.299,0)	(1.415,4)	(1.094,6)	(2.333,5)	1.892,6	1.582,5	1.434,2	1.923,1	2.963,6
Trade Exchange	20.347,8	26.507,2	32.204,6	35.128,6	31.841,3	29.936,6	35.267,5	33.902,0	33.429,5	38.290,8
<i>Growth rate %</i>										
Exports		26,1	32,7	10,5	(13,3)	7,9	15,8	(4,1)	0,0	16,7
Imports		33,7	12,8	7,7	(5,7)	(17,9)	20,1	(3,6)	(3,0)	12,1
Trade Exchange		30,3	21,5	9,1	(9,4)	(6,0)	17,8	(3,9)	(1,4)	14,5

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

Exports in the past ten years have also thrived, showing an average annual growth rate above 16%. This allowed that in 2003 Chilean exports surpassed the twenty billion dollar barrier, thereof reaching a record high of 20.627 million dollars. In the past ten years exports growth has been the norm, except for 1998 where exports suffered a drop of 13%, due to a massive fall in commodity prices as a result of the Asian crisis. Although exports recovered quickly – in 2000 exports had well recovered all the terrain lost in the 1998 crisis – in 2001 there was another fall in exports, this time as a result of the slump in the regional economic environment, mainly caused by the Argentinean crisis, and a slowdown in global demand in the wake of the September 11 events. In 2003 the latter was reversed stimulated by the strong growth of demand from Asian markets, especially China and Japan that raised international commodity prices.

Imports in 2003 reached 17.663 million dollars, which means an annual increase of 12%. The latter doesn't mark a record high given that although imports have evolved satisfactorily since the 1998 Asian crisis, which triggered a slowdown of the Chilean economy and thereof internal demand; imports still have not reach the 1987 record figure of 18.111 million dollars.

Chile's trade balance reached in 2003 a surplus of 2.963 million dollars, thereof becoming the fifth consecutive year that the trade balance has been positive. The latter is not only due to the important raise in exports but also to the due to the huge fall in imports in 1999 and its week recovery in the following years.

#### I.2.A. Composition of Trade in Goods

##### a. Exports

Table I.4 shows the structure of exports according to International Standard of Industrial Classification (ISIC). At a first glance it is obvious that most of Chile's exports are highly concentrated in two sectors: Industry and Mining, which represent close to 90% of all exports in 2003.

**TABLE I.4**  
**CHILE'S EXPORT STRUCTURE ACCORDING TO ISIC, 1994 - 2003**  
(%)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. Agriculture, Fruit, Livestock, Silviculture and Extractive Fishery</b>	<b>10,9</b>	<b>9,3</b>	<b>10,9</b>	<b>9,6</b>	<b>11,4</b>	<b>10,8</b>	<b>8,8</b>	<b>8,8</b>	<b>9,7</b>	<b>9,5</b>
Agriculture, Fruit and Livestock	9,7	8,2	10,0	8,7	11,0	10,3	8,4	8,4	9,4	9,2
Silviculture	1,0	0,9	0,7	0,7	0,2	0,4	0,3	0,2	0,2	0,1
Extractive Fishery	0,2	0,2	0,2	0,2	0,2	0,2	0,1	0,1	0,1	0,1
<b>II. Mining</b>	<b>44,0</b>	<b>48,5</b>	<b>46,1</b>	<b>48,4</b>	<b>41,3</b>	<b>42,9</b>	<b>45,7</b>	<b>43,1</b>	<b>41,5</b>	<b>42,4</b>
Copper	36,0	40,4	38,2	41,0	33,6	36,4	39,8	37,5	35,5	36,2
Other	8,1	8,1	7,9	7,4	7,7	6,5	5,9	5,6	6,0	6,1
<b>III. Industry</b>	<b>44,7</b>	<b>41,8</b>	<b>42,3</b>	<b>41,4</b>	<b>46,8</b>	<b>45,6</b>	<b>44,9</b>	<b>47,4</b>	<b>47,6</b>	<b>47,2</b>
Foodstuff and beverages	18,4	17,3	20,0	18,5	21,1	20,1	17,4	18,9	19,7	19,5
Textiles and apparel	1,6	1,1	1,3	1,3	1,3	1,0	1,0	1,0	0,8	0,7
Forestry and Furniture	5,0	4,5	4,7	4,9	5,0	5,8	5,1	5,7	6,6	6,2
Cellulose, paper and by-products	7,9	9,9	6,2	5,7	6,5	6,6	7,8	6,7	6,3	6,0
Processed and unprocessed chemicals	6,3	5,0	5,0	6,0	6,4	6,1	8,1	9,5	8,9	10,2
Glass, clay and porcelain products	0,2	0,2	0,2	0,2	0,3	0,3	0,3	0,3	0,3	0,3
Basic steel and iron industry	1,4	1,3	1,3	1,2	1,5	1,5	1,5	1,5	1,5	1,6
Metal products, machinery and equipment	3,5	2,4	3,4	3,4	4,5	4,2	3,6	3,7	3,4	2,6
Non specified manufactures	0,3	0,2	0,2	0,1	0,2	0,1	0,1	0,1	0,1	0,1
<b>IV. Others</b>	<b>0,4</b>	<b>0,3</b>	<b>0,7</b>	<b>0,6</b>	<b>0,5</b>	<b>0,6</b>	<b>0,6</b>	<b>0,8</b>	<b>1,2</b>	<b>1,0</b>
<b>V. Total Exports</b>	<b>100,0</b>									

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

*i. Agriculture, Forestry and Extractive Fishery*

In 2003, 9.5% of Chilean exports came from this sector, scoring a currency inflow of 1.955 million dollars. Although this sector may appear to be relatively small compared to the industrial and mining sectors, it is of no lesser importance to Chile's economic activity. The average annual rate of growth over the last 10 years has been 5.4%, and has accelerated in the past years stimulated by an increase of Asian and European markets.

Exports show a very high concentration in agricultural goods, representing 97% of all exports. Concentration that has grown in the last two years, given the reduction in exports in the other sub-sectors. This is not surprising, especially considering that around 84% of this sub sector are fruit exports.

**TABLE I.5**  
**AGRICULTURE, FRUIT AND LIVESTOCK EXPORTS, 1994 -2003**  
*(millions of dollars FOB and %)*

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>Agriculture, Fruit, Livestock, Silviculture and Extractive Fishery</b>	<b>1.272,2</b>	<b>1.531,9</b>	<b>1.672,5</b>	<b>1.635,0</b>	<b>1.682,2</b>	<b>1.721,4</b>	<b>1.619,8</b>	<b>1.551,4</b>	<b>1.707,7</b>	<b>1.955,2</b>
Agriculture, Fruit and Livestock	1.131,4	1.355,6	1.532,3	1.488,8	1.620,2	1.633,5	1.541,6	1.485,2	1.655,9	1.901,2
Silviculture	117,4	147,7	111,1	116,4	31,7	57,7	51,7	39,9	28,0	26,8
Extractive Fishery	23,5	28,6	29,0	29,8	30,4	30,2	26,4	26,3	23,8	27,2
<i>structure</i>										
<b>Agriculture, Fruit, Livestock, Silviculture and Extractive Fishery</b>	<b>100,0</b>									
Agriculture, Fruit and Livestock	88,9	88,5	91,6	91,1	96,3	94,9	95,2	95,7	97,0	97,2
Silviculture	9,2	9,6	6,6	7,1	1,9	3,4	3,2	2,6	1,6	1,4
Extractive Fishery	1,8	1,9	1,7	1,8	1,8	1,8	1,6	1,7	1,4	1,4
<i>Growth</i>										
<b>Agriculture, Fruit, Livestock, Silviculture and Extractive Fishery</b>		<b>20,4</b>	<b>9,2</b>	<b>(2,2)</b>	<b>2,9</b>	<b>2,3</b>	<b>(5,9)</b>	<b>(4,2)</b>	<b>10,1</b>	<b>14,5</b>
Agriculture, Fruit and Livestock		19,8	13,0	(2,8)	8,8	0,8	(5,6)	(3,7)	11,5	14,8
Silviculture		25,9	(24,8)	4,7	(72,8)	82,3	(10,4)	(22,9)	(29,7)	(4,3)
Extractive Fishery		21,5	1,6	2,7	1,9	(0,5)	(12,6)	(0,6)	(9,4)	14,1

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

ii. *Mining*

In 2003, mining exports amounted to 8.742 million dollars representing 42% of all exports. It was also the sector that experienced the highest rate of growth, 19%, favored by a greater international demand for these products in the second half of the year.

**TABLE I.6**  
**MINING EXPORTS, 1994 -2003**  
*(millions of dollars FOB and %)*

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>Mining</b>	<b>5.128,3</b>	<b>7.982,1</b>	<b>7.101,5</b>	<b>8.240,5</b>	<b>6.094,0</b>	<b>6.831,5</b>	<b>8.412,9</b>	<b>7.610,8</b>	<b>7.342,4</b>	<b>8.742,2</b>
Copper	4.190,0	6.645,0	5.881,3	6.975,1	4.964,2	5.793,0	7.332,2	6.621,4	6.281,7	7.474,7
Other	938,3	1.337,1	1.220,3	1.265,4	1.129,8	1.038,5	1.080,6	989,4	1.060,8	1.267,5
<i>structure</i>										
<b>Mining</b>	<b>100,0</b>									
Copper	81,7	83,2	82,8	84,6	81,5	84,8	87,2	87,0	85,6	85,5
Other	18,3	16,8	17,2	15,4	18,5	15,2	12,8	13,0	14,4	14,5
<i>Growth</i>										
<b>Mining</b>		<b>55,6</b>	<b>(11,0)</b>	<b>16,0</b>	<b>(26,0)</b>	<b>12,1</b>	<b>23,1</b>	<b>(9,5)</b>	<b>(3,5)</b>	<b>19,1</b>
Copper		58,6	(11,5)	18,6	(28,8)	16,7	26,6	(9,7)	(5,1)	19,0
Other		42,5	(8,7)	3,7	(10,7)	(8,1)	4,1	(8,4)	7,2	19,5

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

This sector has been one of the most dynamic Chilean export sectors, as well as the most volatile. This volatility is explained by the composition of this sector, which is made mostly of commodities, and thus very sensitive to international price fluctuations.

Copper based exports account for 85% of all mining exports - although 1.2 billion dollars worth of exports coming from the rest of the sector is all but minor. Although Chile has been a traditional copper exporter, given the abundant endowment of this mineral and its relatively low extraction costs, its importance has grown smaller with time, especially considering that in 1960 copper represented almost 70% of all exports and today it represents only half of that. The latter doesn't necessarily imply that the amount of copper exports have diminished, on the contrary in the last ten years exports have grown in almost 80%, but other sectors such as industrial exports have grown at a much greater pace.

TABLE I.7

## INDUSTRIAL EXPORTS, 1999 - 2003

(millions of dollars FOB and %)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>Industry</b>	5.202,6	6.885,7	6.510,8	7.047,7	6.898,7	7.264,6	8.273,1	8.372,7	8.418,4	9.731,9
Foodstuff and beverages	2.144,7	2.851,3	3.071,7	3.152,7	3.111,0	3.197,9	3.214,8	3.340,5	3.477,0	4.020,8
Textiles and apparel	180,7	182,9	198,8	226,4	185,5	163,6	180,7	175,5	142,5	149,9
Forestry and Furniture	581,6	734,1	729,3	837,7	731,4	917,8	935,0	1.013,0	1.164,6	1.272,7
Cellulose, paper and by-products	921,4	1.629,3	952,4	965,7	961,6	1.044,6	1.441,0	1.183,1	1.116,1	1.234,7
Processed and unprocessed chemicals	738,6	822,7	772,2	1.014,0	949,5	965,1	1.494,7	1.672,5	1.575,3	2.108,6
Glass, clay and porcelain products	24,7	28,4	33,0	41,9	49,1	54,5	49,4	52,4	50,7	63,6
Basic steel and iron industry	163,9	221,0	198,3	200,1	224,8	235,0	282,0	258,0	271,9	329,2
Metal products, machinery and equipment	413,0	389,0	524,7	586,8	658,4	662,9	660,1	653,0	593,9	535,4
Non specified manufactures	34,0	26,9	30,4	22,6	27,4	23,1	15,5	24,7	26,3	16,9
	<i>structure</i>									
<b>Industry</b>	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0
Foodstuff and beverages	41,2	41,4	47,2	44,7	45,1	44,0	38,9	39,9	41,3	41,3
Textiles and apparel	3,5	2,7	3,1	3,2	2,7	2,3	2,2	2,1	1,7	1,5
Forestry and Furniture	11,2	10,7	11,2	11,9	10,6	12,6	11,3	12,1	13,8	13,1
Cellulose, paper and by-products	17,7	23,7	14,6	13,7	13,9	14,4	17,4	14,1	13,3	12,7
Processed and unprocessed chemicals	14,2	11,9	11,9	14,4	13,8	13,3	18,1	20,0	18,7	21,7
Glass, clay and porcelain products	0,5	0,4	0,5	0,6	0,7	0,8	0,6	0,6	0,6	0,7
Basic steel and iron industry	3,2	3,2	3,0	2,8	3,3	3,2	3,4	3,1	3,2	3,4
Metal products, machinery and equipment	7,9	5,6	8,1	8,3	9,5	9,1	8,0	7,8	7,1	5,5
Non specified manufactures	0,7	0,4	0,5	0,3		0,3	0,2	0,3	0,3	0,2
	<i>Growth</i>									
<b>Industry</b>		32,4	(5,4)	8,2	(2,1)	5,3	13,9	1,2	0,5	15,6
Foodstuff and beverages		32,9	7,7	2,6	(1,3)	2,8	0,5	3,9	4,1	15,6
Textiles and apparel		1,3	8,7	13,8	(18,1)	(11,8)	10,5	(2,9)	(18,8)	5,2
Forestry and Furniture		26,2	(0,7)	14,9	(12,7)	25,5	1,9	8,3	15,0	9,3
Cellulose, paper and by-products		76,8	(41,5)	1,4	(0,4)	8,6	37,9	(17,9)	(5,7)	10,6
Processed and unprocessed chemicals		11,4	(6,1)	31,3	(6,4)	1,7	54,9	11,9	(5,8)	33,9
Glass, clay and porcelain products		15,1	16,2	27,1	17,2	11,1	(9,4)	6,0	(3,2)	25,5
Basic steel and iron industry		34,8	(10,3)	0,9	12,4	4,5	20,0	(8,5)	5,4	21,1
Metal products, machinery and equipment		(5,8)	34,9	11,8	12,2	0,7	(0,4)	(1,1)	(9,1)	(9,8)
Non specified manufactures		(20,8)	12,9	(25,6)	21,2	(15,8)	(32,8)	59,2	6,4	(35,8)

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

### iii. Industry

Industrial exports, in 2003, reached 9.731 million dollars thus accounting for 47% of Chilean exports, as well as showing a spectacular growth in sales of 15% compared to the previous year, figure that is well above the average growth rate for the 1994 – 2003 period (8,7%).

The industrial sector has not only been the sector that has shown the most rapid growth in the past ten years (87%), but also the sector that has shown a greater amount of stability, being the only one that has grown constantly for the past five years. This can be explained partly because of the diversity that exists within the sector, where not one single sub-sector concentrates more than 50% of all exports, contrary to what happens in the agricultural and mining sector.

In terms of sub-sectors, foodstuffs represent 41% of all industrial exports, followed by processed chemicals (21%), forestry (13%) and cellulose and paper (12%). This structure differs to the 1994 structure where cellulose and paper came in second, processed chemicals third and forestry fourth. The change in order is due to differences in each sub-sectors growth rate, although none have diminished their exports some have grown faster than others, that is the case of the processed chemical sub-sector that grew in 185% compared to the 34% growth rate shown by the cellulose sub-sector in the same period.

Although the majority of the industrial export sub-sectors have expanded their sales, two sub-sectors have seen their exports reduced. The textile industry has been identified as one of the sectors that have weakened its foreign sales in 17%. Although 2003 meant a surge in its exports, this surge was not enough to compensate the loss suffered in 2002. The main reason for the reduction of sales is the loss of foreign market share due to a greater competition, especially from China and India.

**TABLE I.8**  
**CHILE'S PRINCIPAL EXPORTS PRODUCTS, 2002 - 2003**  
(millions of dollars FOB and %)

HS	Description	Value (FOB)		Structure (%)		Growth (%)
		2002	2003	2002	2003	2003
74031100	Copper cathodes	4.096,1	4.364,8	23,2	21,2	6,6
26030000	Copper minerals and ores	1.735,6	2.461,2	9,8	11,9	41,8
47032100	Cellulose	494,9	578,8	2,8	2,8	16,9
29051100	Methanol	321,3	446,4	1,8	2,2	38,9
44071019	Wood sawn or chipped lengthwise	383,1	427,9	2,2	2,1	11,7
74020010	Unrefined copper	253,1	427,2	1,4	2,1	68,8
160000	Port and airport services	305,1	374,7	1,7	1,8	22,8
3041052	Salmon fillets	298,7	361,0	1,7	1,7	20,9
71081200	Gold	240,7	282,3	1,4	1,4	17,3
26131010	Molybdenum ores and concentrates	193,3	238,6	1,1	1,2	23,5
	<b>Total Principal Products</b>	<b>10.680,3</b>	<b>12.580,2</b>	<b>60,4</b>	<b>61,0</b>	<b>17,8</b>
	Others	6.996,1	8.047,0	39,6	39,0	15,0
	<b>Total Exports</b>	<b>17.676,3</b>	<b>20.627,2</b>	<b>100,0</b>	<b>100,0</b>	<b>16,7</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

#### iv. *Products*

In 2003 Chile exported 5.226 different types of goods from 6.435 different companies. This contrast favorably with the 1994 scenario where only 3.615 products were exported through 5.844 companies.

Table I.8 shows the top ten products that Chile exports to the world, these ten products, which represent only represent 0.4% of the total number of products that are actually exported, account for over almost half (48%) of the total value of exports. This reveals that although exports are very divers in number, there is still a high concentration in a small amount of products. Thus implying that the Chilean export sector is still very vulnerable towards external shocks such as sharp changes in international commodity prices.

## b. Imports

Imports, according to types of goods, are basically concentrated in intermediate goods, in other words goods that serve as inputs in the production of final goods, be it for internal consumption or export markets. Although traditionally intermediate goods have accounted for at least half of all imports, in 2003 these types of imports reached a record high, not only in value but also in their concentration. The latter is not surprising if we consider that 30% of all intermediate imports are fossil fuels or fossil fuel based products, which in the past two years have seen international prices above average.

**TABLE I.9**  
**CHILE'S IMPORTS ACCORDING TO TYPE OF GOOD, 1994 -2003**  
*(millions of dollars CIF)*

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. Consumer Goods</b>	1.820,4	2.638,0	3.073,0	3.392,7	3.173,7	2.630,8	3.118,0	3.016,8	2.946,8	3.230,7
<b>II. Intermediate Goods</b>	6.138,4	8.173,7	9.085,5	9.552,3	9.121,3	8.254,9	10.186,1	9.732,1	9.421,0	10.849,1
Petroleum	747,9	905,7	1.158,8	1.131,2	845,2	1.099,9	1.993,7	1.726,8	1.615,1	2.130,5
Other fuels and Lubricants	380,5	466,6	726,4	723,8	696,5	793,9	1.045,1	993,9	1.003,9	1.191,9
<b>III. Capital Goods</b>	3.190,4	4.091,4	4.651,6	5.166,5	4.792,4	3.136,4	3.538,5	3.484,9	3.385,4	3.583,8
<b>IV. Total Imports</b>	11.149,1	14.903,1	16.810,0	18.111,6	17.087,4	14.022,0	16.842,5	16.233,9	15.753,2	17.663,6

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

Capital good imports come in at a far second, representing a fifth of all imports (20%) in 2003. This is an important reduction in participation considering that in 1994 this type of imports represented almost 29% of total purchases. Although in the following years imports grew, this growth was by all means less that shown by the other types of goods. In 1999, although there where reductions across the board in imports, the capital goods sector was the most hurt, and since then has shown weak signs of recovery until 2003, although the current figure has far to compensate the 1999 fall, basically due to high costs of this type of products and the relative stagnation of domestic investment in capital goods.

Regarding consumer goods purchases, this category was also heavily impacted by the drop in internal demand but has recovered satisfactorily, reaching in 2003 imports levels close to the record high of 3.3 billion dollars of 1997.

**TABLE I.10**  
**CHILE'S IMPORT STRUCTURE ACCORDING TO TYPE OF GOOD, 1994 - 2003**  
 (%)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. Consumer Goods</b>	16,3	17,7	18,3	18,7	18,6	18,8	18,5	18,6	18,7	18,3
<b>II. Intermediate Goods</b>	55,1	54,8	54,0	52,7	53,4	58,9	60,5	59,9	59,8	61,4
Petroleum	6,7	6,1	6,9	6,2	4,9	7,8	11,8	10,6	10,3	12,1
Other fuels and Lubricants	3,4	3,1	4,3	4,0	4,1	5,7	6,2	6,1	6,4	6,7
<b>III. Capital Goods</b>	28,6	27,5	27,7	28,5	28,0	22,4	21,0	21,5	21,5	20,3
<b>IV. Total Imports</b>	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

Contrary to exports, imports show a lesser degree of concentration in terms of products. Table IX shows the top 10 products out of a total of 6.666 products imported by Chile in 2004. These 10 products, which represent 0.4% of the total number of imported products, account for 22% of total import value.

**TABLE I.11**  
**CHILE'S PRINCIPAL IMPORT PRODUCTS, 2002 - 2003**  
 (millions of dollars FOB and %)

HS	Description	Value (FOB)		Structure (%)		Growth (%)
		2002	2003	2002	2003	2003
27090020	Crude oils with API degrees above or equal to 25	1.354,0	1.497,3	8,6	8,5	10,6
27090010	Crude oils with API degrees below 25	261,0	633,2	1,7	3,6	142,6
87032391	Automobiles for tourism with cylinder > 1500 cc and < 1500cc	323,2	419,0	2,1	2,4	29,6
27112100	Natural gas	311,4	378,8	2,0	2,1	21,6
85252030	Cellular phones	233,4	255,0	1,5	1,4	9,3
84391000	Machinery for the fab of cellulose	16,3	201,9	0,1	1,1	1.136,6
27101940	Gas oils and diesel oils	138,8	187,4	0,9	1,1	35,0
30049010	Medicaments for human consumption	133,2	150,1	0,8	0,8	12,7
87032291	Automobiles for tourism with cylinder < 1500 cc	92,5	136,9	0,6	0,8	48,1
27111200	Liquid propane	105,7	133,3	0,7	0,8	26,2
		-	-			
	<b>Total Principal Products</b>	<b>2.969,5</b>	<b>3.992,9</b>	<b>18,8</b>	<b>22,6</b>	<b>34,5</b>
	Others	12.783,7	13.670,7	81,2	77,4	6,9
	<b>Total Imports</b>	<b>15.753,2</b>	<b>17.663,6</b>	<b>100,0</b>	<b>100,0</b>	<b>12,1</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

## I.2.B. Origin and Destination of Trade in Goods

### a. Exports

In 2003, Chile exported products to 165 different markets. Although this might seem as very divers spectrum of export markets, only 15 of these 165 markets concentrate 79% of total exports. In the same year, the United States, Japan and China were the main export markets for Chilean goods, accounting for 39% of all exports.

**TABLE I.12**  
**CHILEAN EXPORTS ACCORDING TO MARKET DESTINATION**  
**1994 - 2003**

*(millions of dollars FOB and %)*

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
United States	2.011,8	2.373,8	2.554,3	2.710,0	2.610,0	3.087,5	3.183,7	3.351,7	3.664,7	3.705,7
Japan	1.976,5	2.906,1	2.495,5	2.676,3	1.956,4	2.276,3	2.548,5	2.144,1	1.946,7	2.287,3
Brazil	604,7	1.056,7	934,3	955,6	778,9	687,6	961,6	852,6	686,2	839,6
South Korea	583,7	896,7	863,3	987,6	384,7	683,7	806,3	563,2	710,5	1.023,4
China Taipei	538,3	703,5	629,1	784,9	524,5	509,6	610,7	356,8	531,3	594,2
Great Britain	522,5	1.075,6	886,3	1.061,8	1.161,1	1.085,2	1.075,9	1.232,0	808,7	714,9
France	403,9	508,3	392,8	458,0	443,8	495,4	633,1	610,9	640,2	743,4
Italy	358,7	608,8	475,3	499,4	668,5	636,7	825,5	812,5	862,8	924,2
Holland	345,5	438,2	398,2	423,3	432,7	511,1	452,7	545,1	543,2	811,7
Peru	329,3	438,2	321,3	347,6	352,9	354,1	439,2	479,1	465,2	426,5
Spain	219,0	319,5	281,9	345,1	274,9	328,1	386,2	345,2	398,2	491,6
Mexico	212,1	132,6	146,6	376,4	488,4	622,8	818,1	830,6	912,4	926,9
P.R.China	133,3	287,9	354,1	433,4	459,7	359,1	907,2	1.021,8	1.240,1	1.865,4
Canada	70,2	96,0	139,5	131,2	143,4	173,5	243,7	265,6	263,7	415,0
Germany	41,9	759,6	742,0	744,8	537,9	555,6	457,8	528,2	428,6	601,6
<b>I. Sub-Total</b>	<b>8.351,3</b>	<b>12.601,5</b>	<b>11.614,4</b>	<b>12.935,4</b>	<b>11.218,1</b>	<b>12.366,2</b>	<b>14.350,4</b>	<b>13.939,2</b>	<b>14.102,7</b>	<b>16.371,5</b>
Others	3.293,4	3.852,1	3.780,3	4.081,6	3.535,8	3.548,5		3.728,8	3.573,6	4.255,7
<b>II. Total Exports</b>	<b>11.644,7</b>	<b>16.453,6</b>	<b>15.394,6</b>	<b>17.017,0</b>	<b>14.753,9</b>	<b>15.914,6</b>	<b>18.425,0</b>	<b>17.668,1</b>	<b>17.676,3</b>	<b>20.627,2</b>
<b>I. Over II.</b>	<b>71,7%</b>	<b>76,6%</b>	<b>75,4%</b>	<b>76,0%</b>	<b>76,0%</b>	<b>77,7%</b>	<b>77,9%</b>	<b>78,9%</b>	<b>79,8%</b>	<b>79,4%</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

The latter is outstanding sine in the 90's China was, on average, in the bottom half of the top ten destinations, furthermore, in 1994 China was the thirteenth largest buyer of Chilean products, behind Mexico. The latter shows the huge expansion of exports to the Chinese market, growth that has exceeded in six times that shown by all other markets on aggregate.

In terms of geography, it is apparent that the Americas is not only the most important destination for Chilean goods, but also the most stable one, showing a constant annual growth rate except for 1998 and 2002, when the negative regional impact of the Asian crisis and the decline of sales to Latin America due to regional economic turbulence in Argentina and Brazil, that the growth of exports to North America failed to compensate.

Asia has traditionally occupied the second place among export markets; shipments over the second half of the decade, however, declined substantially due to heavy falls in demand and commodity prices, seeing a certain recovery in 2000 and a defiant rebound in 2003, fueled by higher demands from China, Japan and South Korea.

**TABLE I.13**  
**CHILEAN EXPORTS ACCORDING TO GEOGRAPHIC ZONE**  
**1994 - 2003**

(millions of dollars FOB and %)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Africa	104,2	133,0	122,8	109,0	67,4	52,1	81,6	83,3	71,6	101,3
America	4.527,3	5.565,4	5.741,3	6.345,6	6.229,5	6.681,7	7.427,8	7.613,2	7.488,2	8.049,9
Asia	3.861,6	5.661,7	5.258,1	5.891,9	3.920,4	4.587,4	5.671,1	4.643,0	5.141,2	6.603,6
Europe	2.945,4	4.840,6	3.996,5	4.374,8	4.309,8	4.352,1	4.888,1	4.963,7	4.577,4	5.360,8
Oceania	55,7	93,8	112,2	89,2	59,9	56,9	64,3	57,4	75,9	128,5
Others	150,5	159,1	163,8	206,4	167,0	184,5	292,1	307,4	322,0	383,2
<b>Total</b>	<b>11.644,7</b>	<b>16.453,6</b>	<b>15.394,6</b>	<b>17.017,0</b>	<b>14.753,9</b>	<b>15.914,6</b>	<b>18.425,0</b>	<b>17.668,1</b>	<b>17.676,3</b>	<b>20.627,2</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

Exports destined for Europe, although with moderate highs and lows, like America, show a greater degree of stability in their performance. Exports are directed mainly to Western Europe. In terms of the markets mainly targeted by Chilean export companies, the following should be highlighted: Great Britain, Spain, the Netherlands, Germany, France and Sweden.

**TABLE I.14**  
**CHILEAN EXPORTS ACCORDING TO TRADE AGREEMENTS**  
**1994 - 2003**

(millions of dollars FOB and %)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Canada	70,2	96,0	139,5	131,2	143,4	173,5	243,7	265,6	263,7	415,0
Central America	37,1	41,3	52,3	67,4	71,7	94,8	107,0	149,0	181,2	272,9
Andean Community	774,1	1.083,6	1.009,4	1.117,1	1.185,3	1.059,8	1.227,9	1.381,6	1.339,5	1.293,2
South Korea	583,7	896,7	863,3	987,6	384,7	683,7	806,3	563,2	710,5	1.023,4
United States	2.011,8	2.373,8	2.554,3	2.710,0	2.610,0	3.087,5	3.183,7	3.351,7	3.664,7	3.705,7
Mercosur	1.352,4	1.774,8	1.759,8	1.860,9	1.631,5	1.520,2	1.709,0	1.517,4	984,3	1.227,3
Mexico	212,1	132,6	146,6	376,4	488,4	622,8	818,1	830,6	912,4	926,9
European Union	2.830,1	4.448,2	3.685,4	4.144,3	4.148,3	4.123,0	4.540,9	4.594,1	4.286,1	4.990,7
<b>I. Sub-Total</b>	<b>7.871,4</b>	<b>10.847,0</b>	<b>10.210,6</b>	<b>11.394,8</b>	<b>10.663,4</b>	<b>11.365,3</b>	<b>12.636,5</b>	<b>12.653,2</b>	<b>12.342,6</b>	<b>13.855,0</b>
Others	3.773,3	5.606,7	5.184,1	5.622,2	4.090,5	4.549,3	5.788,5	5.014,8	5.333,7	6.772,1
<b>II. Total</b>	<b>11.644,7</b>	<b>16.453,6</b>	<b>15.394,6</b>	<b>17.017,0</b>	<b>14.753,9</b>	<b>15.914,6</b>	<b>18.425,0</b>	<b>17.668,1</b>	<b>17.676,3</b>	<b>20.627,2</b>
<b>I. over II.</b>	<b>67,6%</b>	<b>65,9%</b>	<b>66,3%</b>	<b>67,0%</b>	<b>72,3%</b>	<b>71,4%</b>	<b>68,6%</b>	<b>71,6%</b>	<b>69,8%</b>	<b>67,2%</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

Table I.13 shows Chilean exports to all destinations with which Chile has negotiated some form of trade agreement. This is of great importance considering that since the April 1<sup>st</sup> 2004 two thirds of Chilean exports receives some form of tariff preference.

In terms of the results that Chile's trade agreements have had, it can be said that in the case of Mercosur and the Andean Community – the agreements that have been in force for a longer period- although these have not shown a clear positive trend in past years, due to the economic turbulence that has affected the whole region, the importance of these agreements can not be diminished especially if it is taken into account that around 60% of all manufactured export goods go to this region.

The performances of the Mexico and Canada FTAs, without a doubt, have been outstanding, thus being perceived by the Chilean exporters as two of the most successful agreements that Chile has signed.

Although exports to the European Union have shown important growth within the period that the agreement has been in force, it is still too early to come to a substantive conclusion on the performance of this agreement given that it has only been in force a year. But apparently, given the momentum of the current scenario, great prospects can be foreseen.

## b. Imports

**TABLE I.15**  
**CHILEAN IMPORTS ACCORDING TO MARKET ORIGIN**  
**1994 - 2003**  
(millions of dollars FOB and %)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Argentina	954,7	1.384,5	1.634,2	1.837,2	1.900,5	2.021,5	2.876,4	3.063,9	3.064,3	3.776,8
United States	2.637,9	3.792,9	4.109,5	4.331,6	4.025,8	3.022,5	3.338,4	2.888,6	2.568,6	2.576,5
Brazil	999,8	1.194,7	1.065,7	1.243,5	1.092,3	968,3	1.335,2	1.495,3	1.619,4	2.028,4
P.R.China	280,7	390,3	515,0	659,1	753,1	660,1	951,4	1.013,7	1.102,4	1.290,2
Germany	48,3	786,5	728,9	842,7	811,7	626,5	622,1	692,2	738,8	716,9
Japan	1.007,1	1.013,0	949,7	1.054,7	994,6	635,4	710,1	560,6	546,3	636,8
France	362,5	445,9	581,9	502,1	680,5	417,4	447,8	575,3	623,3	595,8
South Korea	333,4	527,4	556,8	588,8	545,2	405,7	535,2	540,0	438,8	540,8
Mexico	263,7	600,6	927,2	1.076,2	849,9	578,8	615,6	532,8	475,4	480,6
Spain	340,8	445,0	530,3	621,1	656,0	406,8	428,0	466,1	417,3	452,9
Peru	94,5	147,4	117,9	118,5	121,4	169,2	265,8	285,6	255,9	421,1
Italy	350,5	508,6	550,7	699,7	680,3	514,8	419,0	436,5	356,1	387,6
Canada	264,8	315,1	408,1	432,5	494,5	407,7	511,9	427,3	321,5	333,1
Finland	71,3	90,3	103,7	140,4	97,8	71,1	88,2	84,3	106,8	252,7
Columbia	118,9	149,9	222,4	201,2	176,0	166,0	206,3	189,3	206,9	203,5
<b>I. Sub-Total</b>	<b>8.128,9</b>	<b>11.792,0</b>	<b>13.002,1</b>	<b>14.349,5</b>	<b>13.879,7</b>	<b>11.071,6</b>	<b>13.351,4</b>	<b>13.251,4</b>	<b>12.841,9</b>	<b>14.693,7</b>
Others	3.020,2	3.111,0	3.807,9	3.762,1	3.207,7	2.950,4		2.982,6	2.911,3	2.970,0
<b>II. Total Exports</b>	<b>11.149,1</b>	<b>14.903,1</b>	<b>16.810,0</b>	<b>18.111,6</b>	<b>17.087,4</b>	<b>14.022,0</b>	<b>16.842,5</b>	<b>16.233,9</b>	<b>15.753,2</b>	<b>17.663,6</b>
<b>I. Over II.</b>	<b>72,9%</b>	<b>79,1%</b>	<b>77,3%</b>	<b>79,2%</b>	<b>81,2%</b>	<b>79,0%</b>	<b>79,3%</b>	<b>81,6%</b>	<b>81,5%</b>	<b>83,2%</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

Traditionally, especially during the nineties, the United States was by far the main supplier of imports to the Chilean economy. This started to change in 2000 when Argentinean goods started to catch up with US imports, overtaking them in 2001 and in the following years has extended the gap between them. The latter is due to a raise in imports of oil-based products,

as a result of investments made by Chilean companies in Argentine oil wells thus insuring the supply of fossil fuels and a significant reduction in transport costs.

**TABLE I.16**  
**CHILEAN IMPORTS ACCORDING TO KEY SUPPLIERS**  
**1994 - 2003**

(millions of dollars FOB and %)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
East Asia	2.170,7	2.692,0	2.878,6	3.116,2	3.030,6	2.330,0	2.886,3	2.786,2	2.707,6	3.141,8
Latin America	2.645,0	3.476,8	3.770,0	4.179,1	3.888,3	3.921,1	5.350,3	5.524,4	5.577,1	6.819,9
North America	3.166,5	4.708,6	5.444,9	5.840,4	5.370,2	4.009,0	4.466,0	3.848,6	3.365,4	3.390,2
European Union	2.396,1	3.155,5	3.537,9	3.957,9	3.850,3	2.848,5	2.880,0	3.064,1	3.023,4	3.260,5
<b>I. Sub-Total</b>	<b>10.378,4</b>	<b>14.032,9</b>	<b>15.631,4</b>	<b>17.093,6</b>	<b>16.139,4</b>	<b>13.108,6</b>	<b>15.582,6</b>	<b>15.223,2</b>	<b>14.673,5</b>	<b>16.612,4</b>
Others	770,8	870,1	1.178,6	1.018,0	948,0	913,4	1.259,9	1.010,7	1.079,6	1.051,3
<b>II. Total</b>	<b>11.149,1</b>	<b>14.903,1</b>	<b>16.810,0</b>	<b>18.111,6</b>	<b>17.087,4</b>	<b>14.022,0</b>	<b>16.842,5</b>	<b>16.233,9</b>	<b>15.753,2</b>	<b>17.663,6</b>
<b>I. over II.</b>	<b>93,1%</b>	<b>94,2%</b>	<b>93,0%</b>	<b>94,4%</b>	<b>94,5%</b>	<b>93,5%</b>	<b>92,5%</b>	<b>93,8%</b>	<b>93,1%</b>	<b>94,0%</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

Like export destinations, imports show a high concentration especially if we consider that the top four suppliers (Argentina, United States, Brazil and China) account for more than half of all imports (54%) and the top fifteen account for 83%.

**TABLE I.17**  
**CHILEAN IMPORTS ACCORDING TO TRADE AGREEMENTS**  
**1994 - 2003**

(millions of dollars FOB and %)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Canada	264,8	315,1	408,1	432,5	494,5	407,7	511,9	427,3	321,5	333,1
Central America	25,2	42,0	41,6	71,1	37,2	33,4	19,3	10,6	14,2	20,7
Andean Community	565,7	757,7	914,2	914,2	720,7	795,3	993,4	808,5	736,2	868,2
South Korea	333,4	527,4	556,8	588,8	545,2	405,7	535,2	540,0	438,8	540,8
United States	2.637,9	3.792,9	4.109,5	4.331,6	4.025,8	3.022,5	3.338,4	2.888,6	2.568,6	2.576,5
Mercosur	2.054,1	2.677,2	2.814,2	3.193,9	3.130,3	3.092,4	4.337,6	4.705,3	4.826,6	5.931,0
Mexico	263,7	600,6	927,2	1.076,2	849,9	578,8	615,6	532,8	475,4	480,6
European Union	2.396,1	3.155,5	3.537,9	3.957,9	3.850,3	2.848,5	2.880,0	3.064,1	3.023,4	3.260,5
<b>I. Sub-Total</b>	<b>8.541,1</b>	<b>11.868,4</b>	<b>13.309,6</b>	<b>14.566,1</b>	<b>13.654,0</b>	<b>11.184,3</b>	<b>13.231,5</b>	<b>12.977,1</b>	<b>12.404,8</b>	<b>14.011,4</b>
Others	2.608,1	3.034,7	3.500,4	3.545,5	3.433,4	2.837,8	3.611,0	3.256,8	3.348,4	3.652,2
<b>II. Total</b>	<b>11.149,1</b>	<b>14.903,1</b>	<b>16.810,0</b>	<b>18.111,6</b>	<b>17.087,4</b>	<b>14.022,0</b>	<b>16.842,5</b>	<b>16.233,9</b>	<b>15.753,2</b>	<b>17.663,6</b>
<b>I. over II.</b>	<b>76,6%</b>	<b>79,6%</b>	<b>79,2%</b>	<b>80,4%</b>	<b>79,9%</b>	<b>79,8%</b>	<b>78,6%</b>	<b>79,9%</b>	<b>78,7%</b>	<b>79,3%</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

It is also interesting to point out that in 2004 almost 80% of all import value will face preferential tariff treatment, meaning that they will pay from zero tariff to less than the actual 6% across the board. Table VI shows imports from all countries or group of countries that Chile has signed trade agreements with that include tariff elimination. It can be seen that

in the 1994 – 2003 period imports from these countries on aggregate grew further more than those imports that come from other countries.

### **I.3. Trade in Services**

In 2002, the service sector contributed 52.7% to GDP, up from 51.7% in 1996.<sup>5</sup> Employment in the sector grew faster than in others; in 2002, 62.8% of the economically active population worked in the services sector, up from 57.9% in 1996. In 2001, Chile's services exports amounted to Ch\$2,342 billion and imports amounted to Ch\$1,884 billion. According to figures provided by the Foreign Investment Committee, annual foreign direct investment in the services sector averaged US\$1,762 million between 1996 and 2002.

As a consequence of Chile's long running privatization policy, state involvement in services is limited. The State retains ownership of BancoEstado, the postal and railway services, and public television. The State also owns major seaports and airports; however, these have been increasingly given in concession to private operators. Involvement of the State in any of the sectors mentioned does not in any way preclude private participation.

Chile has implemented a profound economic reform over the last twenty years. Key aspects of such reform are the significant changes introduced to the laws and regulations that govern the service sector. As a result, transformations have taken place in its economic structure, in the dynamism achieved by productive sectors and in the mechanisms of insertion in the global economy.

The increasing presence of foreign service providers, operating in Chile both in terms of commercial presence in the national market or through other forms of service marketing, is manifest when we observe the manifold services aggressively offered by foreign companies in the Chilean market.

The four principles that regulate service liberalization are the most-favored nation treatment, absence of the requirement of local presence, national treatment and progressive elimination of quantitative non-discriminatory restrictions. These four principles have guided the liberalization of cross-border services in Chile in recent years.

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<sup>5</sup> Following the UN System of National Accounts, the construction, electricity, and water industries are part of the industrial sector.

## II. ECONOMIC RELATIONS BETWEEN CHILE AND CHINA

### II.1. Bilateral Trade in Goods

In 2003, bilateral trade between Chile and China reached a record high of 3.155 million dollars. This places China as Chile's third global trading partner, behind Argentina and the United States, but also above countries like Japan, Brazil and all of the European Union economies. The latter strongly diverge from what was recorded a decade ago, when bilateral trade flows ranked in the fifteenth place. The strong growth in trade between Chile and China is the result of a dynamic evolution in exports and imports, thus generating an increase in bilateral exchange in no less than 662% between 1994 and 2003, surpassing in more than six times the growth of Chile's global trade in the same period (94%)

**TABLE II.1**  
**TRADE BETWEEN CHILE AND CHINA, 1994 - 2003**  
(millions of dollars and %)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. China</b>										
Exports (FOB)	133,3	287,9	354,1	433,4	459,7	359,1	907,2	1.021,8	1240,1	1865,4
Imports (CIF)	280,7	390,3	515,0	659,1	753,1	660,1	951,4	1.013,7	1102,4	1290,2
Trade Balance	(147,4)	(102,4)	(160,9)	(225,7)	(293,4)	(301,0)	(44,1)	8,1	137,7	575,2
Trade Exchange	414,0	678,3	869,1	1.092,5	1.212,8	1.019,1	1.858,6	2.035,4	2342,5	3155,6
<b>II. Global</b>										
Exports (FOB)	9198,7	11604,1	15.394,6	17.017,0	14.753,9	15.914,6	18.425,0	17.668,1	17.676,3	20.627,2
Imports (CIF)	10543,6	11149,1	16.810,0	18.111,6	17.087,4	14.022,0	16.842,5	16.233,9	15.753,2	17.663,6
Trade Balance	(1.344,9)	455,0	(1.415,4)	(1.094,6)	(2.333,5)	1.892,6	1.582,5	1.434,2	1.923,1	2.963,6
Trade Exchange	19.742,3	22.753,2	32.204,6	35.128,6	31.841,3	29.936,6	35.267,5	33.902,0	33.429,5	38.290,8
<b>III. Participation</b>										
Exports	1,4	2,5	2,3	2,5	3,1	2,3	4,9	5,8	7,0	9,0
Imports	2,7	3,5	3,1	3,6	4,4	4,7	5,6	6,2	7,0	7,3
Trade Exchange	2,1	3,0	2,7	3,1	3,8	3,4	5,3	6,0	7,0	8,2

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

The trade balance, exports minus imports, in 2003, also marked a record high with a surplus for Chile of 575 million dollars, sum that is far from the 147 million dollar deficit of 1994. The traditional deficit in favor of Chile dates to 2001 and has increase since then.

As in total trade exchanges, in 2003, the Chinese economy represented the third destination of Chilean exports, accounting for 1.865 million dollars. Between 1994 and 2003 Chilean exports destined to China grew in an accumulated amount of 1.299%, meaning an average of 130% annually, growth that is ten times greater than that shown by total Chilean exports.

Imports coming from China in 2003, reaches a sum of 1.290 million dollars, placing China as the fourth supplier of imported goods to Chile. Although imports from the Asian giant haven't shown the spectacular surges as those in imports, these do not seem to amaze given that between 1994 and 2003 imports reached a growth rate of 360%, fact that is of no minor importance considering that global imports only grew in 124% in the same period.

## II.1.A. Exports

Ten year ago, the People's Republic of China accounted for only 1,4% of Chile's exports, ranking China as the seventeenth external buyer of Chilean products. In 2003, the latter changes given that in the past ten year China has raised its relative importance, reaching a point where it provides close to a tenth of all currency inflows from exports, thus transforming China into the third global destination of Chilean exports, overtaking Japan who has been our traditional second destination.

**TABLE II.2**  
**CHILE'S EXPORTS TO CHINA**  
(millions of dollars and %)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. Exports to China</b>	133,3	287,9	354,1	433,4	459,7	359,1	907,2	1.021,8	1240,1	1865,4
<b>II. Global Exports</b>	9198,7	11604,1	15.394,6	17.017,0	14.753,9	15.914,6	18.425,0	17.668,1	17.676,3	20.627,2
<b>I. Over II.</b>	<b>1,4</b>	<b>2,5</b>	<b>2,3</b>	<b>2,5</b>	<b>3,1</b>	<b>2,3</b>	<b>4,9</b>	<b>5,8</b>	<b>7,0</b>	<b>9,0</b>
	<i>growth rate (%)</i>									
<b>Exports to China</b>		116,0	23,0	22,4	6,1	(21,9)	152,7	12,6	21,4	50,4
<b>Global Exports</b>		26,1	32,7	10,5	(13,3)	7,9	15,8	(4,1)	0,0	16,7

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

Without a doubt the Chinese market has been the most important buyer measured in terms of export growth, between 1994 and 2003 exports grew in no less than 1.299%, averaging annually a rate of 130%, which compares to the 124% growth in global exports in the same period (an average of 16% annually). On the other hand, it is interesting to point out that this increase in imports has also been continuous along the whole period - with the exception of 1999- including 1998, the year that global exports suffered the major decline (13%), due to the effects of the Asian financial crisis.

The excellent results that Chilean exports towards China have shown, not only in the past decade but also the first four years of the present decade, are mainly the result of the robust expansion that the Chinese economy has shown during the past 25 years, process that has intensified in the past ten years. This phase of economic growth, which has been translated in growth rates that average 9% annually, started with the first process of economic reform in 1978. This reform has been mainly based in the attraction of foreign direct investment towards the Chinese export sector.

Although China may represent a huge market with 1.3 billion potential consumers, a fifth of the world population, that fact still remains that of the 1.3 billion inhabitants only a small fraction have a level of income that could appear attractive to capitalists. Therefore, economic growth has been based on manufactures exports taking advantage of comparative advantages given by the abundance of cheap labor and scale economies.

**TABLE II.3**  
**CHILE'S EXPORTS TO CHINA ACCORDING TO ISIC, 1994 - 2003**  
*(millions of dollars FOB)*

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. Agriculture, Fruit, Livestock, Silviculture and Extractive Fishery</b>	<b>0,0</b>	<b>1,9</b>	<b>1,8</b>	<b>3,2</b>	<b>55,0</b>	<b>35,6</b>	<b>20,6</b>	<b>18,3</b>	<b>39,7</b>	<b>20,9</b>
Agriculture, Fruit and Livestock	-	1,8	0,0	0,3	52,6	32,3	17,9	15,6	36,9	16,5
Silviculture	0,0	0,0	-	0,6	0,0	0,0	0,0	0,0	0,0	0,1
Extractive Fishery	-	0,0	1,8	2,3	2,3	3,3	2,7	2,6	2,9	4,2
<b>II. Mining</b>	<b>81,5</b>	<b>189,7</b>	<b>217,7</b>	<b>302,8</b>	<b>234,3</b>	<b>257,0</b>	<b>668,5</b>	<b>631,0</b>	<b>801,7</b>	<b>1.375,1</b>
Copper	70,0	178,8	204,4	291,8	222,0	250,1	659,1	606,8	756,6	1.317,1
Other	11,6	10,9	13,3	11,0	12,3	6,9	9,3	24,2	45,1	58,0
<b>III. Industry</b>	<b>51,8</b>	<b>96,4</b>	<b>134,6</b>	<b>127,3</b>	<b>170,4</b>	<b>66,4</b>	<b>218,2</b>	<b>372,4</b>	<b>398,3</b>	<b>468,1</b>
Foodstuff and beverages	4,8	17,5	57,7	48,9	64,8	46,3	46,0	89,2	135,7	158,0
Textiles and apparel	4,4	4,1	4,5	2,7	2,1	1,7	2,2	1,8	1,0	1,1
Forestry and Furniture	1,4	1,2	0,5	0,5	0,3	1,3	3,0	6,3	11,3	16,0
Cellulose, paper and by-products	35,7	64,7	64,8	59,9	90,9	7,7	140,3	234,4	206,9	214,5
Processed and unprocessed chemicals	5,4	7,7	6,7	12,5	11,3	8,0	24,2	33,3	27,0	51,3
Glass, clay and porcelain products	-	-	-	-	0,2	-	-	-	0,1	0,0
Basic steel and iron industry	0,1	0,2	0,3	1,1	0,7	1,3	2,0	4,9	10,2	27,0
Metal products, machinery and equipment	0,0	1,0	0,1	1,6	0,1	0,2	0,5	2,5	6,2	0,2
Non specified manufactures	-	-	0,0	0,0	0,0	0,0	0,0	0,0	0,1	0,0
<b>IV. Others</b>	<b>0,0</b>	<b>-</b>	<b>-</b>	<b>0,1</b>	<b>0,0</b>	<b>0,0</b>	<b>-</b>	<b>0,1</b>	<b>0,3</b>	<b>1,3</b>
<b>V. Total Exports</b>	<b>133,3</b>	<b>287,9</b>	<b>354,1</b>	<b>433,4</b>	<b>459,7</b>	<b>359,1</b>	<b>907,2</b>	<b>1.021,8</b>	<b>1.240,1</b>	<b>1.865,4</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

A sample of the success of the Chinese economy are the economic results of 2003, where exports reached 438 billion dollars, accounting for 30% of GDP for that year (1.436 billion), with a surplus trade balance of 5.7 billion dollars. Although China's imports have also grown considerably during the same period, this is simply the result of a raise in demand for industrial imports, such as natural resources as well as capital goods, so as to feed its industrial processes. An example is that ten years ago China was a net producer of crude oil, today it is the world's second consumer of this commodity, behind the United States.

In 2003, Chinese, exports reached, for the fourth consecutive time a record high of 1.865 million dollars, representing an increase of 50% compared to the previous year. This strong growth, that outweighs and mainly explains the growth in Chile's total exports (16,7%), is mainly due to a huge growth in sales of copper, commodity that saw a strong raise in price as a result of international demand fueled mainly by the Asian markets.

#### *i. Export Sectors*

Table II.4 allows to appreciate that Chilean exports towards China are concentrated mainly within two sectors (mining and industry), which account for 98,9% of total exports to China. Although the mining sector has clearly been the dominant sector, its importance has been quite variable throughout the decade, due to fluctuations in international prices of these types of products.

**TABLE II.4**  
**STRUCTURE OF CHILE'S EXPORTS TO CHINA ACCORDING TO ISIC, 1994 - 2004**  
 (%)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. Agriculture, Fruit, Livestock,</b>	<b>0,0</b>	<b>0,6</b>	<b>0,5</b>	<b>0,7</b>	<b>12,0</b>	<b>9,9</b>	<b>2,3</b>	<b>1,8</b>	<b>3,2</b>	<b>1,1</b>
<b>Silviculture and Extractive Fishery</b>	-	-	-	-	-	-	-	-	-	-
Agriculture, Fruit and Livestock	-	0,6	0,0	0,1	11,4	9,0	2,0	1,5	3,0	0,9
Silviculture	0,0	0,0	-	0,1	0,0	0,0	0,0	0,0	0,0	0,0
Extractive Fishery	-	0,0	0,5	0,5	0,5	0,9	0,3	0,3	0,2	0,2
<b>II. Mining</b>	<b>61,2</b>	<b>65,9</b>	<b>61,5</b>	<b>69,9</b>	<b>51,0</b>	<b>71,6</b>	<b>73,7</b>	<b>61,8</b>	<b>64,6</b>	<b>73,7</b>
Copper	52,5	62,1	57,7	67,3	48,3	69,7	72,7	59,4	61,0	70,6
Other	8,7	3,8	3,7	2,5	2,7	1,9	1,0	2,4	3,6	3,1
<b>III. Industry</b>	<b>38,8</b>	<b>33,5</b>	<b>38,0</b>	<b>29,4</b>	<b>37,1</b>	<b>18,5</b>	<b>24,1</b>	<b>36,4</b>	<b>32,1</b>	<b>25,1</b>
Foodstuff and beverages	3,6	6,1	16,3	11,3	14,1	12,9	5,1	8,7	10,9	8,5
Textiles and apparel	3,3	1,4	1,3	0,6	0,5	0,5	0,2	0,2	0,1	0,1
Forestry and Furniture	1,1	0,4	0,1	0,1	0,1	0,4	0,3	0,6	0,9	0,9
Cellulose, paper and by-products	26,8	22,5	18,3	13,8	19,8	2,2	15,5	22,9	16,7	11,5
Processed and unprocessed chemicals	4,0	2,7	1,9	2,9	2,5	2,2	2,7	3,3	2,2	2,8
Glass, clay and porcelain products	-	-	-	-	0,0	-	-	-	0,0	0,0
Basic steel and iron industry	0,1	0,1	0,1	0,3	0,2	0,4	0,2	0,5	0,8	1,4
Metal products, machinery and equipment	0,0	0,3	0,0	0,4	0,0	0,0	0,1	0,2	0,5	0,0
Non specified manufactures	-	-	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0
<b>IV. Others</b>	<b>0,0</b>	-	-	<b>0,0</b>	<b>0,0</b>	<b>0,0</b>	-	<b>0,0</b>	<b>0,0</b>	<b>0,1</b>
<b>V. Total Exports</b>	<b>100,0</b>									

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

It is worthwhile to highlight that the sector that has shown a greater growth has been the mining sector (1.587%), where copper exports represent the largest share of the exports for this sector. The latter is a clear example of the growth in the demand of inputs of the Chinese economy due to the growth in GDP based on industrial production. Moreover, it should be noted that this phenomenon has caused some level of distortion in global trade flows provoking strong trade deviations towards China, thus, elevating international commodity prices as well as generating a surge in international transport costs.

In terms of the industrial sector, although it hasn't shown the same levels of growth as the mining sector, there is no question that the growth of this type of exports are not a minor issue given that, in the same period, sales have grown in no less than 800%. Within this sector, the main export products is cellulose, which has shown an important raise in sales since 2000 coinciding with the international increase in the price of commodities. The other type of product that belongs to this sector that has favorably evolved (3.191%) has been fishmeal, good that belongs to the foodstuff industry, sub sector that accounts for 158 million dollars worth of exports.

The latter clearly shows that close to 97% of all of Chilean exports to China can be explained by three types of products: copper, cellulose and fishmeal. Therefore, it is clearly laid out that Chile is a net exporter of inputs to the Chinese economy. This implies that the level of elaboration that Chilean products that are exported to China is extremely low given that the great majority are raw materials.

TABLE II.5

## CHILE'S MAIN EXPORTS TO CHINA, 2002 - 2003

(millions of dollars FOB and %)

HS	Description	Value (CIF)		Structure (%)		Growth (%)
		2002	2003	2002	2003	2003
74031100	Copper cathodes	568,0	923,6	45,8	49,5	62,6
26030000	Copper minerals and ors	184,9	370,1	14,9	19,8	100,1
47032100	Cellulose	118,9	127,3	9,6	6,8	7,0
47031100	Cellulose	51,5	53,0	4,2	2,8	2,9
23012013	Processed fishmeal contain protein superior	32,4	52,8	2,6	2,8	63,2
23012011	Processed fishmeal contain protein inferior	5,0	24,3	0,4	1,3	381,7
26011210	Iron pellets	13,8	21,5	1,1	1,2	55,4
23012012	Fishmeal	52,5	20,3	4,2	1,1	-61,2
47032900	Cellulose from different types of coniferous woods	26,1	19,5	2,1	1,0	-25,4
29051100	Methanol	-	18,5	-	1,0	-
28342100	Potassium Nitrate	10,5	16,8	0,8	0,9	60,4
74020010	Unrefined copper	2,8	14,8	0,2	0,8	431,8
44071019	Other wood sawn or chipped lengthwise	10,5	13,4	0,8	0,7	27,0
26011111	iron ors	13,9	11,9	1,1	0,6	-14,4
22042991	Other red wines	7,4	10,0	0,6	0,5	34,5
48010010	Paper	7,3	9,2	0,6	0,5	25,4
28369100	Lithium carbonate	5,7	9,0	0,5	0,5	58,8
8061030	Fresh grapes	23,1	8,1	1,9	0,4	-64,8
72091800	Steel and iron plates	-	7,5	-	0,4	-
16059090	Other seafood	8,2	7,0	0,7	0,4	-14,9
	<b>Subtotal</b>	<b>1.142,5</b>	<b>1.738,4</b>	<b>92,1</b>	<b>93,2</b>	<b>52,2</b>
	Others	97,6	127,0	7,9	6,8	30,1
	<b>Total Exports</b>	<b>1.240,1</b>	<b>1.865,4</b>	<b>100,0</b>	<b>100,0</b>	<b>50,4</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

*ii. Export products*

Chile, in 2003 exported 258 products to the Chinese market. This figure only represents 5% of the total number of products that Chile exported to the world in the same year. Table V shows the twenty main export products sold to China, as it can be seen, these twenty products, that only account for 8% of the total number of products sold to China, explain 93% of all sales to China.

Also it can be seen that out of the twenty products, only two hold no relation to the mining sector, be it primary or industrial, these are cellulose and fishmeal. This isn't a minor issue taking into consideration that the top twenty listed products, which are all different types of inputs, face very low or even non existent levels of tariffs of non-tariff barriers which are very limited in comparison to other products that Chile exports to other parts of the world, specially those goods that belong to the food sub-sector for human consumption as well as agricultural products.

## II.1.B. Imports

As it has been said before, the Peoples Republic of China is the fourth supplier of imported goods to Chile, registering in 2003 imports of 1.290 million dollars. This represents an important raise of 17% in comparison with the previous year and, at the same time, represents the fourth year in a row that imports have grown from China.

**TABLE II.6**

**CHILE'S IMPORTS FROM CHINA, 1994 - 2003**

(millios of dollars CIF and %)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. Impors from China</b>	280,7	390,3	515,0	659,1	753,1	660,1	951,4	1.013,7	1102,4	1290,2
<b>II. Global Imports</b>	10543,6	11149,1	16.810,0	18.111,6	17.087,4	14.022,0	16.842,5	16.233,9	15.753,2	17.663,6
<b>I. Over II.</b>	<b>2,7</b>	<b>3,5</b>	<b>3,1</b>	<b>3,6</b>	<b>4,4</b>	<b>4,7</b>	<b>5,6</b>	<b>6,2</b>	<b>7,0</b>	<b>7,3</b>
	<i>growth rate (%)</i>									
<b>Imports from China</b>		39,1	32,0	28,0	14,3	(12,4)	44,1	6,5	8,8	17,0
<b>Global Imports</b>		5,7	50,8	7,7	(5,7)	(17,9)	20,1	(3,6)	(3,0)	12,1

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

In terms of the behavior of imports coming from China between 1994 and 2003, these have tended to show continuous levels of growth along the whole period, with the exception of 1999 where an important fall in Chilean internal demand triggered a significant fall in imports across the board including those originating from China. The continuous growth in imports from China contradicts the global tendency that shows successive fall in the amount of imports due to the adjustments in internal demand as a result of the harsh consequences of the international financial crisis of 1997.

**TABLE II.7**

**STRUCTURE OF IMPORTS ACCORDING TO TYPE OF GOOD, 1994 - 2003**

(%)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. Consumer Goods</b>	72,8	72,9	76,7	76,6	75,8	73,6	72,1	70,2	68,0	65,7
<b>II. Intermediate Goods</b>	20,9	22,1	17,8	16,4	17,5	19,4	20,4	21,5	21,9	23,9
Petroleum	-	-	-	-	-	-	-	-	-	-
Other fuels and Lubricants	0,1	0,0	0,0	0,2	0,3	0,7	0,5	1,0	0,2	0,3
<b>III. Capital Goods</b>	6,3	5,0	5,5	7,0	6,7	7,0	7,5	8,4	10,1	10,5
<b>IV. Total Imports</b>	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

## a. Imports of goods

Table II.8 shows the type of goods that are imports from China. It is apparent that the majority of imports are concentrated in good for consumption that account for 66% of total imports originating from China. It's important to note that in this type of product, China accounts for 26% of all imports there for becoming our main provider of consumer goods. This is of no minor importance taking into consideration that in 1994 China only provided a tenth of all consumer product imports.

TABLE II.8

## CHILE'S IMPORTS FROM CHINA ACCORDING TO TYPE OF GOOD, 1993 - 2004

(millions of dollars CIF)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. Consumer Goods</b>	204,4	284,6	394,8	504,6	571,0	485,9	685,9	711,6	749,7	847,3
<b>II. Intermediate Goods</b>	58,6	86,4	91,8	108,1	131,4	127,8	193,8	217,5	241,2	308,0
Petroleum	-	-	-	-	-	-	-	-	-	-
Other fuels and Lubricants	0,2	0,0	0,0	1,2	2,1	4,7	5,0	9,9	1,7	3,9
<b>III. Capital Goods</b>	17,6	19,3	28,4	46,4	50,6	46,4	71,6	84,7	111,5	135,0
<b>IV. Total Imports</b>	280,7	390,3	515,0	659,1	753,1	660,1	951,4	1.013,7	1.102,4	1.290,2

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

The latter, together with the fact that global imports in consumer goods have been stable over the years, imply that there has been a deviation in imports where the Chilean economy prefers to buy goods from China at lower prices than that of other traditional suppliers

In second place, in terms of importance within Chile's import mix, come imports of intermediate goods, in other words those goods that are used in some type of productive process, accounting for 24% of total exports. Finally capital goods imports account for only a tenth of total exports.

In terms of how the import mix has evolved over the 1994 – 2003 period, it can be said that there has been a certain amount of shuffling within the types of goods, where consumer goods have lost relevance to a raise in intermediate and capital good's imports. This is basically explained by an evident change in Chinas supply, which starts to compete head to head with technological products at lower prices thus provoking a deviation of imports from other suppliers like Chinese Taipei or Japan.

**TABLE II.9**  
**IMPORTS FROM CHINA ACCORDING TO ISIC, 1994 - 2003**  
*(millions of dollars CIF)*

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. Agriculture, Fruit, Livestock, Silviculture and Extractive Fishery</b>	<b>0,5</b>	<b>0,5</b>	<b>1,3</b>	<b>1,4</b>	<b>2,6</b>	<b>1,1</b>	<b>1,9</b>	<b>1,4</b>	<b>2,1</b>	<b>2,9</b>
Agriculture, Fruit and Livestock	0,5	0,5	1,3	1,4	2,5	1,1	1,8	1,4	2,1	2,8
Silviculture	-	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,1
Extractive Fishery	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0
<b>II. Mining</b>	<b>0,4</b>	<b>0,6</b>	<b>1,3</b>	<b>0,5</b>	<b>1,2</b>	<b>0,1</b>	<b>2,8</b>	<b>7,0</b>	<b>2,8</b>	<b>4,1</b>
Copper	-	-	-	-	-	-	-	-	-	-
Other	0,4	0,6	1,3	0,5	1,2	0,1	2,8	7,0	2,8	4,1
<b>III. Industry</b>	<b>279,7</b>	<b>388,7</b>	<b>512,4</b>	<b>657,2</b>	<b>749,2</b>	<b>658,6</b>	<b>946,6</b>	<b>1.005,1</b>	<b>1.097,1</b>	<b>1.282,8</b>
Foodstuff and beverages	1,7	1,2	1,1	1,5	1,6	1,7	2,1	2,2	2,6	4,9
Textiles and apparel	122,1	163,5	234,4	275,3	324,6	289,2	397,9	429,6	438,2	480,5
Forestry and Furniture	1,9	2,9	4,8	7,1	7,8	6,9	10,5	11,0	14,7	18,1
Cellulose, paper and by-products	1,3	1,9	1,4	2,8	3,2	3,2	4,6	3,8	3,7	4,5
Processed and unprocessed chemicals	26,0	46,0	56,7	67,5	75,9	72,1	107,0	126,4	143,1	187,6
Glass, clay and porcelain products	6,9	9,3	12,1	12,7	16,9	14,4	22,9	21,5	21,4	25,6
Basic steel and iron industry	0,9	6,4	3,3	3,7	2,7	2,9	4,9	7,2	8,7	7,6
Metal products, machinery and equipment	77,4	103,3	134,9	194,1	215,7	192,7	297,3	315,3	380,6	457,6
Non specified manufactures	41,6	54,2	63,7	92,5	100,9	75,5	99,4	88,1	84,2	96,3
<b>IV. Others</b>	<b>0,0</b>	<b>0,5</b>	<b>0,0</b>	<b>0,0</b>	<b>0,1</b>	<b>0,3</b>	<b>0,2</b>	<b>0,1</b>	<b>0,3</b>	<b>0,4</b>
<b>V. Total Exports</b>	<b>280,7</b>	<b>390,3</b>	<b>515,0</b>	<b>659,1</b>	<b>753,1</b>	<b>660,1</b>	<b>951,4</b>	<b>1.013,7</b>	<b>1.102,4</b>	<b>1.290,2</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

Table II.9 shows imports according to productive sectors according to ISIC. As it can be seen 99,4% of all imports come from the industrial sector and are mainly textiles, Chemical products including plastics and metal products, machinery and equipment.

#### b. Imported products

On the contrary to exports, imports show a higher degree of diversification given that in 2003, Chile imported from China 3.456 different products, which accounts for 52% of the number of products that Chile imports from the world. Table II.10 shows the top twenty products that Chile imports from China, which represent on aggregate only account for 18% of total imports that are of Chinese origin, thereof giving an example of how diversified imports are. It can also be seen that the majority of the products belonging to the top twenty are textiles or technology such as TV's, Chips and cellular phones.

**TABLE II.10**  
**CHILE'S MAIN IMPORTS, 2002 - 2003**

*(millions of dollars CIF and %)*

HS	Description	Value (CIF)		Structure (%)		Growth (%)
		2002	2003	2002	2003	2003
61091011	T-shirts y shirts made from cotton	14,4	17,6	1,3	1,4	22,4
62034291	Long trousers	14,0	15,9	1,3	1,2	14,0
85219000	Other recording apparatus	7,9	15,1	0,7	1,2	90,2
64039992	Other Shoes	16,8	14,9	1,5	1,2	-11,5
85273190	Radio receivers	13,9	13,9	1,3	1,1	-0,0
61103010	Sweaters and jerseys made of polyesters	12,2	12,9	1,1	1,0	5,3
84716031	monitors	13,4	12,7	1,2	1,0	-4,8
95039010	other plastic toys	8,8	12,7	0,8	1,0	44,7
85421000	cards containing integrated circuits	14,4	11,6	1,3	0,9	-19,3
62052010	Cotton shirts for men	10,7	10,9	1,0	0,8	2,7
42031010	Coats and jackets	13,4	10,7	1,2	0,8	-20,2
62046291	Cotton trousers made from cotton	5,9	10,3	0,5	0,8	73,6
64041990	Other shoes with rubber soles	8,2	10,2	0,7	0,8	24,6
64039991	Shoes	10,7	10,0	1,0	0,8	-6,6
61102000	Sweaters, jerseys and pullovers	7,5	9,2	0,7	0,7	22,7
85252030	Cellular phones	6,4	9,2	0,6	0,7	42,7
61103090	Other sweaters and pullovers	8,6	9,1	0,8	0,7	6,5
85273130	Other radio receivers	8,3	9,1	0,8	0,7	8,9
64029991	Other shoes	6,7	8,9	0,6	0,7	31,6
62053011	Polyester fiber shirts	8,0	8,9	0,7	0,7	10,1
	<b>Subtotal</b>	<b>210,3</b>	<b>233,8</b>	<b>19,1</b>	<b>18,1</b>	<b>11,2</b>
	Others	892,1	1.056,3	80,9	81,9	18,4
	<b>Total Imports</b>	<b>1.102,4</b>	<b>1.290,2</b>	<b>100,0</b>	<b>100,0</b>	<b>17,0</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

## II.2. Bilateral Trade in Services

Unfortunately, in this area of the bilateral relation there is no reliable data accounting the bilateral flow of services between the Peoples Republic of China and Chile. Even though there is no record of Chinese trade in services to Chile, we have detected some minor activity of Chilean services in China. In terms of specific services sectors, these are focused in trade such as maritime transport services, insurance and banking, always related to some type of investment.

## II.3. Bilateral Investments

### II.3.A. Chilean Investment in China

Although there are no official statistics on Chilean investment in China, given that there is not yet any official methodology for accounting for this type of investment, some investments by Chilean companies can be identified, mainly concentrated in the service sector, specifically related to maritime transport, trading and insurance.

### II.3.B. Chinese Investment in Chile

Economic relations between Chile and China have traditionally been marked by high levels of transactions in goods, basically products although some services can be detected, while, in comparison, direct investment levels have not been significant. As an example, we may indicate that the aggregate Chinese investment for the period 1974-2003 accounted for only 85 million dollars, less than a month's imports from China, and only represented 0.2% of all foreign direct investment received by Chile in the same time period.

**TABLE II.11**  
**FOREIGN DIRECT INVESTMENT**  
**FROM CHINA, 1974 -2003**  
(millions of dollars)

	1974 - 1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	1974-2003
<b>I. China</b>	41,2	6,5	25,8	1,2	5,7	1,8	1,8	-	-	-	-	<b>84,0</b>
<b>II. World</b>	10.142,5	2.525,0	3.037,7	4.836,2	5.217,8	6.034,4	9.198,4	3.022,5	4.781,8	3.376,5	1.276,4	<b>53.449,0</b>
<b>I. Over II.</b>	<b>0,4</b>	<b>0,3</b>	<b>0,8</b>	<b>0,0</b>	<b>0,1</b>	<b>0,0</b>	<b>0,0</b>	-	-	-	-	<b>0,2</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Foreign Investment Comity

This performance pattern reflects, however, the general pattern of Asian investment both worldwide and in Latin American and the Caribbean, characterized by a strong asymmetry between Asian presence in international trade, on the one hand, and the low profile of direct foreign investment, on the other.

Asian investors in South America have traditionally developed projects aimed at ensuring the quality, continuity and stability of raw material prices. In the case of Chinese investments these clearly depart from this pattern, given that the most important sectors targeted for investment are construction and forestry, concentrating 98% of total investment.

**TABLE II.12**  
**FOREIGN DIRECT INVESTMENT FROM CHINA BY SECTOR, 1974 - 2003**  
*(millions of dollars and %)*

	1974-1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	1974-2003	Structure (%)
Agriculture	0,5	0,0	-	0,0	-	-	-	-	-	-	-	0,6	0,7
Construction	-	-	-	-	-	-	-	-	-	-	-	-	-
Electricity, Gas and Water	-	-	-	-	-	-	-	-	-	-	-	-	-
Industry	-	-	0,4	-	-	-	-	-	-	-	-	0,4	0,4
Mining	-	-	-	-	-	-	-	-	-	-	-	-	-
Fishing	0,3	-	-	-	-	-	-	-	-	-	-	0,3	0,4
Services	25,2	-	19,2	-	0,0	-	-	-	-	-	-	44,4	52,8
Forestry	15,1	6,5	6,2	1,2	5,7	1,8	1,8	-	-	-	-	38,4	45,7
Transport and Telecom	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total</b>	<b>41,2</b>	<b>6,5</b>	<b>25,8</b>	<b>1,2</b>	<b>5,7</b>	<b>1,8</b>	<b>1,8</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>84,0</b>	<b>100,0</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Foreign Investment Comity

### **III TRADE AND INVESTMENT POLICIES AND SYSTEMS**

#### **III.1 Introduction.**

The basic features of the trade policy of Chile and its institutions were presented in preceding chapter, a detailed presentation of its policies and instruments will be further developed in this chapters and its sections.

#### **III. 2. Measures affecting Trade in Goods**

##### **III.2.A. Tariffs**

###### **a. General Tariffs**

As a result of the Uruguay Round, Chile lowered its tariffs from 35 to 25 percent, save for those applicable to dairy products, wheat, wheat flour, sugar and vegetable oils, which were reduced to 31.5 percent. Today, tariffs in Chile stand at 6 percent (as from 1 January 2003), according to a five-year reduction schedule, under Law No. 19,589 of 14 November 1998. Chile has a flat MFN custom tariff of 6% for most products, which represents more than 98% of tariff lines. However, there are some exceptions for sugar, wheat and wheat flour, which are subject to the *price band system* (thus to a specific duty), plus some measures for poultry (from heading 0207), which has a tariff of 25%. On the other hand, there are some products that are duty free, including fire fighting vehicles, helicopters, aircraft, cargo and fishing vessels, books and computers and some of their components.

Chile has lowered its effective tariff rate to 2.9 as of December 2003 through the implementation of recent FTAs and other former trade agreements. In accordance with Chile's approach, in every FTA most of the products have been included in immediate or short run lists. The products subject to special treatment (included in long term lists or not subject to tariff elimination) are in general the same in attention to the sensitiveness of these sectors in Chile. However, there are also products protected just in some or one agreement in attention to the specific sensitiveness with respect productive characteristics of the counterpart. Products that have gotten special treatment in all agreements are sugar, wheat and wheat flour and to a lesser extent dairy products, rice and others.

Imported second-hand goods are subject to the tariffs applicable to new goods, with a 50 percent surcharge, except for some goods such as capital goods and goods subject to the exemptions established in section 0 of the Chilean Customs Tariffs (diplomats, armed forces, charities, and others).

A 10 percent tariff on added value applies to repairs or work done to domestic products abroad.

Chile applies the MFN tariff treatment to WTO member States and also to non-WTO countries subject to such treatment under bilateral agreements, i.e. Russia, Vietnam, Saudi Arabia, Lebanon, etc. The preferential treatment is only accorded to countries with which

Chile has trade agreements. The purpose of such bilateral trade agreements is to reduce tariffs to 0 percent.

Chile applies special tariff treatments to goods imported under Section 0 of the Chilean Customs Tariffs (diplomats, armed forces, gifts to aid organizations, and others), consisting in total or partial tariff exemptions. Most goods included in this Section are duty-free, but others are subject to ad valorem duties of 1, 5, 6, and 8 percent, which in turn apply only when they are less than the duties established in customs tariffs for the same goods. In addition, these duty-free goods are not subject to import prohibitions and other import restrictions.

Chile does not apply tariff quotas, save in cases of reciprocity (Article 88 of the Central Bank Law).

b. Specific Tariffs

Chile imposes specific duties as a result of the application of price bands, which are mechanisms established for purposes of stabilizing domestic prices. Such specific duties apply to cooking oils, sugar, wheat, and, as from 1993, to wheat flour. The price stabilization mechanism works as a variable tax, since the duty levied on these products varies according to their import price. Thus, if the price of the imported product is less than the reference price, a specific duty expressed in US dollars is added to the ad valorem duty in order to put the import price at the same level as the reference price (up to the level of the maximum tariff, set at 31.5 percent). On the other hand, if the import price exceeds the reference price, the effective tariff is reduced.

III.2.B. Non-Tariff Measures

a. Taxes and Duties

Most imports are subject to the 18 percent Value-Added Tax (VAT), which is also applicable to domestic products. VAT is calculated on CIF value plus import duty. Capital goods imported for investment purposes may be VAT exempt when imported under the Chilean Foreign Investment Law (Decree Law No. 600 of 1974), or when the imported goods are not locally manufactured or when such manufacturing is insufficient<sup>6</sup>.

Several products, including different luxury items, alcoholic beverages, gasoline and vehicles are subject to other local taxes.

An airport tax (pursuant to Article 62 of Executive Order No. 172 of the Under-ministry of Aviation, published in the Official Gazette on 10 April 1974) equivalent to 2 percent of the effective duty applies to all air-freighted imported goods, except to Canadian goods, which are exempt from this tax, and Mexican products, pursuant to Articles 3-10 of the relevant Free-Trade Agreement.

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<sup>6</sup> Lists of such goods are prepared by the Department of Foreign Trade of the Ministry of Economy.

A customs clearance tax equivalent to 2 percent of CIF value applies when the goods concerned are duty-free pursuant to Article 190 of Law No. 16,464. This tax does not apply to products originating in countries with which Chile has trade agreements. At present, a bill to repeal this tax (Article 21) has been passed in the first stage of parliamentary approval procedure and should complete such procedure before the year-end.

b. Prohibited Imports

The Central Bank Law provides for the free importation of goods. Nonetheless, there still are some import prohibitions. For example, importation of second-hand vehicles is prohibited on sanitary and environmental grounds, i.e. pursuant to measures established by the authorities to combat air pollution in the main cities. However, such prohibition does not apply to second-hand vehicles imported under section 0 of the Customs Tariffs nor to those who may be imported under total or partial duty exemptions.

Import prohibitions also apply to goods that may offend public morals or affect sanitary and phytosanitary safety. For instance, the importation of fruit infected with fruit fly is prohibited.

Pursuant to the Convention on International Trade in Endangered Species, ratified by Chile, the importation of endangered plants and animals is prohibited. However, these species may be imported with a special permit issued by the National Commission for Scientific and Technological Research.

Chile applies a duty free quota of 60,000 tons. for sugar within the framework of WTO, as a result of the renegotiation of its bound rate of tariff. On the other hand, preferential duty free quotas to several products are being applied within the framework of the FTAs.

c. Others

i. *Price Band System*

This system was modified in 2003, in conformance with the recommendations of the WTO. A new legislative piece introduced reforms for a more predictable, transparent and non discretionary system. Moreover, the new law eliminate edible oils from its application, establishes a new upper and lower borders of the band, and the way these borders are decreasing until 2014.

In relation to the elimination of the price band scheme, the law does not establish a deadline, rather, it establishes that in 2014 the President has to asses the modalities and conditions of application of the system, which could result in its elimination or in its modification.

### III.2.C. Import and Customs Procedures

Generally, the Central Bank should approve an import report prior to the shipment of and payment for goods, but the import authorization may also be obtained from and processed through commercial banks. The import report is mandatory for all imports, save for those

whose value is less than US\$3,000 FOB, regarding which the importer is responsible for the payment. Although it is possible to import goods for a value of less than US\$100,000 without the prior import report approval by the Central Bank, such report should be approved *ex post*.

Imports received via inland freight require the International Waybill/Customs Transit Declaration, which allows goods to be cleared at border customs houses. Otherwise, goods should be transferred to regional customs houses.

Goods imported on a temporary basis are subject to a *bona fide* self-valuation and some customs administrative functions have been transferred to customs agents.

For imports and exports originating in Free Zones there is a "remote clearance" system. Customs procedures are completed electronically through the Information Technology Center, where all information is recorded either directly from the free zone or from a special transmission center. The information required is basically the same as for other types of imports.

#### III.2.D. Measures Affecting Exports

##### a. Export Subsidies

Chile has notified the WTO of three mechanisms containing export subsidy components: i) the simplified system of customs duty refund; ii) the deferred payment system for customs duties, fiscal credits and other tax-related benefits; and iii) the automobile law. National authorities are committed to eliminating or bringing such mechanism in line with the Agreement on Subsidies and Countervailing Measures.<sup>7</sup> Thus, the customs duty refund system is gradually being adjusted to eliminate the subsidy component by the end of 2002. In the second case, the subsidy component was eliminated in late 1998. Finally, regarding the third case, the immediate repeal of its only subsidy component still in effect is established in the above referred to bill<sup>8</sup>.

##### i. *Simplified System of Customs Duty Refund*

Establish under Law No. 18,480 of 1985, this system benefits exporters of minor non-traditional export products. Minor non-traditional export products are those whose FOB value was less than or equal to US\$2,5 million in the biannual period 1983-1984, or US\$5 million in 1990. Products that are inconsistent with the definition of minor non-traditional exports are included in a list comprised of some 200 items, among which are copper, cellulose, fishmeal and fruit, all of which account for nearly 90 percent of Chilean exports.

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<sup>7</sup> WTO documents G/SCM/N/2/CHL y G/SCM/N/2/CHL/Suppl.1, dated 2 May 1995 and 16 October 1995, respectively.

<sup>8</sup> See latest notice given by Chile to the WTO: G/SCM/N/60/CHL, dated 4 July 2000.

At 1 January 1999, two different refund systems were in place. The first, currently in effect, allows exporters to get a refund amounting to 8, 5 or 3 percent of the FOB value of exported goods, relative to their full value. The second system, repealed on 1 January 1999, set forth the same refund rates for national or nationalized supplies intended for the manufacturing, elaboration or production of export goods.

Refunds granted under the simplified system are not equivalent to the duties paid on imported supplies; in practice, their amount may be more or less, thus the alleged subsidy component that has been notified to the WTO.

Law No. 19,589 (Official Gazette of 14 November 1998) established the gradual adjustment of this instrument to the WTO Agreement on Subsidies and Countervailing Duties. The subsidy component therein will be fully eliminated by the end of 2002.

In fact, Law No. 19,589 progressively reduces the refund rate, from the original 10, 5 and 3 percent to a flat 3 percent (current rates are 8, 5 and 3 percent). In addition, as from 1 January 2003, the 3 percent simplified refund will be granted solely to exports incorporating at least 50 percent of imported supplies. Therefore, the refund will reflect the tariff paid on imported components (as the flat 3 percent refund rate will be less than or equal to the 6 percent tariff paid for the 50 percent or more of imported supplies).

ii. *Deferred Payment of Customs Duties, Fiscal Credits and Other Tax-Related Benefits*

These benefits were established by Law No. 18,634 of 1987, and are intended for importers of capital goods and first buyers of capital goods manufactured in Chile. Among capital goods that may claim these benefits are machinery, vehicles, equipment and tools directly or indirectly used to produce goods or services or in their marketing, with a minimum useful life of three years. The value of such goods may not be less than US\$3,602.33 or, in the case of vehicles, US\$4,563.33.<sup>9</sup> This value is updated on an annual basis.

Prior to November 1998, exporters of goods and services using capital goods purchased under the deferred payment or fiscal credit system could write off refunds and even get a debt remission. Write-offs were fixed in terms of the exports results exhibited by the concerned company, calculated according to the total exports - total sales ratio of the two-year period preceding the debt due date.<sup>10</sup>

It should be noted that deferred payment of tariffs and fiscal credits does not constitute a subsidy in itself. A subsidy did arise when the purchaser of capital goods had its fiscal debt partially or totally remitted according to its export results. However, Law No. 19,589 provided for the elimination of this subsidy, as from its effective date (14 November 1998).

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<sup>9</sup> Vehicles used for the sole purpose of inland transport may claim these benefits, provided they have a load capacity in excess of 2,000 kg or are fitted with at least 15 seats (including the driver's seat).

<sup>10</sup> Law No. 18,634, Official Gazette of 5 August 1987.

*iii. Automobile Law*

Law No. 18,483 of 1985 allows the national automobile industry to claim a partial or total reduction of import duties on fully disassembled parts (CKDs) or partially disassembled parts (SKDs). When said manufacturing companies export national parts, according to a program approved by the Automobile Commission, imports of CKDs and SKDs are fully or partially exempt of the ad valorem duties, which correspond to the general customs duties to be paid for foreign goods.<sup>11</sup> This benefit applies to imports up to a value equivalent to that of nationally manufactured parts exported within a 12-month period. In total, this benefit is limited to 35 percent of the customs valuation of the finished vehicle.

It should be noted that the automobile law included benefits other than duty exemptions, by means of fiscal credits for national incorporation and for export incentives. However, both benefits expired on 31 December 1998.

As regards the customs duty exemption, its immediate repeal is included in a bill presently being discussed by Congress, which brings several aspects of the Chilean legislation in line with undertakings arising from the WTO agreement.

*iv. Customs and Fiscal Allowances*

Chilean exporters may get a rebate for the Value Added Tax applicable to all purchases of national and imported goods and services used in productive processes.

Law No. 18,708 provides for a duty refund system that benefits all exporters who have used imported supplies. Exporter are refunded import duties paid on all supplies incorporated in or used during the productive process. This system does not allow the refund of surcharges or countervailing duties. This mechanism does not either involve a subsidy component, unlike the simplified duty refund system mentioned above under "Export Subsidies".

*v. Support to Exports*

Export activities have no access to prime rates. However, the Production Development Corporation (CORFO), through Chilean and foreign commercial banks, provides interest rate support to importers of non-traditional Chilean exports (all exports, except for copper, iron, cellulose, fishmeal and fruit). CORFO provides the necessary funds for those credit lines through private financial institutions and does not compete against the private sector in connection with fund provisions.

There are no preferential insurance mechanisms for exports.

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<sup>11</sup> This is set at 9 percent for the year 2000, and will be reduced in 1 percent annually until the year 2003, when it will remain at 6 percent. This ad valorem duty was set at 11 percent until the end of 1998 (equivalent to the customs tariff), and was later amended together with the scheduled tariff reduction set forth in Law No. 19,589, Official Gazette of 14 November 1998.

The Guarantee Fund for Non-Traditional Exporters, established in 1987, secures up to 50 percent of loans, both public and private.

### III.2.E. Technical Barriers to Trade

#### a. Basic Principles

Consistent with Chile's international trade policy, the elaboration, adoption and application of standards, technical regulations and conformity assessment procedures is based on non-interference with the free operation of markets, non discriminatory treatment between domestic and foreign products and the use of international standards as a basis for standards and technical regulations.

#### b. Standards

The Chilean institution in charge of the development of standards is the National Standardization Institute (Instituto Nacional de Normalización, INN). The INN is a Private Right Foundation and affiliate of "Production Promotion Corporation" (Corporación de Fomento de la Producción, CORFO).

In September of 1995, the INN accepted the Code of Good Practice for the Preparation, Adoption and Application of Standards of the Agreement on Technical Barriers to Trade of the World Trade Organization (WTO). The Chilean Standard base (NCh1) establishes that in all the cases that is possible, the standards must be based in the international standard and keep them as similar as possible (ISO, IEC, Codex Alimentarius, etc.), and if this is not possible, in a regional standard (COPANT, CEN, etc.) trying that the modifications are minimal.

Chile is member of the International Standardization Organization (ISO) through the INN. Also, INN is member of The Interamerican Metrology System (SIM), International Organization of Legal Metrology (OIML), the Inter-American Accreditation Cooperation (IAAC), the Pan-American Standards Commission (COPANT), and International Accreditation Forum (IAF). Moreover, Chile participates in the CODEX Alimentarius Commission. In 1997, the National Committee of the Codex Alimentarius was institutionalized, with the participation of the Ministries of Health, Agriculture, Economy and Foreign Affairs, as well as representatives of the food industry, academic sector and consumers. Chile is also technically represented by the INN in the General Conference of Weights and Measures, International Committee of Weights and Measures, and the International Bureau of Weights and Measures, where the official representing is the RREE Ministry.

Standards are adopted through a process of consensus-building among the interested parties from both the public and private sectors. The public consultation process is announced on a nationwide newspaper, and the text of draft standards is available to anyone requesting them. Once a standard has been approved by the INN Council, it is given official status by the relevant Ministry, yet they keep being voluntary standards.

It Exists a Documentation Center that depends of the Information and Diffusion Division from INN. This Center keeps all Chilean standards (both officials and yet in study) and is available to the public trough two media: Documentation Center Library; and the web page [www.inn.cl](http://www.inn.cl) (the information published on the internet includes the standard code, title, value, scope and application field).

Currently, there are about 2.600 which compliance is not mandatory. The process of study of such standards is conducted according to widely accepted international criteria. An important number of the standards developed in recent years, are equivalent to international standards or present minor deviations from international standards in aspects that do not affect the technical content. However, in some cases the international standards have not been taken into account for the development of national standards, because they have been considered as inadequate for national application. Such is the case of seismic designs and structures because of local seismic conditions.

The “stock” of national standards is subject to alignment with international standards whenever standards go through a revision process or when an obstacle to trade has been detected.

Accordingly, Chile is making important efforts in order to meet its commitments on the APEC’s Voluntary Action Plan, through the alignment of national standards with international standards in those products identified as "priority" by the APEC’s Sub-Committee on Standards and Conformance. This program began in 1996 and it will continue as long as new priority areas are defined.

*i. Technical Regulations*

Technical regulations are those which compliance is mandatory. They are developed by the Ministries, and other governmental Agencies with competence in the specific area to be regulated. Each Ministry develops its own regulations –most of them refer to international standards-which are approved by either a decree or a resolution. They are published on the “Diario Oficial de la República de Chile” (Official Gazette).

Among the main institutions with competence to adopt technical regulations, is worth to mention: The Ministries of Economy, Agriculture, Health, Transportation and Telecommunications.

Chile notifies to the WTO the technical regulations, pursuant to the obligations established in the Agreement on Technical Barriers to Trade. This information is public and available on the Ministry of Economy web page ([www.economia.cl](http://www.economia.cl))

*ii. Conformity Assessment*

In Chile, the conformity assessment process is conformed in one hand by mandatory mechanisms under the supervision of the Ministries with competence in health, hygiene, and

safety matters, and in the other hand by non-mandatory mechanisms such as the one administrated by the INN.

*iii. Voluntary*

The conformity assessment with voluntary standards, is administrated by the INN. For this purpose, the Institute has developed a National Accreditation System that includes the accreditation of: Products and Quality System Certification Bodies; Auditors of Quality Systems; Quality System Certification Bodies; Inspection Bodies and Calibration and Testing Laboratories.

This system operates under international criteria (ISO/IEC guides). The accreditation is given for a certain period of time, during which there is a continuing evaluation of the competence of the conformity assessment bodies.

Both domestic and foreign conformity assessment bodies participate in the process. They include: Universities and private institutions as well as transnational subsidiaries (*Bureau Veritas, Societé General de Surveillance, Lloyd Register, etc.*).

Finally, consistently with the Chilean foreign trade policy, the INN is seeking to increase its international credibility through the international recognition of its accreditation system. The aim behind this policy, is to achieve the recognition of the Chilean conformity assessment results by those markets to which Chile exports its products. For this objective, INN intends to present the application to be part of the plurilateral recognition agreements IAAC, ILAC and IAF.

*iv. Mandatory*

In this case, the conformity assessment process is under governmental control. The assessment of conformity in some cases is carried out directly by the competent Agency through its own infrastructure, and in other cases the process is carried out by conformity assessment bodies which are authorized by the Agency for that purpose.

As a way to facilitate the mutual recognition of the conformity assessment results, the authorities are working on the standardization of the criteria to approve conformity assessment bodies, as well as on the criteria for certification in specific regulated areas. To facilitate this process, INN has developed arrangements with some Agencies in order that its accreditation of those conformity assessment bodies be accepted by the Agencies. This has happened in the areas of liquid combustible products, fishing products and extinguishers. Other products, such as sanitary and medical devices are in a advanced stage of study.

Chile is committed to facilitate the international trade through the participation in several recognition arrangements, both in the APEC context and with a group of economies that includes APEC economies, all those arrangements are for a particular area. The priority areas are Electricity, Food and Toys.

Chile participates in the Part I of the APEC EEMRA (Mutual Recognition Arrangement on Conformity assessment of Electrical & Electronic Equipment).

Chile subscribed the APEC Arrangement for Exchange of Information in Toys Safety.

The Superintendence of Electricity and Fuels (SEC) recognizes test results and certification from a specific list of organizations from the United States, Germany, France, Italy, the Netherlands, Austria, Switzerland, England, Canada, Japan, Denmark, Sweden, Norway and Belgium. The organizations interested in having this recognition may request to SEC to be included in that list after compliance with some requirements.

v. *Metrology*

Between the years 1995 through 1997, Chile started the development of a National Metrology System which was implemented through a National Metrology Network coordinated by INN. The Network operates as a central laboratory, using the preexistent capabilities in the country, endowing them with the necessary technological support to achieve their international technical recognition. In order to divulge the information from the network, a web page is under construction and would be administered by the same servers as the network. The National Metrology Network has signed several agreements (5 MOU, 2 MRA, 4 Adhesion Acts and 2 Contracts/Other; 4 of them aren't binding and 9 are binding, as for example the Convention du Metre).

The system's main characteristic is that, the metrological execution is performed by the most recognized laboratories coming from Universities, private and public sectors. This situation substantially defers from what happens in other countries, in which the entire operation is centralized in a single National Control Center.

Currently, this process is under execution, and the authorities are designating the "custody laboratories" for the magnitude of Mass, Temperature, Force, Length, Pressure, and Electrical Magnitudes. These "custody laboratories" are already providing services. The process is expected to expand and include as many magnitudes as possible, in order to reach a certain degree of coherency among them, so they can have a real economic impact.

c. *Main Features of Standards and Technical Regulations*

i. *Objectives*

The authority has basic legitimate objectives to accomplish on issues related to the protection of human health or safety, animal or plant life or health, or the environment. Then the official policy is that what does not fall under a legitimate objective has to be left to the market to decide on what standards a product must comply with, if any, and they are of a voluntary nature. This is the reason why, the number of technical regulations is fairly limited.

Chilean technical regulations do not constitute a barrier to trade. The reduced number of complaints made by our commercial partners, either during bilateral meetings or through international publications, confirm the situation.

Indeed, the findings on technical barriers to trade made by the United States (*National Trade Estimate*), and the European Union (*Market Access Database*) do not show an important number of claims regarding the Chilean standards and regulations. In fact, they only make reference to the strictness of some sanitary and fitosanitary measures, or to the differences between the international standards and the Chilean regulations in the building sector. However, this situation has been explained before in the present work.

*ii. Alignment with International Standards*

A great number of national standards and technical regulations are aligned with international standards.

Given that a substantial portion of the domestic technical regulations are based on domestic technical standards, most recent technical regulations are already aligned with international standards. However, this does not necessarily occur with old technical regulations, since there is no official updating procedure.

Chile, as a small and export-oriented economy, has not supported the idea of developing neither a national or regional standards (there are justified exceptions). Chile's official policy is to focus on international standards. This policy is consistent with Chile's open, multi-targeted, and export oriented economy.

*iii. Market Surveillance*

Another characteristic of the Chilean system is that, as a general rule (excepting food, drugs and a few others), the verification of compliance with mandatory requirements for products (national or imported) is made effective once products have entered the market. This policy was adopted a long time ago and seeks to facilitate the flow of trade.

*iv. Fulfilling the Obligations under Agreement on Technical Barriers to Trade*

The responsibility for implementing and administering the Agreement on Technical Barriers to Trade lies on the Ministry of Economy through its Foreign Trade Department.

Through document G/TBT/2/Add.16/Suppl.1, Chile updated its notification to the WTO on implementation and administration of the Agreement on Technical Barriers to Trade, according to article 15.2 of the TBT Agreement.

*c. Bilateral and Multilateral Agreements*

Chile signed the Agreement on Technical Barriers to Trade of the Tokyo Round in 1980. The Agreement on Technical Barriers to Trade of the Uruguay Round came into force as a Law in Chile on May 1995.

Most of Chile's bilateral agreements include a chapter on technical barriers to trade. This fact, together with the commitments assumed before the WTO, have generated a need for "interdisciplinary team-work" between the Parties involved in the area of technical barriers to trade. The agreements make reference to the creation of "Commissions" which develop working programs and constitute an instance to solve problems concerning the impact of a specific measure on the trade relations between the Parties. In all of these cases, the compromises include disciplines that extend beyond the TBT Agreement provisions in areas such as transparency, equivalence, mutual recognition, and risk assessment. In addition, the Canada-Chile FTA and the Mexico-Chile FTA include provisions on this area in the telecommunication sector.

d. Legal Framework

Chile does not have a unified legal framework for the development of technical regulations and conformity assessment procedures. Therefore, the process of elaborating such regulations is not homogeneous and generates sometimes coordination difficulties on the notification process to the WTO.

In order to approach this issue, in 1997 was created the National Commission on Technical Barriers to Trade. The Commission is headed by the Ministry of Economy, and has played a fundamental role on dealing with this issue. By centralizing the process, and dealing with all the agents involved in the development of technical regulations, the Commission provides all the parties involved, with a common forum to express their concerns and expectations related to the nation's standardization agenda.

Another measure oriented to improve the implementation of the Agreement on Technical Barriers to Trade is law 19.912, published in November 2003. Among other provisions, it ratifies the Ministry of Economy as the responsible authority for the notification process under WTO obligations, and also defines the nature of the process itself

To implement the law above mentioned, a draft regulation has been developed, , together with the different Government Agencies, which establishes basic criteria for the development, adoption and application of technical regulations and conformity assessment procedures, including the notification process. By May 2004, the draft regulation was finalizing its proceeding.

All things combined, will improve Chile's capacity to meet its current international commitments, including those assumed under the WTO, and other international organizations, as well as the specific compromises arising from the negotiation of commercial agreements.

### III.2.F. Sanitary and Phytosanitary

#### a. Local Competent Authorities

In their respective fields of competence, the Ministries of Agriculture, Health and Economy are responsible for complying with the obligations assumed by Chile under the WTO Agreement on Application of Sanitary and Phytosanitary Measures, and for exercising its rights thereunder.

The Ministry of Agriculture is the competent authority responsible for managing — through the Agriculture and Livestock Agency (SAG), all requirements involving sanitary (animal health) and phytosanitary (plant health) matters that apply to the import and export of animals, plants and by-products thereof; the sanitary and phytosanitary measures applied to reduce the risk of introducing animal-borne diseases and plant pests, and for controlling the eradication or the spreading thereof; and also for issuing the sanitary and phytosanitary export certificates for animal and plant products, including the certification of fitness for human consumption for primary products.

The Ministry of Health is the local sanitary authority vested with the necessary legal powers for approving and controlling the installation and operation of establishments dedicated to the production, processing, packaging, storage, distribution and sale of food, as well as slaughterhouses for poultry and cattle, and public and private cold storage facilities. At the slaughterhouse plants, the Ministry of Health is entitled to conduct, either directly or through other appropriate public entities, a medical veterinary inspection of the animals slaughtered there, and the resulting meat products. In addition, the Ministry of Health is vested with the authority to authorize or reject the import and marketing of all imported food intended for human consumption.

To ensure compliance with the laws and regulations governing food safety, the Ministry of Health inspects facilities and monitors the sanitary quality of the products. These inspection and monitoring activities are performed throughout the country on an ongoing basis, and they are based on specific surveillance programs.

The legal powers of the Ministry of Health are established in the Sanitary Code, which is the main statute governing all matters related to the promotion, protection and recovery of the health of the Chilean population, with the exception of matters governed by other laws. On the other hand, the Sanitary Code establishes supplementary regulations applicable to specific matters. With regard to food safety, the Food Sanitary Statute is the standard that establishes the sanitary conditions applicable to the production, importation, processing, packaging, storage and sale of food for human consumption, in order to protect the health and nutrition of the population, and guarantee that the products supplied are healthy and safe. This statute also applies to all natural or artificial persons that intervene or participate in the aforementioned processes, and to all facilities, modes of transportation and distribution channels involved.

In order to comply with its legal obligations, the Ministry of Health has a network consisting of 29 Regional Health Offices, which act as the sanitary authority in the jurisdiction where each of them must manage and implement the food safety programs.

The Ministry of Economy participates in the food industry through its regulatory powers with regard to fisheries and the proper operation of the markets, consumer protection; surveillance and resolution is carried out by agencies attached to the Ministry. The agency in charge of fisheries is the Office of the Under-Secretary for Fisheries (SUBPESCA) and the National Fisheries Bureau (SERNAPESCA). SUBPESCA holds the appropriate authority to manage all fisheries and marine related activities together with being entitled to propose initiatives for its development by defining, following-up and disseminating national fishing and aquaculture policies and establishing regulations for its implementation, with the purpose of achieving sustainability in the use of the hydrobiological and environmental resources for the benefit of the entire Chilean population. On the other hand, SERNAPESCA is the agency responsible for implementing national fishery policies, by regulating the exploitation of fisheries resources. At the same time, it is the agency responsible for the sanitary control and certification of the hydrobiological products for export, and for establishing epidemiological surveillance systems aimed at preventing, controlling and eradicating disease among aquatic animals.

The Ministry of Foreign Affairs, through its General Directorate for International Economic Affairs (DIRECON), is the agency in charge of coordinating the different regulatory agencies responsible for supervising compliance with SPS measures. It determines national positions regarding these matters in the WTO Sanitary and Phytosanitary Committee. In addition, it supervises compliance with the commitments assumed under the Agreement on the Application of Sanitary and Phytosanitary Measures, and other trade agreements.

A Inter-Ministerial National Commission on Sanitary and Phytosanitary Matters was established in March 2001, headed by DIRECON. Its objectives are: to assess the SPS chapters of the different trade agreements; analyze trade concerns, follow - up Action Plans derived from the SPS Committees of the FTAs and other agreements; discuss national positions with regard to the Codex Alimentarius, International Plant Protection Convention (IPPC) and the International Office of Epizootics (IOE).

The regulatory framework, drafting procedures, and adoption of the Sanitary and Phytosanitary Measures by Chile were reported to the Secretariat of the SPS Agreement in December 1995<sup>12</sup>.

#### b. SPS Policies

Closely coinciding with the provisions established in the SPS Agreement of the WTO, drafting of new standards in Chile is based on scientific grounds, following the principles established in the WTO Agreement, avoiding measures that may pose hidden barriers to

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<sup>12</sup> Distributed as document G/SPS/W/39.

trade, and promoting a balance between sanitary and phytosanitary protection and a necessary smooth flow of trade.

To apply this policy, Chile has an active participation at the multilateral level for guidelines (WTO) and the regulations or standards (OIE, IPPC, CAC). At bilateral sphere, Chile look for achieving a better and clearer implementation of the SPS Agreement.

- **Imports Policies**

All animal imports and products thereof, must be accompanied by a sanitary certificate issued by a competent authority from the country of origin. The certificate confirms compliance with the zoosanitary requirements that are mandatory in Chile, which are based on the Zoosanitary Code of the OIE (International Office of Epizootics). A phytosanitary certificate issued by the competent authorities of the exporting country is required for plants or parts thereof, whether processed or in their natural state, that may constitute or transmit pests, and for articles that may represent a hazard to plants (including plant by-products, living organisms, containers, agricultural materials and soils).

Irrespective of their country of origin, animals are placed in quarantine. Plants and seeds are placed in quarantine based on the phytosanitary conditions of their country of origin. The decision is based on a risk analysis, which is performed in accordance with the procedures established in the International Plant Protection Convention.

With regard to food imports, the Regional Health Offices of the Ministry of Health authorize food imports for human consumption based on the regulations in force. The import process contemplates sanitary controls including laboratory analyses. Risk criteria and historical data on food safety are applied in the analyses, in order to define the recurrence and impact thereof.

The Ministries of Agriculture and Health accept certificates issued by the official sanitary agency of countries that comply with the guidelines established by international scientific organizations, such as FAO, Codex Alimentarius, International Plant Protection Convention (IPPC) and the International Office of Epizootics (IOE).

A sanitary certificate indicating strict compliance with the requirements established must accompany imports of live aquatic resources. Sanitary regulations are in agreement with the Aquatic Animals Health Code of the IOE.

From July 1997 to May 2004, Chile has submitted 168 notifications on sanitary and phytosanitary regulations and emergency measures to the Sanitary and Phytosanitary Committee (SPS Committee) of the WTO<sup>13</sup>.

A chapter on SPS measures has been included in the preferential trade agreements subscribed by Chile, in the FTA signed with Mexico, Central America, the United States of

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<sup>13</sup> WTO Documents series G/SPS/N/CHL/.

America, EFTA and South Korea, and an specific Annex as an integral part of the Association Agreement between Chile and the European Union. On the other hand, the agreement signed with MERCOSUR confirms the rights and obligations of the parties under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

- **Export Policies**

With regard to exports, guaranteeing the health of the products and complying with all the sanitary regulations, it is essential to gain the confidence of the destination markets.

The Regional Health Agencies of Chile, are responsible for certifying the origin of the products and their compliance with the local sanitary regulations since they are the agencies authorized to approve and control the installation and operation of the pertinent establishments and the processes involved in the food production chain and the food safety control programs.

The inspection and certification of the sanitary and phytosanitary condition of all animal and plant products and by-products for export, and the verification of compliance with the sanitary and phytosanitary requirements of the destination country is a responsibility shared by the Agriculture and Livestock Agency (animal and plant products) and the National Fisheries Bureau (hydrobiological products).

With the purpose of adequately implementing the WTO SPS Agreement, efficiently solving trade problems and facilitating trade activities, SPS Committees have been established in the agreements with Mexico, United States of America, Canadá, Korea and European Union.

- c. Compliance with the Principles Established in the SPS Agreement

Chile works and participate in all of the principles established in the SPS Agreement, but today is supporting the discussion in the WTO SPS Committee in Regionalization.

- **Regionalization**

Regarding trade, Chile acknowledges the regional conditions of animal and plant health, the special status of animal disease (including zoonosis) and pests affecting a territory or region, and the concept of regionalization for trade.

### Multilateral Scope

At the level of the WTO SPS Agreement, Chile has favored establishing guidelines to better implement the principle<sup>14</sup>, particularly with regard to acknowledging phyto- and zoosanitary conditions because, even though there are standards that have been approved by the corresponding international organizations, their use is very limited, mainly due to

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<sup>14</sup> Chile has presented documents G/SPS/W/139 – G/SPS/GEN/381 – G/SPS/W/140 – G/SPS/W/140/Rev.1. - G/SPS/W/140/Rev.2.

administrative problems, and sometimes they require more than simply verifying the scientific basis.

### Bilateral Scope

Chile also applies the principle of regionalization in its bilateral relationships, granting sanitary recognition to different parties.

At the same time, Chile is recognized as a country free from the main diseases classified under List A of the IOE, and from the most important quarantine pests in terms of plant health.

### III.2.G. Rules of Origin

Rules of origin regulations do not apply to imports made under the MFN treatment. In Chile, a certificate of origin is only required when goods are imported under preferential systems. Origin is also recorded on commercial certificates

## **III.3. Services**

### III.3.A. Measures Affecting Trade in Services

There are a few measures that discriminate between national and foreign service providers, which affect the principle of national treatment, and a few minor exceptions to the MFN. Chile has some quantitative non-discriminatory restriction, mainly related to technical considerations, while in certain sectors local presence is required to better protect consumer interests or domestic market stability.

#### a. Telecommunications

The Chilean telecommunications industry has expanded rapidly in recent years. The contribution of the communications subsector to Chile's GDP increased from 1.9% in 1996 to 3.1% in 2002.

There are 14 fixed-net service providers, five providers of mobile services, and 20 companies providing international telecommunications services. Telefónica CTC has a dominant market position as a fixed-net provider in 10 of Chile's 13 regions. Since the early 1990s, Chile's telecommunication sector has been fully privatized; the State is not involved in the provision of telecommunications services.

The telecommunication sector is regulated by the Sub-secretary of Telecommunications (Subtel). Subtel is in charge of implementing and overseeing the application of the Telecommunication Law (Law No. 18.168 of 2 October 1982).

From the legal and constitutional standpoint, there is no discrimination between national and foreign investors, being there no restrictions for their participation in Chilean companies.

Domestically, the Chilean regulatory framework allows ample room for market development and only controls possible abuses arising from a dominant market position. This is achieved through the so-called "tariff-setting decree", which establishes for a five-year period the maximum rate to be charged for long-distance, local and Internet services. This type of regulation, in addition to the implementation of the "calling party pays" system (charges for calls made from cellular phones are paid by the calling party and under no circumstances by the receiver of the call), has been highly effective in fostering competition in all services provided by this sector.

Pursuant to Article 8 of the Telecommunication Law, a concession is required for offering public telecommunications services. Concessions are granted by Subtel by means of supreme decrees. Once granted, a concession to provide telecommunication services is valid for 30 years. A concession or licence is required for the use of the radio-wave spectrum; the fees for the different types of concessions or licences are set out in Article 32 of the Telecommunication Law.

The National Council on Television (*Consejo Nacional de Televisión*) may establish, as a general requirement, that programs broadcast through public (open) television channels include up to 40 percent of Chilean production.

The owner of a social communication medium such as sound and image transmissions or a national news agency, shall, in the case of a natural person, have a duly established domicile in Chile, and, in the case of a juridical person, shall be constituted with domicile in Chile or have an agency authorized to operate within the national territory.

Only juridical persons duly constituted in Chile and having domicile in the country may be the titleholders, or make use of permits, for limited radio broadcasting telecommunications services and cable television or microwave television services.

A ruling by the Telecommunications Under-Secretary is required to carry out Complementary Telecommunication Services, which are additional services provided through the connection of equipment to the public network

Telecommunication services, including domestic and international telephone services, mobile telephones and value added network services are completely open to competition from both, national and foreign providers.

In the case of social communication mediums, only Chilean nationals may be president, administrators, or legal representatives of the juridical persons at stake. In the case of public radio broadcasting services, the majority of the members of the Board of Directors must be Chilean nationals. The legally responsible director and the person who replaces him or her must be Chilean with domicile and residence in Chile.

Requests for public radio broadcasting concessions, submitted by a juridical person in which foreigners hold an interest exceeding 10 percent of the capital, shall be granted only if proof is

previously provided verifying that similar rights and obligations as those that an applicant will enjoy in Chile are granted to Chilean nationals in the applicant's country of origin.

The following special limitations apply:

Maritime and aeronautic telecommunications which are reserved to the Chilean Navy and the Aeronautic Civil Board, respectively.

- Only Chilean individuals and foreign individuals with permanent residency in Chile may obtain amateur radio aficionado licenses. This license can also be obtained by amateur radio individuals from countries where Chile maintains reciprocity agreements, and foreign individuals with temporary residency in Chile previously qualified by the Undersecretary of Telecommunications.

The future trend points to market liberalization, facilitating the entry of new national and foreign competitors not only through specific trade agreements but also through direct foreign investment. This, together with an attractive technological progress, has situated Chile in a privileged position at world level in the area of telecommunications, and also provides an important basis for future business expansion into Latin America and other business partners countries.

- E-commerce

Chile has supported all initiatives designed to analyze the impact of e-commerce, as well as those designed to disseminate and foster discussion on the issue, both at private and public level, establishing work in these areas as one of the main goals of its policy.

As regards the modernization of the telecommunications regulatory framework, in May 1999 the Tariff-Setting Decree introduced the concept of Local Stretch, reducing in more than 60 percent the cost of using the network for switch access services.

In our country, legislation is already in force concerning electronic documents, pension fund forms, payments of health scheme contributions, electronic bank payments, import and export declarations, and payments of customs duties.

The program designed to modernize the Government Procurement and Contracts System represented in 1999 the first step to process government procurement operations via Internet. This system allows to publish, store and distribute information related to State purchases and contracts. Thus, the State has a transparent and dynamic medium to control the procurement function.

As an example, the Customs Service has a automated system to entry and exit declarations. At present, 98% of import declarations is done by electronic media (EDI) and 100% of export declarations is done by Internet.

The Privacy Act, introduced in late 1999, establishes the need to obtain the consent of concerned parties whenever using their personal information, as well as the obligation of direct marketing companies to implement systems designed to provide concerned parties their personal information on request.

As mentioned above, our country is aware of the vital importance of creating an appropriate regulatory framework if it wishes to become part of economic globalization.

The Chilean government has adopted as its legal and regulatory strategy the gradual creation, with strict respect to personal freedom and through reforms and legal and administrative innovations, of new institutions, restructuring old ones according to needs and partially moving forward in the different areas, among which we may highlight the Electronic Signature Bill, which is presently being discussed by Congress.

Likewise, different programs aimed at developing small and medium-size companies, based on their participation in e-commerce, have been implemented.

Furthermore, Chile has participated in different international fora - within the context of APEC, WTO, ALCA, and some bilateral initiatives - on e-commerce.

b. Transportation

i. *Maritime Transportation*

Sectoral exceptions to market access remain in maritime transport.

Chile's policy in recent years has been aimed at liberalizing this sector, pursuant to effective legislation, which execution is entrusted to the Ministry of Transportation and Telecommunications. The general guiding principle of this policy is the free participation of any vessel, Chilean or foreign, in the transportation of cargoes originating in the country, provided there is reciprocity as regards access to traffic and foreign-bound cargoes.

For our country, building an efficient, modern and geographically extended port infrastructure has been a priority task in recent years.

In 1999, 47 percent of maritime trade was handled by State ports and 53 percent by privately owned ports. State-owned ports are managed by ten independent Port Companies, successors to the now extinct EMPORCHI. This was provided for in Law No. 19,542, which amended the administration system of State-owned ports and established the decentralization of port asset management, the creation of the above-mentioned independent companies, and the concession of docks. The State continues to exercise the regulatory function.

The government has given in concession the auxiliary services provided at State-owned ports. Authorities have stated that no more public investment is to be made in new port assets, in order to promote private investment. Some port services, such as loading,

unloading and storage, are entrusted to private companies. The main idea is to provide ports the necessary tools for them to improve their efficiency and performance, as the conviction exists that the private sector will be able to carry out this function better than anyone else.

In general, Chile's international maritime transportation policy is based on the principle of freedom of navigation. However, where other country accord preferential treatment to vessels flying certain flags, Chile may apply reciprocity measures and maritime authorities may also accord preferential treatment in such cases. Under a 1974 bilateral agreement, all maritime transport between Brazil and Chile has to be performed by Chilean or Brazilian vessels, with the exception of the transport of oil and its by-products and natural liquefied gas. Freightage has to be divided between the two countries. Transport in third-country vessels is only permitted when no other means of transport are available; the agreement does not cover coasting. No measures involving any preferential treatment apply to the provision of auxiliary services nor to access to or use of port facilities.

As regards international trade, no discriminatory measures are applied to foreign vessels in connection with access to ports and port installations or their use. In 1995, 25 percent of maritime cargo was transported by Chilean vessels and the remaining 75 percent by foreign vessels.

*ii. Air Transportation*

Because of its geographic situation, Chile requires expeditious, low-cost routes, both within and outside its borders. The development of a foreign-trade-based economy renders it necessary to have means of transportation suitable for the country's exportable bases. Thus, the air freight sector grew hand in hand with the development of exports, particularly export products such as seeds and fresh fish, fruit and vegetables. These products require to be rapidly delivered to consumer markets, which, in the case of Chile, are located very far away. At the same time, this economic model brought about the growth of imports, which to a large extent are air freighted into country.

The Commercial Aviation Law recognizes Chilean and foreign companies alike the freedom to offer both national and international air transport services. In other words, any foreign or Chilean company may offer such services without any restriction, save for those related to technical and safety considerations.

Under this legal system, domestic traffic grew 1,000 percent over the period 1979-1999, with more than 3.2 million passengers carried yearly. In the 90s alone, domestic air traffic grew at average annual rates of 18 percent.

This has not only permitted to develop productive centers in remote regions of the country, but also to shorten distances in a country more than 4,000 km long, and with fares that make air transport increasingly affordable.

On the other hand, the consolidation of three private airlines and the presence of a fourth that recently initiated operations (with Peruvian capitals), plus several regional airlines, reflect the dynamism of this sector.

At international level, this absolute freedom has one exception: reciprocity established in bilateral agreements or practice. Thus, foreign companies may operate in Chile insofar as their governments grant similar rights to Chilean airlines in their respective territories.

The Chilean experience and the development of its industry have shown that the greater the opening to foreign competition and the fewer the barriers or restrictions, the quicker the growth of traffic in the sector.

In turn, international cargo traffic has grown more than 8,000 percent since 1979, according to data provided by the Santiago Chamber of Commerce. Eight percent of Chilean exports leave the country via air, a figure that in the case of trade with the United States climbs to 16 percent and to 20 percent in the case of the United Kingdom.

### III.3.B. International Commitments Related to Services

Among the main objective of our country at international level is the establishment of clear regulations for services and investment, with a view to creating a wider and stable market for our services and goods abroad. In this sense, we seek to progressively open up our markets for service providers and to strengthen the integration processes that may contribute to the expansion of trade and foster the creation of joint ventures to penetrate different markets.

As a result of the Uruguay Round, commercial disciplines extended beyond those related to trade in goods to cover areas such as services, investment and intellectual property. In recent years, our country has continued to participate in WTO working groups on services and investment. Furthermore, our country assumed certain obligations in connection with Telecommunications and Financial Services under the GATS agreement. Moreover, Chile has actively participated in preparatory work for the negotiations scheduled to take place in the year 2000.

Chile has also participated in other multilateral fora, such as the Asian Pacific Economic Forum (APEC) and the Service Group in the FTAA - the free-trade area of the Americas -, carrying out important work in said areas and actively participating in negotiations on services.

At bilateral level, some concrete results have been achieved through the subscription of legal instruments that cover issues and disciplines additional and complementary to trade in goods, as a means to achieve a better and more profound liberalization of trade.

In this context, we should note that the Free-Trade Agreements with Canada, Mexico and Central America include specific chapters governing cross-border trade in services. These Agreements also contain chapters and annexes that regulate and supplement these

disciplines, such as those dealing with telecommunications, professional services and temporary admission of business people.

The above-mentioned Agreements are based on principles such as non-discrimination and transparency, which are applied to trade in services and investments; they set forth the restrictions that both investors and service providers from both countries may face when entering the different markets; and establish the mechanisms for the progressive removal of such restrictions.

On the other hand, in pursuing its objectives, our country has assumed different obligations or undertaken different initiatives that involve future negotiations aimed at further liberalizing services and investments with other countries or groups of countries. In this context, during 1999, a Service Negotiation Group was created within the framework of the Mercosur Agreement, which is now reviewing a negotiation proposal submitted by our country.

### **III.4 Foreign Investment System**

#### **III.4.A. General Regime of Foreign Investment**

Chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulations correspond to general regime of foreign investment in Chile. It establishes rules for investment, capital contributions, and foreign credit. Under Chapter XIV, the Central Bank is not allowed to reject foreign investments, although it may impose conditions based on its monetary policy on the transfer of funds into and out of Chile, such as a one-year retention requirement. Foreign capital entering Chile under Chapter XIV receives national treatment, but it is excluded from the benefits of the foreign investment contracts possible under the Foreign Investment Statute, in particular the choice of invariable taxation. Foreign capital entering Chile under Chapter XIV has to be registered with the Central Bank. This may be carried out at any commercial bank, prior to converting the capital into Chilean pesos.

#### **III.4.B Special Regime of Foreign Investment**

The Foreign Investment Statute (Decree Law No. 600 of 1974, amended on 16 December 1993), correspond to a special voluntary investment regime.

Foreign investors receive national treatment, subject to a limited number of exceptions established under law. The main exceptions include international land transport, maritime cabotage, fisheries, and radio and print media. Furthermore, land owned by the State, within a distance of ten kilometers from the borders and five kilometers from the high-water line, cannot be sold to foreigners.

To attract foreign investment, the Foreign Investment Statute establishes rules and procedures for foreign investors who opt for this mechanism. Investors wishing to invest at least US\$5 million in foreign currency or US\$250.000 in tangible assets may submit an investment application. Under this statute, applications submitted by investors for foreign

investment are subject to authorization by the Foreign Investment Committee.<sup>15</sup> The Committee is composed of the Minister of Economy, who presides it, the Ministers of Finance, Foreign Affairs, and Planning and Cooperation, and the President of the Central Bank. It accepts or rejects applications for foreign investment, and establishes the terms and conditions for the relevant investment contracts. If the Committee rejects an application, the capital may enter Chile under Chapter XIV of the Central Bank's Compendium for Foreign Exchange Regulations (see below). The Committee has not rejected investment applications in recent years.

Under the Foreign Investment Statute, foreign investors conclude a contract with the State of Chile, which authorizes and protects the transfer of capital for the investment. Under Article 9 of the Statute, both the investment and the respective company are subject to the general laws applicable to domestic investment. The contract, which is indefinite in duration, may be modified only with the consent of both parties. It sets out the period in which the foreign investor must bring in the capital, which cannot exceed three years (eight years in the case of mining investments). The Committee may extend this period to eight years for investments of at least US\$50 million when warranted by the nature of the project, and twelve years in the case of mining projects when prior exploration is required. Capital brought in under DL600 may only be repatriated following a one-year waiting period; profits may be transferred abroad at any time.

Pursuant to Article 8 of the Foreign Investment Statute, foreign investors have the right to include a clause establishing invariability of indirect taxes and customs duties for certain imported capital goods for the term authorized to effect the investment.

Foreign investors may also opt for a system of invariable direct taxation, under which a company's operations are subject to a fixed overall income tax rate of 42%. Investors who choose this option may, only once, waive this right and ask for the application of ordinary tax laws. Tax invariability is available for a maximum period of ten years, but may be extended for up to 20 years on industrial and extractive projects with a value exceeding US\$50 million.

Article 11 of the Foreign Investment Statute allows regulations limiting the access of foreign investors to domestic credit. This provision has not been applied in recent years.

In conclusion, Foreign investors have the choice between the two statutes when bringing capital to Chile; most foreign investment enters Chile under the provisions of the Foreign Investment Statute.

Finally, the foreign capital investment funds (FCIFs) are governed by law 18.657 and are permitted to receive preferential tax treatment. FCIFs are required to obtain a favorable report issued by the Chilean Securities and Insurance Supervisor ["Superintendencia de Valores y Seguros" (SVS)] in order to conduct business in Chile. FCIFs may not remit

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<sup>15</sup> The application form for FDI under Decree Law No. 600 is available online at: [http://www.foreigninvestment.cl/fdi\\_inchile/solicitud.pdf](http://www.foreigninvestment.cl/fdi_inchile/solicitud.pdf).

capital for five years following the investments of such capital, although earnings maybe remitted at any time. A FCIF may hold a maximum of 5% of a given company's shares, although this can be increased to a maximum of 10% if the company issues new shares. Furthermore, no more than 10% of a FCIFs assets may be invested in a given company's stock, unless the security is used or guaranteed by the Republic of Chile or the Central Bank, and all together, and no more than 25% of the outstanding shares of any listed company may be owned by FCIFs.

#### III.4.C. Special Tax-Free Regimes

The Investment Platform Law (Law No. 19.840) of 23 November 2002 is aimed at permitting multinational companies to use Chile as a regional base under a special regime granting tax-free status on earnings from international operations. At the same time, the Law contains various provisions designed to prevent the use of Chile as a tax haven or the misuse of the regime by domestic entrepreneurs to avoid paying domestic taxes. The Chilean operations of these companies are taxed under the regime that normally applies to foreign investment.

#### III.4.D. BIT's and Other Agreements

Chile has bilateral investment agreements to promote and protect investment, with Argentina, Australia, Austria, Belgium, Bolivia, China, Costa Rica, Croatia, Cuba, the Czech Republic, Denmark, Ecuador, El Salvador, Finland, France, Germany, Greece, Guatemala, Honduras, Italy, Indonesia, Lebanon, Malaysia, Nicaragua, Norway, Panama,, Paraguay, Peru, the Philippines, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Ukraine, the United Kingdom, Uruguay, and Venezuela. Further bilateral investment agreements have been or are being negotiated, with Brazil, Colombia, the Dominican Republic, Egypt, Greece, Hungary, Iceland, the Netherlands, New Zealand, South Africa, Tunisia, Turkey, and Viet Nam.

In addition, Chile is a member of the Multilateral Investment Guarantee Agency (MIGA), and of the International Center for the Settlement of Investment Disputes. It has ratified the Inter-American Convention on International Commercial Arbitration, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and the Convention on the Settlement of Investment Disputes between States and Nationals of other States. Furthermore, a draft law on private international commercial arbitration was submitted to Congress in 2003.

#### III.4.E. Investment Agreements

In the 90s, Chilean investment has shown a remarkable dynamism against the backdrop of a policy that seeks to ease off regulations and the increasing international insertion of the Chilean economy. Direct Foreign Investment in Chile shows, just like our foreign trade, a relatively high volume in relation to our economy. Chile is among the ten non-OCDE countries with the highest level of foreign investment in recent years, while Chilean companies have become important investors abroad, mainly within their own region, since the early 90s.

According to this scenario, one of the main objectives of our country has been to ensure the establishment of clear investment rules, with a view to creating a wider and safer market. Furthermore, it has completed negotiation processes in order to gradually liberalize the markets for investors, as well as to strengthen integration processes that may contribute to trade expansion and the creation of strategic alliances to tackle global markets.

To ensure a predictable business environment that allows productive activity and investment planning, Chile has bilaterally negotiated two types of investment-related agreements: Investment Promotion and Protection Agreements (IPPAs) and the investment chapters included in Free-Trade Agreements (FTAs) subscribed with Canada and Mexico.

The main difference between these two types of instruments resides in that FTAs, in addition to pertaining to a comprehensive Agreement governing different disciplines, guarantee access, whereas IPPAs, in the case of Chile, do not. In other words, FTAs consolidate non-conforming effective measures related to the obligations of National Treatment (NT), Most Favored Nation (MFN), Performance, and Senior Managerial Personnel Requirements, but cannot increase non-conformity in the future. On the other hand, IPPAs establish that investment shall be made "under the laws and regulations of the contracting Party", in other words, they allow discriminatory measures to become even more discriminatory (less liberal) in the future. Thus, IPPAs do not provide access guarantees to investors.

a. Investment Chapters in Free-Trade Agreements

Investment chapters in FTAs subscribed by our country provide a broad definition of investment, covering both investments existing at the date in which the Protocol enters into force and those made or acquired at a later date. Likewise, these rules apply to every level of government, i.e. to federal, state and local, etc. government, as appropriate.

On the other hand, the treatment accorded to investments and investors is based on the principle of non-discrimination, which is materialized through the National Treatment (NT) and Most Favored Nation (MFN) concepts. The NT implies, for purposes thereof, that each Party accords to investments and investors of the other Party a treatment no less favorable than the one accorded, under similar circumstances, to its own investments and investors in terms of establishment, acquisition, expansion, management, conduction, operation, sale or other forms of investment disposals. In turn, the MFN treatment implies, for purposes thereof, that each Party accords to investments and investors of the other Party a treatment no less favorable than the one accorded, in similar circumstances, to investments and investors of a non-party country in terms of establishment, acquisition, expansion, management, conduction, operation, sale or other forms of investment disposals. In this sense, such treatment offers greater certainty to investors, in the sense that they will not be affected by a discriminatory treatment in respect of any later liberalization measure accorded to third countries only, which could not be foreseen at the time of making the investment. It should be borne in mind that an investment is a long-term relationship between the investor and the recipient State.

From these principles arose a clause that provided for the possibility that each Party should give the other Party the option of choosing the best treatment under either the MFN or NT (known as the level of treatment). Likewise, they ensure a fair and equitable treatment, and a non-discriminatory treatment in view of events such as civil unrest or armed conflicts, save for subsidies and gifts.

Furthermore, these Chapters prohibit the establishment of other types of protectionist barriers, such as the application of certain performance requirements. Said clause sets forth two aspects mainly: on the one hand, it prohibits Parties to impose certain requirements and also to subject a benefit to the fulfillment of certain requirements. However, it allows Parties to impose certain conditions, such as the location of production, or training, among others. Furthermore, it provides that nationality may not be a requirement to curb an investor's capacity to exercise control over his investment.

Under an article covering transfers, investors are guaranteed the right to effect transfers freely and without delays. Chile has an Annex wherein it reserves the right to exercise some powers, aimed at ensuring the stability of its currency.

These FTAs are based on a liberalization schedule of negative lists; they recognize, however, that countries have sensitivities and discriminatory legislation in different sectors, wherefore they build in reserves concerning the obligations referred to above, such as the NT, MFN, and the non-application of performance requirements or restrictions to senior managerial personnel. Countries undertake not to make measures more restrictive, and to seek greater liberalization. The above-mentioned reserves are effected through the following Annexes.

- Annex I: Existing Measures and Liberalization Commitments
- Annex II: Reserves concerning Future Measures
- Annex III: Exceptions to the Most Favored Nation Treatment

Likewise, these agreements include extensive provisions on expropriation and compensation, which ensure that the former is well grounded and the latter fair, immediate and paid in a freely convertible currency.

As regards investment, there is the obligation to protect the environment and the prohibition of easing off environmental measures for purposes of attracting investment.

Finally, in addition to the dispute settlement system contained in the Agreement, this Chapter provides a mechanism to settle controversies arising between one Party and investors from the other Party, which ensures equal treatment to investors of both Parties and due process of law before an international court. In addition, then, to the dispute resolution system contained in the Agreement, this chapter establishes a second system to settle controversies between one Party and investors from the other Party.

b. Investments Promotion and Protection Agreements

In essence, IPPA provisions are similar and seek to create favorable conditions for investment by nationals and companies of one Party in the territory of the other Party.

These Agreements arise from the fact that in today's world the only way to establish and maintain appropriate international capital flows is through clear, balanced, fair and institutionalized rules, making up a satisfactory regulatory framework for investments, although naturally in compliance with the laws of the recipient country.

When making an investment, foreign investors' main fears are unstable legislation and economic policies, and particularly the risk of seeing the value of their investments affected by nationalization or expropriation without due compensation or uncertainty concerning repatriation of capital and profits, as well as the likelihood of denial of access to justice.

To prevent these circumstances from happening - which are referred to as political risks, in other words risks beyond the normal business risks of an operation - the Government of Chile has continued to negotiate the above-mentioned Investment Promotion and Protection Agreements, with a view to placing our country in a better position within world competition and thus attract foreign investment and duly ensure Chilean investment abroad.

Among the general principles included and recognized in such Agreements, the following should be highlighted:

- i. Free transfer: any investor may send the benefits derived from his investment to his country of origin, and also repatriate invested capital in the event of termination of activities or liquidation of the investment;
- ii. Compensation in the event of expropriation or nationalization; and
- iii. A fully regulated dispute resolution mechanism, to settle controversies arising between the contracting Parties or between one Party and investors from the other Party. In this latter case, the investor is entitled to choose whether to submit to the jurisdiction of national courts or to initiate an international arbitration proceeding before the ICSID (International Center for the Settlement of Investment Disputes) or before an ad-hoc tribunal constituted according to the UNCITRAL rules (United Nations Commission on International Trade Law). Once chosen, jurisdiction is final; in other words, it may not be changed thereafter.

The procedure to select the countries with which Chile is interested in subscribing IPPAs is the following: once a year, the International Economic Relations Office, in coordination with the Foreign Investment Committee, prepares an agenda for the different Agreements to be negotiated. For such purposes, international political priorities set by the different Foreign Affairs Departments are taken into account.

As regards economic and trade considerations that may affect the establishment of negotiation priorities with countries included in the Agenda, it should be noted that often times it is difficult to assess the actual impact of an IPPA on investment growth in the territory of the other Party. Thus, the importance of such an Agreement resides, in essence, in the existence of a legal framework that, in the event of effective investments, sufficiently ensures the rights of investors through clear, pre-established rules. In this sense, it is reasonable to assume that a foreign investor, faced with two States offering similar economic advantages, would prefer to make his investment in the country where an IPPA is in effect.

Chile has subscribed fifty Agreements on this matter, thirty-one of which have been published in the Official Gazette (see a complete list at [www.direcon.cl](http://www.direcon.cl)).

Lastly, it should be mentioned that additional obligations included in IPPAs - such as consolidated access to foreign investors in the recipient country and pre-establishment (protection for the investor and his investment during the stage prior to the establishment) - have been agreed upon in FTAs subscribed with Canada, Mexico and United States with the relevant restrictions and due safeguards for the regulatory powers of the Central Bank.

### **III.5 Trade Remedies**

#### **III.5.A. Safeguards**

Chile's legal framework for safeguard measures comprises: Article XIX of GATT 1994, the WTO Agreement on Safeguards, Law No. 18.525 (amended in May 31, 1999, by Law 19.612), and the Regulations on the Application of Safeguard Measures issued by the Ministry of Finance in Decree No. 909 of 17 June 1999. Law No. 19.612, Chile's first law on safeguard measures, establishes the National Commission (mentioned in Law No. 18.525) as the authority to initiate and conduct investigations relating to safeguard measures and to propose the imposition of safeguard measures.<sup>16</sup>

Pursuant to Article 9 of the revised Law No. 18.525, the President of the Republic may apply *ad valorem* tariff surcharges through a Supreme Decree of the Ministry of Finance, subject to a favorable report by the National Commission. At the written request of the domestic industry or on its own initiative, the National Commission may initiate investigations to determine serious injury to the domestic industry or the threat thereof, due to a surge of imports.

As established by the Regulations on the Application of Safeguard Measures, serious injury is understood to mean a significant impairment in the position of a domestic industry. In determining the existence of injury or threat thereof, the Commission must evaluate all relevant objective and quantifiable factors.

Within ninety days from the initiation of the investigation, the Commission must decide whether, the available information leads to the conclusion that imports of a product have

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<sup>16</sup> Chile's notification is available in WTO document G/SG/N/1/CHL/2, 24 August 1999.

increased in such volume and under such conditions as to cause or threaten to cause serious injury to domestic producers of like or directly competitive products. If this is the case, it must adopt a Resolution recommending the application of tariff surcharges: the Resolution, together with the background information and conclusions of the investigation, are transmitted to the President of the Republic, who makes a final decision through a Decree of the Ministry of Finance. Where, the available information does not permit the establishment of a safeguard measure, the Commission must dictate a resolution to end the investigation and transmit the decision to the Minister of Finance to be summarized and published in the *Official Gazette*.

In critical circumstances where delay would cause damage that would be difficult to repair, the Commission may recommend to the President of the Republic to apply provisional tariff surcharges within a period of thirty days from the initiation of the investigation. The Commission's recommendation must be based on a preliminary determination of the existence of clear evidence that the increase in imports has caused or threatens to cause serious injury.

The surcharges may not be applied for more than one year, including the period of provisional application of the measure. This period may be extended for one further period not exceeding one year, subject to a favorable report by the Commission. The Commission may at any time recommend that the application of the tariff surcharges in effect should be modified or abolished before their expiry date. The Law does not provide for the imposition of quotas. Commission decisions are by majority of the votes cast. The approval of three quarters of the members of the Commission is required if the application of a surcharge increases the tariff in place above the WTO bound tariff rate.

Since the Safeguard Legislation has been in force, Chile has imposed seven safeguard measures, out of eleven investigations (Table III.5). None of the measures taken is in force at present time.

### III.5.B. Antidumping Measures and Countervailing Duties

The Agreement on Implementation of Article VI of the GATT 1994, the Agreement on Subsidies and Countervailing Duties, Article VI of GATT 1994, and the WTO Agriculture Agreement, all apply with the force of law in Chile since the enactment of the Marrakesh Agreement by Supreme Decree No. 16 of the Ministry of Foreign Affairs of 5 January 1995 (Chapter II), Law No. 18.525 of 30 June 1986 and its further amendments, Decree No. 575 of the Ministry of Finance containing the Regulations on Article 11 of Law No. 18.525, and the Chile-Canada Free-Trade Agreement.<sup>17</sup>

The various definitions contained in the WTO Agreements on Anti-Dumping and on Subsidies and Countervailing Duties apply fully, as these Agreements are an integral part of the Chilean legislation.

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<sup>17</sup> See Chile's notification in WTO document G/ADP/N/1/CHL/2.

The National Commission for Investigations on Price Distortions through Imports, created by Article 11 of Law No. 18.525, carries out investigations related to all aspects of anti-dumping and countervailing measures. The Commission is composed of: the National Economic Prosecutor's Office, who chairs it; two representatives of the Central Bank of Chile, one representative respectively of the Ministries of Finance, Agriculture, Foreign Relations, and Economy; and the National Director of Customs. The Central Bank provides the Technical Secretariat for the Commission.

The Commission conducts an investigation if the complainant can provide evidence of a distortion (dumping or the existence of a subsidy) and the manner in which it causes or threatens material injury to the Chilean industry. Complaints can be submitted by any industry group or in the name of any industry group. The Commission may also conduct investigations on its own initiative when it possesses information that justifies so doing. The authorities indicate that this has not occurred since 1995.

After a complaint has been lodged the Commission must publish a notice of the opening and subject of an investigation in the *Official Gazette*. Within thirty days from the date of this notice, the Commission shall receive all information interested parties wish to submit, and request any reports it considers necessary. Before reaching a decision, it must conduct public hearings. If the Commission considers that, on the basis of available information, it is possible to establish the existence of price distortions and that these distortions cause or threaten to cause material injury to the affected domestic industry, this is stated in its decision recommending the establishment of anti-dumping or countervailing duties.

The anti-dumping and countervailing duty proposed by the Commission must not exceed the margin of distortion, which is calculated by comparing dumped with non-dumped imports. The Commission may also recommend to the President the application of provisional duties. Anti-dumping and countervailing duties can be imposed for a maximum of one year. However, a new investigation can be initiated if the Commission considers that there is evidence for the duty to be maintained.

Against the background of increased worldwide use of anti-dumping measures, Chile has contributed to the WTO Negotiating Group with a view to clarify and improve at the multilateral level various provisions of the Anti-Dumping Agreement. They cover, *inter alia*: duration of anti-dumping measures, facts available, constructed value, zeroing, assessment of injury, price-undertakings, lesser duty, and review of anti-dumping orders.

The latest anti-dumping measures were adopted in 1998 and affected the imports of hot rolled steel from Russia and Ukraine. The latest countervailing duty applied was in 2000 and affected imports of powder milk from United States and the European Union.

### III.5.C. Institutional Arrangement

Included in 3) e) i, and 3) e) ii.

### **III.6. Chilean Commitments Regarding the WTO**

The WTO Agreements were adopted by Chile through Supreme Decree No. 16 of 5 January 1995 of the Ministry of Foreign Affairs. They form an integral part of national legislation, with the status of an ordinary law, and may be invoked before Chilean courts. WTO Agreements take precedence over domestic legislation if they contain a greater degree of specificity, when covering the same subjects, or if they establish a new set of rules covering subjects not dealt with by domestic legislation, or when they regulate institutions or subjects setting rules whose legal sense and effects are in contradiction with the sense and effects of prior domestic legislation. Moreover, when the WTO Agreements were enacted after the prevailing relevant domestic legislation, the principle of tacit derogation applies. However, this does not detract from the validity of the provisions of an existing law that do not conflict with or contradict newer laws (Article 52 and 53 of the Civil Code).

Law No. 19.589 of 14 November 1998 provided for a reduction of Chile's MFN tariffs and revised some export promotion programs with a view to bringing them into line with Chile's WTO commitments (particularly with the SCM Agreement).

A law on miscellaneous WTO-related matters entered into force as of November 4, 2003. The law No. 19,912 aims to bring various individual provisions of Chile's legislation into line with the WTO Agreements. It contains provisions on customs valuation, technical regulations, taxation, and intellectual property. The law provides for notification procedures for technical regulations and conformity assessments. It also provides for the abolition of the dispatch tax on goods imported duty-free, and of the trade-related investment measures in the automotive sector. Furthermore, it amends Chile's intellectual property legislation by specifying protection for computer programs, data compilations, and textile designs.

Chile does not have any pending implementation of WTO Agreements.

#### ***Participation in the World Trade Organization***

Chile is a founding member of the GATT, and as such it has unwaveringly maintained its commitment to the multilateral trading system as represented by the WTO. Thus, it actively supported efforts to launch a new round of negotiations in the Ministerial Conferences in Seattle (1999) and Doha (2001). Chile welcomed the launching of the Doha Development Round, which represents an opportunity to settle serious problems in our trade relations which have proven impossible to solve in the context of bilateral or regional agreements. This has been the case, in particular, for agricultural subsidies and the abuse of anti-dumping measures. Likewise, the Doha Development Round has provided Chile with a potential to considerably improve access for its exports to important markets with which it has no preferential trade arrangements, particularly in Asia.

In line with these objectives, Chile has submitted various negotiating proposals and has participated actively in formal and informal coalitions with other Members which share its interests. These coalitions include, in particular, the Cairns Group and, more recently, the G20 in agriculture, and the Friends of the Anti-Dumping Negotiations (FANs). We have

also been active in other areas of the Doha Development Round such as market access for non-agricultural products and the reform of the Dispute Settlement Understanding.

The importance that Chile attributes to the WTO is not limited to the gains to be achieved through negotiation. For Chile, the WTO also derives its importance from the ongoing work of its different technical bodies, above all the Dispute Settlement Body. This is the mechanism that ultimately ensures that multilateral trade rules are respected and that countries of extremely varied political and economic weight can solve their problems on the basis of commonly agreed rules, on an equal footing, and with the full opportunity to present their arguments, rather than being subjected to the decisions of the most powerful. Chile has in fact been active in using the DSB as complainant, respondent and third party.

## IV. ANALYSIS OF THE EFFECTS OF TARIFF REDUCTION ON CHILEAN IMPORTS AND EXPORTS.

### IV.1 Introduction

This section analyses the effects that a tariff reduction would bring about in bilateral trade between China and Chile. The latter considers a set of partial equilibrium models, one for exports and one for imports, taking into consideration Chilean trade data from 2003. Both models consist in studying each market separately and determining the effect of a full tariff reduction on the quantities demanded and supplied of goods, and does not take into account the relationships between these markets and the rest of the economy, as well as macro restrictions of resources in the economy. The final results in terms of imports and exports are given by the difference between demanded and supplied goods after the application of the tariff reduction.

### IV.2. Models

#### IV.2.A. Model to Estimate the Impact on Imports

The formulas proposed by Cline (1998)<sup>18</sup> were used in order to calculate the expansion in Chilean imports from China that would be brought about by a reduction in Chilean tariff. This model seeks to determine trade creation and trade diversion that would arise from a preferential tariff reduction on Chilean imports from China. Trade would be created in those goods for which China may offer a lower price than the international price, i.e. goods for which China is the cheapest supplier. Thus, by eliminating the tariff, with the resulting price reduction perceived in the internal market, consumption increases and quantities offered by domestic producers decrease, when national production competes with imports; consequently, there is a net increase of imports, since this implies an increase of goods available for consumption. Trade creation has a positive effect derived from the tariff reductions.

Trade creation will be estimated based on the definition of price elasticity of import-based demand. The model assumes that an FTA will translate into the full elimination of *ad valorem* tariffs and that the increase of Chilean imports will generate a variation (in foreign currency terms) in the internal price of imported goods, therefore that the change of tariff is equivalent to the change in domestic price. Thus, the change in the value of imports would only arise from changes in imported quantities, and the calculation of trade creation for each product will be done as follows:

$$TC = M_0^{RPCH} \cdot h_p \cdot Dt_{CH} / (1 + t_0) \cdot (1 - h_p / e_p^{RPCH})$$

Where,:

TC : Chilean trade creation in benefit of Chinese exports

<sup>18</sup> Cline, W. et al. "Trade negotiations in the Tokio Round: A Quantitative Assessment". Washington D.C., Brookings Institution, 1998.

- $M_0^{RPCH}$  : Value of initial imports from China, before tariff reduction.  
 $\eta_p$  : Price elasticity of import-based demand  
 $\Delta t_{CH}$  : Differential between the present Chilean tariff and the FTA tariff (0).  
 $t_0$  : Initial *ad valorem* duty.<sup>19</sup>  
 $\varepsilon_p^{RPCH}$  : Price elasticity of export-based supply.

On the other hand, trade deviation will emerge in relation to those goods for which China offers a higher price than the cheapest international supplier, since a preferential tariff to China would push the price down in the domestic market, thus enabling Chile to substitute Chinese imports for goods offered by more efficient international suppliers. Trade deviation does not imply greater availability of goods, and only represents a substitution of supply sources due to the relative price change arising from the preferential tariff granted to the trade partner. Trade deviation represents a Free-Trade Agreement-derived efficiency cost for the economy, as it ends up importing goods at a price higher than that available before the agreement (because CIF prices at both sources have not changed). This translates into lower tariff revenues for the State, which is transferred as an implicit subsidy to partner countries and therefore leads to lesser welfare.

To calculate the increase of imports arising from trade deviation we use the concept of elasticity of substitution between goods imported from different suppliers (China and the rest of the world). In addition, it is assumed that the increase of Chilean imports does not affect the CIF value of imported goods. With this, deviation are calculated as:

$$TD = (r \cdot P_r \cdot M_0^{RPCH} \cdot M_0^{RM}) / (M_0^{RPCH} + M_0^{RM})$$

where:

- TD : Chilean trade deviation in benefit of Chinese exports  
 $\rho$  : elasticity of substitution between imports from China and imports from the rest of the world.  
 $M_0^{RM}$  : value of initial imports from the rest of the world  
 $M_0^{RPCH}$  : value of initial imports from China.  
 $P_r$  : proportional variation in relative prices. The latter is expressed as:

$$P_r = [(1 + t_1^{RPCH}) / (1 + t_1^{RM})] / [(1 + t_0^{RPCH}) / (1 + t_0^{RM})] - 1$$

Where  $t_1^{RPCH}$  and  $t_0^{RPCH}$  are the tariffs applied to Chinese imports before and after tariff reduction. On the other hand,  $t_1^{RM}$  y  $t_0^{RM}$  are the tariff applied by Chile to the rest of the world before and after tariff reduction towards Chinese imports.

It may then conclude that, firstly, an FTA would have a positive effect if the benefits derived from trade creation were to exceed the costs of trade deviation. This model, however, has the problem of underestimating the impact of tariff reductions on imports, as it fails to

<sup>19</sup> The Chilean unilateral tariff for 2003 is 6%.

capture the effect on goods that were not initially imported because of tariff barriers, the trade of which may become profitable as a result of the tariff reduction.

Another problem is that the model is static in nature and thus disregards dynamic effects, as it fails to capture the impact of an FTA on the rate of growth of product. In fact, the model calculates the effect on trade flows, and thus on product level, on a one-time basis, due to the reallocation of resources driven by changes in relative prices as a result of the tariff reduction.

#### IV.2.B. Model to Estimate the Impact on Exports

In the case of exports, an equation developed by Panagariya<sup>20</sup> (1995) was used. The latter allows to estimate the impact on Chilean exports of the reductions of tariffs in the Chinese market. The equation is based on the calculation of the deviation in Chinese trade with the rest of the world in favor of Chilean exports. As in the case of imports, the effects will be calculated under the assumption that an FTA will bring the elimination of *ad valorem* tariffs and that the increase of Chilean exports to China will generate a variation (in foreign currency terms) in the price of imported goods in China, with which the change of tariff is equivalent to the change in domestic price, thus creating an artificial price advantage towards Chilean goods.

The latter will be expressed by the following equation:

$$TD = M_{RPCH} \cdot \epsilon_p \cdot \Delta t_{RPCH} / (1 + t_1)$$

Where,

TD	:	Chinese trade diversion in benefit of Chilean exports
$M_{RPCH}$	:	imports originating from Chile
$\epsilon_p$	:	price elasticity of Chilean export-based supply
$\Delta t_{RPCH}$	:	differential between the Chinese tariff before and after the FTA
$t_0$	:	Chinese tariff rate before the FTA

This equation is applied to each tariff line, as long as it satisfies the following conditions:

- trade before the tariff reduction exists, in other words that trade in that good is greater than zero, and
- the tariff is greater than zero

If any of these conditions do not occur, the equation would tend to zero. This is due to the fact that the model, as the import model, only takes into account existing trade, therefore disregarding the possibility of trade creation in those products where trade is non-existent and where a tariff reduction will make a Chilean product more attractive to Chinese consumers. In the case of a zero initial tariff, this would mean that in the presence of a

<sup>20</sup> Panagariya, A. "Rethinking the New Regionalism". The UNDP-World Bank Trade Expansion Project Conference. Enero, World Bank, Washington, D.C., 1995.

general tariff reduction brought about by an FTA, these products would face the exact same conditions, and thus no price advantage towards Chilean products would exist.

With regards to the data that was used to calculate the effects of an bilateral FTA, the Central Bank of Chile trade data base for 2003 was used for export and import statistics. For China's tariff rates, the WTO database was used, under the assumption that the present tariff of China is the same as that bound in the WTO. In terms of elasticity, in general, the price elasticity of imports that were used came from Valdés<sup>21</sup> (1992) that originally came from De Gregorio<sup>22</sup> (1984). In the case of textiles and apparel an elasticity of -1,23 from Taplin (1973) was used and -4,72 from Goldstein and Khan<sup>23</sup> (1985). In terms of the substitution elasticity, this came from UNCTAD<sup>24</sup> (1989) and is equal to 1,5.

### **IV.3. Tariffs Structure**

#### **Structure and levels**

Chile grants at least MFN treatment to all its trade partners. The Chilean tariff classification is based on the Harmonized Commodity Description and Coding System (HS 2002). In March 2003, Chile's tariff schedule contained 7,903 lines at the eight-digit level. The average applied MFN tariff is 5.9% (Table III.2). Agricultural goods (WTO definition), including those subject to the price band system, are levied an average of 6.0%, while non-agricultural products excluding petroleum face an average tariff of 5.9%.

All import duties are applied to the c.i.f. value of goods. With the exception of 36 tariff lines that are subject to specific duties within a price band system (section (v)), Chile applies only *ad valorem* tariffs. It does not apply seasonal tariffs.

Through Law No. 19.589 of 14 November 1998, Chile has been reducing its applied tariffs unilaterally by one percentage point annually since 1999; since January 2003 it has been applying a uniform tariff of 6%, which applies to more than 98% of tariff lines. The authorities indicated that currently no further tariff reductions are envisaged. All changes in the tariff structure must be approved by Congress.

With the exception of the agricultural goods subject to the price band system, the only applied rates are 6% and 0%. Since Chile's last Review in 1997, the number of goods entering duty-free has increased, from 21 to 95 tariff lines at the eight-digit level. Goods

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<sup>21</sup> ESTRATEGIA COMERCIAL CHILENA PARA LA DECADA DEL 90 Elementos para el Debate, Eds. Andrea Butelman y Patricio Meller; CIEPLAN, "Una metodología para evaluar el impacto cuantitativo de una liberalización comercial: aplicación al ALC entre Chile y EE.UU.", Rodrigo Valdés, 1992

<sup>22</sup> De Gregorio José, 1984, "Comportamiento de las Exportaciones e Importaciones en Chile, Un Estudio Económico", Colección de Estudios CIEPLAN N° 87.

<sup>23</sup> Goldstein M. y Khan M., 1985, "Income and Price Effects in Foreign Trade", en Handbook of International Economics, R. Jones P. Kenen eds., North-Holland.

<sup>24</sup> UNCTAD - WORLD BANK, 1989, A user's manual for SMART, Software for Market Analysis and Restrictions on Trade.

that enter at a zero tariff include fire-fighting vehicles, helicopters, aircraft, cargo and fishing vessels, various computer products, and books.

Used goods bear a surcharge of 50% above the relevant import duty, resulting in a combined duty of 9%. Goods exempt from this additional duty include used ambulances, armoured cars, public-road-cleaning vehicles, mobile homes, prison vans, and cement-making vehicles. The customs duty payable on goods admitted under the temporary admission system is based on the number of days for which the merchandise is admitted. For temporary admission of 1 to 15 days the duty is 2.5% of the normal duty, for 16 to 30 days 5%, for 31 to 60 days 10%, for 61 to 90 days 15%, for 91 to 120 days 20% and for more than 121 days 100%. An additional tax of 10% on the customs value is levied upon application for an extension of the period.

Government revenue from import tariffs decreased from US\$1.6 billion in 1997 to US\$0.7 billion in 2003. Fiscal revenue from foreign trade (tariffs plus VAT and specific taxes on imports) fell from over 40% in 1996 to just over 37% in 2003.

### **Tariff bindings**

In the Uruguay Round, Chile bound all its tariff lines contained in Chapter 1 to 97 of the Harmonized System at a uniform rate of 25%, with the exception of various agricultural products and of six tariff lines that already had lower bound rates as a result of pre-Uruguay Round Commitments. A number of agricultural products are subject to a bound rate of 31.5% at the end of the implementation period; this list, in Section 1 of Chile's Schedule, includes: dairy products, wheat and wheat flour, oil-seeds and oleaginous fruit, vegetable fats and oils, and beet or cane sugar. Six tariff lines carry bound rates lower than 25%: one line is bound at 0% (bone ashes), one at 3% (ships over 3,500 tons or 120 metres in length), and one at 15% (various worked carving material); and three lines (various types of turbines) are bound at 23%. As at March 2003, all applied tariffs were below or equal to bound levels.

After the conclusion of the Uruguay Round, Chile pursued Article XXVIII renegotiations for sugar to allow it to amend its Schedule of Commitments. In September 2001, Chile notified that it had completed the process of renegotiation concerning the rectification of its Schedule, resulting in an increase in the final bound rate for sugar to 98%, up from 31.5%, together with the introduction of a 60,000 ton tariff quota with a zero tariff (section (iv)).<sup>25</sup> Chile has on three occasions reserved the right under Article XXVIII:5 of GATT 1994 to modify its Schedule of Commitments; the most recent communication refers to the three-year period commencing 1 January 2003.<sup>26</sup>

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<sup>25</sup> WTO document G/MA/TAR/RS/82, 30 October 2001.

<sup>26</sup> WTO documents G/MA/24, 8 January 1997; G/MA/91, 16 December 1999; and G/MA/126, 16 December 2002.

## **Tariff preferences**

The importance of preferential tariffs in Chile's trade regime has continued to increase. As at June 2003, Chile granted preferential tariff treatment under free-trade agreements to imports from Canada, Costa Rica, El Salvador, the European Union, and Mexico, The European Union and the United States. Furthermore, under LAIA partial scope agreements preferential treatment is granted to imports from Bolivia, Colombia, Ecuador, the members of MERCOSUR, Peru, and Venezuela. Chile gives preferential treatment to imports within the Global System of Trade Preferences among Developing Countries (GSTP).

Applied tariffs vary significantly across preferential agreements and sectors, generally as a result of the specific schedules of tariff reductions and the dates of entry in force of each agreement. Tariff phase-outs for sensitive products, which are in most cases agricultural products, should be completed by 2013 for products from the EU; 2014 for goods from Canada and El Salvador, and MERCOSUR; and 2015 for products from Costa Rica. No phase-outs are pending in Chile's agreement with Mexico or in its partial scope agreements.

## **Tariff concessions**

Section 0 of Chile's tariff establishes tariff concessions for, *inter alia*, public entities, benevolent and educational institutions, religious communities, maritime and air transportation companies, and automotive parts.

### **IV.4. Effects on Imports**

In the case of imports, in a situation where tariffs on Chinese imports were reduced from 6% to zero percent, and taking into consideration the Chinese and global import data from 2003, imports from China would increase in 168 million dollars, thus representing an increase of 3% on imports from China. The latter considers the sum of both trade creation and trade diversion.

In the case of trade creation, given that trade diversion basically means importing from China instead of importing from the rest of the world, the application of a zero tariff would imply an estimated increase in imports of 118 million dollars. In other words Chilean global imports would be raised by 0,7% due specifically to a tariff reduction towards Chinese products.

It is necessary to point out that in terms of imports, what is significant for the importing country is trade creation given that these surges imply greater competition within the internal market and will expose national producers to greater competition, thus to a more efficient allocation of productive resources.

**Table IV.1**  
**Assessment of the Impact on Imports of an FTA Between Chile and China**  
*(dollars CIF)*

Sector	ISIC Sub-Sector	Trade Creation	Trade Diversion	Total Trade Expansion
<b>I. Agriculture, Fruit, Livestock, Silviculture and Extractive Fishery</b>	<b>100</b>	<b>82.006</b>	<b>114.760</b>	<b>196.766</b>
	110 Agriculture, Fruit and Livestock	79.077	107.245	186.321
	120 Silviculture	2.417	6.159	8.575
	130 Extractive Fishery	513	1.357	1.870
<b>II. Mining</b>	<b>200</b>	<b>233.012</b>	<b>192.695</b>	<b>425.707</b>
	230 Extraction of other mineral	230.855	189.808	420.663
	231 Other minerals	10.441	13.742	24.183
	232 Non mineral mining	220.414	176.066	396.481
	240 Others	2.157	2.886	5.043
<b>III. Industry</b>	<b>300</b>	<b>117.801.609</b>	<b>49.783.952</b>	<b>167.585.561</b>
	310 Foodstuff and beverages	392.014	278.584	502.592
	320 Textiles and apparel	38.451.870	12.742.246	51.194.116
	330 Forestry and Furniture	1.023.293	712.358	1.735.651
	340 Cellulose, paper and by-products	295.450	314.004	609.454
	350 Processed and unprocessed chemicals	17.380.974	8.114.767	25.495.741
	360 Glass, clay and porcelain products	2.903.034	920.770	3.823.804
	370 Basic steel and iron industry	720.826	481.997	1.202.823
	380 Metal products, machinery and equipment	49.932.130	23.590.664	73.522.794
	390 Non specified manufactures	6.702.018	2.628.562	9.330.580
IV. Others	900	5.182	5.525	10.708
<b>V. TOTAL</b>		<b>118.121.809</b>	<b>50.096.933</b>	<b>168.218.742</b>

Source: Economic Research Unit, DIRECON (August 2004), based on data from Banco Central de Chile.

#### IV.4.A. The Effects of Tariff Reduction by Sector<sup>27</sup>.

##### *i. Agriculture.*

This sector, as a whole, is estimated to be the least benefited by tariff reduction, foreseeing a possible increase of only 196 thousand dollars, where 114 thousand dollars consists of are trade diversion and 82 thousand dollars represents trade creation. This, in comparison to actual 2003 import data, would imply an increase in 7% in agricultural imports.

The latter would represent a minimum effect on global imports and trade patterns in this sector. It would mainly be trade diversion from other suppliers. The reasons behind this is, on the one hand, that exports of China to Chile of agricultural products only accounts for 0,2% of total imports, but also, on the other hand that Chile is not a great buyer of these types of products, given that the internal productive sector is competitive in most agricultural products, the latter being supported by the fact that Chile is a net exporter of agricultural goods.

<sup>27</sup> As in Chapter II, sectoral analysis is based on the ISIC Classification.

ii. *Mining.*

As in the agricultural sector, the effects on the mining sector of a reduction in tariffs brought about by the subscription of an FTA would be relatively small, amounting to an increase of 425 thousand dollars, which in turn would represent a 10% growth rate of mining imports from China.

However, unlike the agricultural sector, trade creation in mining sector (233 thousand dollars) would exceed that of trade diversion (192 thousand dollars). The latter is due to the fact that sectoral imports would increase in those minerals that belong to the non ferrous minerals subsector, where Chile is a net importer, and therefore a tariff reduction would encourage greater demand from the internal market that would exceed the substitution effect brought about by the artificial price differential that tariff reduction would create.

iii. *Industry*

This sector will have the greatest impact of an FTA between Chile and China. The model estimates that imports in industrial goods would increase in 167 million dollars, concentrating 99,6% of the total growth of imports. Trade creation in this sector amounts to 117 million dollars (99,1% of total trade creation) and trade diversion to 49 million dollars (98% of total trade deviation). In terms of trade creation, this increase in imports would imply that Chilean total imports from the world would grow in 0,7%, *ceteris paribus*.

Within the industrial sector, the largest increases are focused in metal products, machinery and equipment sub-sector, that would grow in 49 million dollars, basically due to the rise in imports of electrical products (26 million dollars) and machinery and equipment (12 million).

The second sub-sector where imports would benefit most from tariff reduction would be the textile and apparel sub-sector. In this case, total trade expansion would reach 51 million dollars, representing a rate of growth of 10% of trade in this sector from China, of which 38 million dollars are trade creation and 13 million are trade diversion. Within this sub-sector the greatest surges are in textiles (18 million), confection and garments (11 million) and footwear (2,6 million).

In third place ranks the higher imports of products originated in processed and unprocessed chemical sub-sector that would reach, in terms of trade creation, 17 million dollars, which represents 15,5% of the total creation of trade in the industrial sector. Within this sub-sector the major increases are focused in rubber products (US\$ 9 million, 53% of total trade creation in the sub sector), plastic products (US\$ 3,7 million, 21,8%) basic chemicals (US\$ 3,4 million, 17%) and prepared chemical products (US\$ 1 million, 5,9%).

In general, the results are not surprising, given the nature and structure of imports from China as well as Chile's role as a net importer of industrial goods. It is also necessary to point out that in the majority of the industrial goods, trade creation well surpasses trade diversion, to the extent that it overcomes all the effects in all the other sectors. This can be

explained by a high substitution elasticity that this sector has, thus a small reduction in the price in the internal market will bring with it a change in demand in favor of that supply that has a smaller price.

#### **IV.5. Results on Exports**

The exporting challenge for the Chilean economy, in the Asian region, is to expand its exports not only in value but also in the amount of products that are sold to the Asian market. In general, the latter has been difficult for the positioning of non-traditional and emerging products of the Chilean export supply, especially in the agricultural, fishing, wood and foodstuff sectors. With the exception of Japan and recently Korea, given the new scenario of the bilateral FTA has brought about, none of the Asian countries has figured in the last few years within the 15 main export markets of non-traditional goods. China is a clear example of the projections and limitations of economic relations with the Asia Pacific region. The immediate benefits of a Free Trade Agreement derive from the opening of China and other Asian markets that are becoming more integrated to this economy, towards a greater array of Chilean exports, that in general represent at present a small percent of total imports.

As it has been said before, the models used to estimate the impact of trade liberalization are very limited in their results; this is even more so if we take into account export analysis given the actual patterns of exports to the Chinese markets. Chile on average has an export supply that covers over more than 5.231 different tariff lines, but only 253 are exported to China, thus the model will only take into consideration what would happen to these 253 products disregarding probable trade creation in the approximately 4.900 other export lines that would also benefit from tariff reduction and other issues addressed in the agreement that also affect directly trade flows.

The Chinese economy still presents tariff and non tariff barriers that have contributed to circumscribe the amount of Chilean products towards a reduced amount of products that are mainly concentrated in natural resources, such as copper, fish meal and cellulose. China still maintains a system of tariff scaling that raises the market price of goods originating from the agriculture sector and industrial products derived from the mining and forestry sector. China has applied high basic tariffs on products of greater added value from the forestry sector and an ample gamma of products from the fishery, agro-industrial and fruit sectors. Finally China also imposes very restrict SPS measures that eliminate any possibility of competing let alone entering that market.

As a whole, these measures have impeded that Chile's export offer can be extended towards products with higher aggregate value, that come from the mining and forestry sectors, and in the same way allowing market access in the Chinese market of emerging exports from the agro industrial and foodstuff sector.

In terms of the results of the model on Chilean exports, a tariff reduction on behalf of China would imply a growth estimated in 69.6 million dollars, which means an increase of 3,7% in exports to China, and in terms of total exports to the world, a raise in 0,3%, *ceteris paribus*.

It must be stressed that these results only apply to the present 253 products that are at present being exported to China. Therefore, the following sections, even though they reflect the results given by the model, also take into account other factors that must be considered that go beyond the model and would reflect a more comprehensive result of trade liberalization not only in tariffs but also in other aspects of non tariff measures

**Table IV.2****Assessment of the Impact on Exports of an FTA Between Chile and China***(dollars FOB)*

Sector	ISIC Sub-Sector	Trade Expansion
<b>I. Agriculture, Fruit, Livestock, Silviculture and Extractive Fishery</b>	<b>100</b>	<b>19.743.122</b>
	110 Agriculture, Fruit and Livestock	16.469.268
	120 Silviculture	12.677
	130 Extractive Fishery	3.261.178
<b>II. Mining</b>	<b>200</b>	<b>3.030.287</b>
	220 Copper	2.841.074
	230 Other	189.213
<b>III. Industry</b>	<b>300</b>	<b>46.857.294</b>
	310 Foodstuff and beverages	37.271.740
	320 Textiles and apparel	530.486
	330 Forestry and Furniture	944.947
	340 Cellulose, paper and by-products	807.697
	350 Processed and unprocessed chemicals	6.909.487
	360 Glass, clay and porcelain products	2.512
	370 Basic steel and iron industry	339.513
	380 Metal products, machinery and equipment	50.513
390 Non specified manufactures	420	
<b>V. TOTAL</b>		<b>69.630.703</b>

Source: Economic Research Unit, DIRECON (August 2004), based on data from Banco Central de Chile.

#### IV.5.A. The Effects of Tariff Reduction by Sector.

##### *i. Agriculture, Forestry and Fishing.*

Chile's agriculture sector (excluding the processing of agricultural goods) is important in terms of production, employment, and trade. Its contribution to GDP was 4.1% in 2003, about the same as in 1996. Depending on the season, Chile's agriculture sector employs between 12.5% and 13.8% of the economically active population.

In 2003, Chile exported agricultural goods (WTO definition) to a total value of US\$1,995.6 million, equivalent to some 9.5% of its total exports. Chile is an important exporter of grapes, apples, and berries. Its main export markets for agricultural products are the United States, the European Union, and Japan.

According to the 1997 National Agricultural Census, Chile had almost 330,000 farms, including just over 100,000 subsistence farms and 176,000 small farms. While the small-farming sector tends to specialize in vegetables, flowers, and dairy farming, Chile's 17,000 medium-sized farms and 9,500 large agricultural operations, which together control 77% of usable farmland, tend to focus on forestry, fruit growing, and cattle raising. Chile's total area used for farming, stock-breeding, and forest plantations is about 17.7 million hectares. The authorities note that, as a consequence of trade liberalization, a diversification in agricultural production has taken place over the last few years, including a shift from annual crops to fruit and vegetable production and stock-breeding.

Chile is one of the world's largest exporters of fresh and processed fruits. It has about 7,800 fruit producers, farming over 211,000 hectares in 2003, up from 187,000 hectares in 1996. Production is concentrated on grapes, apples, avocados, and pears; industry output expanded to 3.8 million tons in 2003.

Besides benefiting from a favorable climate and geography, Chile's location in the southern hemisphere allows producers to target off-season northern hemisphere markets, giving exporters, especially of fresh fruits, an important competitive edge. Furthermore, about 35% of Chile's cropland is irrigated, compared with an average of 13.7% in Latin America.

Farming in northern Chile (Regions I to VII), which and relies on artificial irrigation is export-oriented. On the other hand, producers in southern Chile (Regions VIII to XII), where cattle farming and annual crops predominate, cater mostly for the domestic market. Foreign direct investment in farming and stockbreeding averaged US\$30 million annually between 1996 and 2003. Foreign investors are granted the rights laid down in the Foreign Investment Statute (Chapter II(4)). The presence of overseas companies has helped to increase the sector's productivity, contributing to far-reaching modernization that has included not only production methods but also marketing and branding techniques, and has increased the industry's integration into international trading and distribution circuits. Foreigners may own agricultural land without limit.

In the case of forestry, Chile has large softwood plantations, consisting mostly of pine trees and eucalyptus. Its forest plantations cover 2.1 million hectares, equivalent to 18% of the total surface covered by forests and 2.8% of the national territory.

According to estimates provided by the authorities, the forestry sector contributed about 0.7% to GDP in 2001. In addition, the processing of wood and wood products contributed about 1.4%, and the production of paper accounted for another 1.9% of GDP. Chile is the world's third-largest exporter of woodchips and also exports nearly 50% of its saw timber, panels, and softwood pulp production. Paper production is mostly consumed domestically. Chile's forestry sector is regulated by the National Forest Corporation (CONAF) of the Ministry of Agriculture, in accordance with the Forest Law (Supreme Decree No. 4363) of 1931, Decree Law No. 701 of 1974, and Law No. 19.300 of 9 March 1994. In addition, the Forest Institute (INFOR) of the Ministry of Agriculture undertakes research with a view to promoting a sustainable use of Chile's forests.

Pursuant to Decree Law No. 701, CONAF must authorize the use of land for forest plantations following a request by an enterprise and an analysis of the territory. The Law also provides for re-forestation requirements for the exploitation of planted forests. There are special provisions for small-scale enterprises engaging in forestry; for example they are exempt from providing re-forestation studies and utilization plans but not from re-forestation requirements. Law No. 19.300 lays down the principles of environmental protection in Chile. In addition, the authorities indicate that legislation is before Congress, with a view to make a more sustainable use of Chile's native forests.

In terms of fishing and aquiculture, The contribution of these products to GDP increased from 1.2% in 1996 to 1.5% in 2003. Compared with other sectors of the economy, foreign direct investment is relatively limited in the fishing sector, with annual FDI averaging less than US\$27 million between 1996 and 2003. While the importance of aquaculture has tended to increase, the Chilean catch has decreased since the mid-1990s. According to the authorities, this decline reflects overexploitation of dwindling stocks in some highly migratory species, mainly due to fleets from third countries operating near Chilean territorial waters; more stringent controls; and shrinkage in the national large-scale fleet to 370 boats from around 900 at the beginning of the 1990s.

Aquaculture has become increasingly important; by 2001 more than 2,250 concessions had been issued for the cultivation of fish, mollusks, and seaweed. Fish cultivation (711 concessions) takes place mainly in Regions X and XI in southern Chile; salmon and trout are the most important cultivated species. The cultivation of mollusks (740 concessions) and seaweed (693 concessions) is concentrated in Region X. Based on a favorable geographic location and low-cost inputs, Chile has become the world's second-largest producer of farmed salmon after Norway, with a world market share of 20%.

In accordance with the Law on Fisheries and Aquaculture of 21 January 1992, the fisheries sector is regulated by the Sub-secretary of Fisheries, a dependency of the Ministry of Economy. The National Fisheries Service (SERNAPESCA) is responsible for issuing and enforcing technical regulations and sanitary requirements in the fisheries sector.

In order to attain a sustainable level of exploitation of the existing resources, the Law on Fisheries and Aquaculture establishes specific systems to limit access to fishing: (i) a general access regime; (ii) a regime for species in full exploitation; (iii) a regime for fisheries that are replenishing; and (iv) a regime for incipient fisheries. Permits to exploit species classified under the general access regime or the full exploitation regime are generally granted automatically, but may not be if, *inter alia*, the request is made by a factory ship. Licenses to exploit species that are incipient or in the process of regeneration are granted for ten years through public bids. The licenses are transferable and are specified as a share of a global quota.

According to the estimates based on the model, exports of agricultural goods would grow in 19.7 million dollars (28% of total expansion of Chilean exports). This figure may appear relatively small, but compared to the present level of agricultural exports; this figure represents an increase of 95%. The impact would be highly concentrated in the exports of fruits, which would explain around 70% of the sector's gain. As a whole, this sector represents the largest proportional gain in exports given a situation where tariffs would be reduced to zero.

The latter result by all means underestimates the probable effects that an FTA would bring about. At present this sector exports 39 products (tariff lines) to the Chinese market, facing tariffs beyond the general average of the Chinese tariff schedule and even the agricultural sector in particular. However it must be considered that this export structure is very restricted compared to this sector's exports to the world.

China considers all components of the agricultural sector as sensitive, given that around 60% of the Chinese population base their subsistence on agricultural activities, with a very low productivity yield; thus the foreign trade administration has been applying a system that is based on quotas, where tariff within the quota are relatively low but the tariffs that lay beyond the quota can reach tariff peaks of up to 60%. However with China's WTO accession, there has been a period of aggressive reform; reforms that should be enhanced bilaterally with a bilateral FTA between China and Chile.

It is clear that in this sector, the major benefits of a Free Trade Agreement would not come from tariff reduction, given the actual position of competitiveness of the Chilean economy in this sector as well as counter seasonal factors, rather, the real benefits would come from clearer and more transparent regulations on non tariff barriers that should be considered in a comprehensive FTA.

In terms of calculating probable results from a comprehensive FTA, this is impossible, however the potential for the sector can be approximated given the results of other FTAs that Chile has signed. The best approximation given the size of demand from the Chinese

market would be to consider a potential that the Japanese market represents for the sector, given the degree of competitiveness of the Chilean market and the counter seasonal consideration, however in terms of short term results the best benchmark would be the Korean market given the market conditions in the sense of structure and demand, as well as the preliminary results of the bilateral FTA that came into force since April of 2004.

The latter would imply that the agricultural sector would probably see a raise not only in the value of trade flows but also the extension of exports supply to products otherwise barred from the market due to the application of non tariff barriers that where substantially eliminated or regulated though the agreement.

## *ii. Mining*

The mining sector contributed 7.1% to Chile's GDP in 2003, up from 6.7% in 1996. Employment in the sector decreased from 1.8% of the labor force to 1.3% over the same period, reflecting a strong increase in the sector's labor productivity. Foreign direct investment in mining is substantial; annual FDI flows averaged over US\$1.3 billion between 1996 and 2003. Chile's mining exports amounted to US\$8.7. billion in 2003, equivalent to 42% of total exports.

With a wide variety of high-quality minerals, and well over a century of mining experience, Chile has one of the largest and most-developed mining industries in the world. Chile is the world's leading supplier of copper and copper ores and concentrates, with 165 million tons of proved copper reserves. Chile is also an important producer of gold, manganese, molybdenum, silver, and zinc.

Chile's total copper production reached around 4.6 million tons in 2003. Exports of copper products in 2003 totaled US\$ 7.5 billion, including US\$ 4.2 billion of copper cathodes and US\$ 2.5 billion of copper concentrates. Chile's main export markets for copper are the United States, Japan, China, Italy, and France.

The State still plays a crucial role in Chile's mining sector, especially in the production of copper. State participation in production is through the National Copper Corporation (CODELCO) and the National Mining Company (ENAMI); these state-owned enterprises are the world's first and the eighth exporters of copper products. According to the authorities, there are no plans to privatize these enterprises.

CODELCO continues to be the world's largest single producer of copper; it is also one of the main producers of molybdenum. In 2003, CODELCO produced 1.7 million tons of copper (Table IV.8), equivalent to about 12.5% of world output, up from 1.2 million tons in 1996. A fixed 10% of the value of CODELCO's external sales is allocated to the Armed Forces, whereas CODELCO's profits are paid into the general State budget. CODELCO also has joint ventures both with national and foreign companies, in Chile and abroad, for exploration, production of electricity, production of mining equipment, and production of manufactured products such as metal wires.

As in other sectors, foreign investors in Chile's mining industry can opt to conclude a contract with the State of Chile under Decree Law No. 600, which authorizes and protects the investment (Chapter II(4)). Under this statute, investors in the mining sector have eight years to bring in the capital; in other sectors the period is three years. The period may be extended by the Foreign Investment Committee to up to twelve years when prior exploration is required.

Without a doubt, the mining sector is the most significant sector in terms of exports to China, it is also the sector that has most benefited by the elevated demand of raw materials by the Chinese economy in the past three years. Although China is a large copper producer and in the past has been self-sufficient with minor imports from Asia, mainly Mongolia, and some African suppliers. Given the huge increase in demand these sources have no longer been enough, in the case of African suppliers given the political and economic instability of the region that has affected supply through reduction in production, and in the case of China the elevated cost of new explorations. Thus, China has been increasingly buying copper from Chile so as to feed its refineries and its industries with refined copper.

Although mining exports explain around 74% of Chile's exports to China, this sector would not be the most favored by an FTA. According to the model, mining exports would grow in 3.0 million dollars (4% of total expansion of Chilean exports), representing only a small increase of 0,2% in mining exports, concentrated mainly in copper or copper related products.

This relatively small growth is due to the fact that the present tariff that mining products face in the Chinese market are relatively low compared to other sectors, meaning that a reduction in the present tariff will not substantially reduce prices in that market.

### *iii. Manufacturing Industry*

Although its value added in real terms has increased, the contribution of manufacturing to GDP has declined, from 17.5% in 1996 to 17.0% in 2003. The authorities indicate, however, that this percentage does not include the activities of smelting, refining, and alloying, which are imputed to the value added of the mining sector. Employment in the sector decreased from 16.3% in 1996 to 14.2% in 2003. Chile's manufacturing sector makes intensive use of local natural resources, specifically within the fishing, forestry, and mining sectors. The most important manufacturing activities include agricultural processing and packaging and production of chemical goods, paper, and steel products. Annual foreign direct investment in the manufacturing sector averaged US\$567 million between 1996 and 2002.

Based on the ISIC classification of goods, Chile exported manufactured goods for US\$ 9.7 billion in 2003, it must be noted that the ISIC classification take into consideration for industrial goods all exports that have some degree of industrial process.

The most important export destinations for Chile's manufactures include the United States (20.9%), Argentina (10.6%), Peru (9.1%), Mexico (8.9%), and Brazil (8.7%). Manufactured

imports originate mainly in the United States (28.7%), Brazil (8.9%), Germany (5.5%), and Argentina (5.3%). Chile is a net importer of all major categories of manufactured goods; its most important manufactured exports are chemicals and other semi-manufactures. Imports center around machinery, transport equipment, and chemicals.

Chile has generally restricted the use of trade policy measures as instruments of industrial policy. Based on the ISIC definition, the average tariff for the manufacturing sector is 5.9% (as of March 2003). With the exception of 95 tariff lines that are duty-free, all manufactured goods are subject to an MFN tariff of 6%. In the Uruguay Round, Chile bound all its manufactured goods at a uniform rate of 25%, with the exception of six items that already had lower bound rates as a result of pre-Uruguay Round Commitments (Chapter III(2)(iv)(b)). Like other activities, the manufacturing sector is eligible for two duty drawback systems and a system of deferred payment of customs duties and tax benefits (Chapter III(3)(v)).

Like on imports, this sector shows the greatest effects of tariff reduction, in actual value terms, and is second to the agricultural sector in relative increase. In the case of industrial exports these would experience an increase of 46.9 million dollars (67%). In terms of present trade, the latter would mean an increase of 10,0% in manufacturing exports, all things being equal.

Once again it must be stressed that these results represent what would happen to actual trade in the sector. The latter is not minor, specially considering that in this sector Chile has an export basket that spans more than 4.898 tariff lines, and at present Chile only exports 203 tariff lines from this sector to China.

It is clear that this sector would be most benefited from tariff reduction, and is of great interest to the Chilean export sector, given that it is the sector where actual tariffs are higher than in other sectors. However, as the agricultural sector this section not only faces higher tariffs due to greater aggregate value of its products, but it also faces non tariff barriers such as SPS measures that affect the foodstuff sub sector and measures that affect importation and commercialization, such as quotas and import and distribution licensing.

Therefore, in light of a comprehensive agreement that strives towards tariff reduction as well as seeking to eliminate import quotas, the creation of clear and transparent procedures that integrally affect trade and commercialization, would create conditions second to none and thus enhancing current trade and expanding trade not only in value but also the scope of products in the Chinese market.

The disaggregated analysis shows that the main source of growth can be found in foodstuff and beverages with US \$ 37.1 million (79% of total expansion of this industry exports). This is not surprising given that this is one of the sectors that in the case of an FTA, would be most benefited by tariff reduction, due to the fact that at present it is, in terms of Chilean export structure, this sub-sector where tariffs are higher or at least above average.

In general terms, and given the potential of Chilean exports in this sector, it can be said that transversal tariff reduction in this sector would open up windows of opportunities for other products that are being exported to Asian markets such as Japan and Korea but not to China, given tariff restraints, that would be eliminated through an FTA, as well as SPS and licensing issues. Such is the case of certain types of beverages, like wine, that at present have an interesting base in the Chinese market, but have greater potential if current commercialization restrictions were lifted.

The latter would also apply to certain meat products that face harsh SPS measures, and given excellent demand conditions within the Chinese market for these products, and also taking into consideration current trade flows to the Japanese market and Korean market as a benchmark, a comprehensive FTA that tackle actual constraints would bring about interesting results in trade in these goods.

In second place ranks the processed and unprocessed chemical sub-sector, with greater exports reaching an amount of 6.5 million dollars, 14% of the total expansion of industrial exports. This result, equivalent to a growth of 9.6%, may seem surprising considering the fact that this same sub-sector in terms of imports of Chinese products would also see an important growth. The reason would be that certain specific products within the sub-sector would be highly benefited from tariff reduction, thus evidencing the high-level trade complementarity in this sector.

Specifically, the benefits to this sector would come about in terms of competitiveness gains compared with other markets. At present Chile has not been able to enter the Chinese market in certain products as it is crowded out by imports from countries like Thailand, in certain light oils, or by Russia in terms of mineral fertilizers. The competitive advantage of tariff reduction over these economies would substantially enhance exports, specially considering that Chilean exports of these products to the world reach a value of over US\$ 100 million, with a potential that would exceed all expectations.

The sub-sector of forest products, cellulose, paper and by-products would be the third most benefited, and would see a growth of 1.7 million dollars (4% of total expansion of manufacturing exports), distributed evenly between cellulose and paper products and forest products.

Within this sub sector, other products that would be benefited, and are overseen by economic modeling, would be manufacture woods such as certain plywood's as well as strips and moldings of wood for furniture, and frames. At present their importance within the Chinese market is fairly marginal, given that China is, in certain products, a net exporter. However, with a significant tariff reduction, present tariffs that are above average on most products, this sector would see a boost in competitiveness in that market in certain niches, where Chilean exports are at present crowded out by imports from neighboring Asian countries. Thus, given the degree of export to other Asian countries, as well as markets with similar demand structures as the Chinese economy, it can be foreseen that increases in demand would be quite interesting for this sub sector.

In terms of other sub sectors within the industrial export sector, the model analysis show marginal increases as a result of tariff reduction. The latter is not strange given the limited amount of products that are being exported to the Chinese market. However, if the same rationale that applies to the other major sub sectors is applied, in terms of transversal tariff reduction as well as comprehensive reduction in non-tariff barriers, it can be said that the results would see some interesting gains, especially in certain niches where Chile would gain competitiveness versus other suppliers to the Chinese market.

#### **IV.6. Conclusions**

In general, it should be stressed that the results portrayed by the model underestimates the effects of a tariff reduction on Chilean exports. This is explained by the fact that according to the 2003 data, Chile only exported 253 products<sup>28</sup> to China out of 5.231 of products that Chile exports to the world. So, as the model is a static model, it only contemplates or answers what would happen to the 253 products that are actually traded, and therefore not taking into consideration that a tariff reduction will induce trade in other products that are not actually being traded due to high tariffs.

Unfortunately, the latter is impossible to quantify with the existing mathematical or econometrical methods. However, a qualitative analysis that takes into account the latest trends in the Chinese economy, so as to understand how demand has evolved in the past five years, as well as a description of Chinese tariffs according to each economic sector, may allow to estimate the possibilities that will arise from tariff reduction and thereof give a better picture of the real effects of a bilateral FTA.

In terms of the latest trends in the Chinese economy, it can be said that in the past five years there has been a sharp change in the economic fabric of Chinese society, which together with a great increase in urban population has bought about an increase in the middle class, reaching about 300 million people. These two factors have marked the trend in consumption, especially of foodstuffs. The latter is not minor variable, specially considering that it is calculated that around 50% of per capita income in China is spend on food, which has to satisfy tastes that day on day are becoming more refined in accordance to a growing middle class.

In the same sector, there is the fact that internal supply has to meet the challenge of satisfying an increasing demand given the growth of population. In the last decade the latter has grown in 10,3%. To be able to quantify the impact of population growth it should be taken into account that in China each hectare must feed, on average, ten people whereas the world average is 4,4, people.

On the other hand, in terms of Chinese tariff structure, although at present Chilean supply of goods to the Chinese market face fairly low tariff rates, if one looks at the Chinese tariff structure as a whole, it can be seen that on average tariffs on commodities are fairly low in comparison to manufactured products. The latter is more apparent if it is considered than on

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<sup>28</sup> When we refer to products we are considering an 8 digit HS tariff line.

average, 63% of all tariff lines face duties that range from 7% to 30% *ad valorem*, where 80% of these correspond to manufactured goods.

Thereof, under this scenario, in the case of an FTA negotiation that would bring tariff down in all sectors, given the above mentioned demand conditions in the Chinese market, Chilean products could become fairly competitive because of the extra edge of tariff reduction.

An example of the latter would be products in the foodstuff sector, where on average more than two thirds of the products in this sector face tariffs that ranges between 7% and 30% *ad valorem*. The same would probably occur in the agricultural sector, where around one third of the products that belong to this sector have tariffs that range between 7% and 40%.

In general, it can be said that once tariffs are reduced, there would be no question about the opportunities in terms of trade creation towards the Chinese market for products that are at present not being sold to China. In the short and medium run there will be an increase in production to cover demand in those traditional markets as well as the new opportunities in China.

#### **IV. 7. Trade In Services**

In 2003, the service sector contributed around 53% to GDP, up from 51% in 1996.<sup>29</sup> Employment in the sector grew faster than in others; in 2003, 63% of the economically active population worked in the services sector, up from 57.9% in 1996. In 2001, Chile's services exports amounted to Ch\$2,342 billion and imports amounted to Ch\$1,884 billion.

According to figures provided by the Foreign Investment Committee, annual foreign direct investment in the services sector averaged US\$1,762 million between 1996 and 2003. Foreign investment in Chile's services sector is subject to the provisions of the Investment Law or of Chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulations (Chapter II(4)). Sectoral exceptions to market access remain in maritime transport.

As a consequence of Chile's long running privatization policy, state involvement in services is limited. The State retains ownership of BancoEstado, the postal and railway services, and public television. The State also owns major seaports and airports; however, these have been increasingly given in concession to private operators. The authorities indicate that involvement of the State in any of the sectors mentioned does not in any way preclude private participation.

In the context of preparations for the 1999 Ministerial Conference, Chile, together with Australia and New Zealand, proposed that the services negotiations should improve market access significantly for developed and developing countries. To this end, the negotiations should achieve higher levels of liberalization in all services sectors, including air and

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<sup>29</sup> Following the UN System of National Accounts, the construction, electricity, and water industries are part of the industrial sector.

maritime transport; simplification of schedules, and greater transparency in commitments; limitation of scope and number of MFN exceptions; and the development of binding rules on domestic regulation.<sup>30</sup>

In the ongoing negotiations on services, Chile has emphasized the importance of eliminating the lack of symmetry in the commitments undertaken by Members in respect of the different modes of supply recognized by the GATS.<sup>31</sup> It noted with concern that commitments in mode 4, i.e. the supply of services through the presence of natural persons, are primarily horizontal and these horizontal commitments are subject to many kinds of limitations. Further, they are bound for only a small subset of service personnel related to commercial presence and at higher levels, and very few commitments extend to independent movement. Chile indicated as main sectors of interest: professional services, construction and engineering, transport services, telecommunication services, distribution services, and energy services.

- **Financial services**

In 2003, financial services (including rent of buildings) accounted for 14% of GDP, up from 12.1% in 1996. Employment in financial services increased from 6.8% of the labour force in 1996 to 7.7% in 2003. Foreign direct investment plays a crucial role in the sector and totalled US\$12.9 billion between 1996 and 2000.<sup>32</sup> According to the Central Bank, Chile's imports of financial services were Ch\$684 billion in 2001, equivalent to about US\$1.08 billion; exports amounted to Ch\$274 billion (about US\$432 million).

- a. **Banking**

As of December 2002, Chile's banking system held about US\$63 billion in assets, equivalent to about 98% of GDP. Chile's banking sector comprises fifteen private banks (of which six are controlled by foreign banks), one Government-owned bank (BancoEstado), and nine branches of foreign banks. Foreign-owned or controlled banks and branches account for about 45% of total deposits and loans. BancoEstado is a commercial bank subject to the same regulatory environment as privately owned banks; it seeks to ensure banking services to all regions, maintaining a large volume of passbook savings accounts and making a substantial amount of low-income housing loans.

Chile's banking sector has undergone significant changes in recent years, most notably various mergers and acquisitions, which has led to increasing concentration in the sector. The ten largest banks account for some 85% of deposits and loans. Interest rates have been decreasing since 1998. The average spread between lending and deposit rates has ranged between 3.7% and 5.7% since 1996. As at March 2003, the lending rate stood at 5.7% and

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<sup>30</sup> WTO document WT/GC/W/204, 14 June 1999.

<sup>31</sup> WTO document S/CSS/W/88, 14 May 2001.

<sup>32</sup> Due to the use of different methodologies, Central Bank figures do not match those provided by the Foreign Investment Committee.

real interest rate at about 1.6%. Dollarization of Chile's banking system remains relatively low; by the end of 2002, 10% of bank deposits were dollar-indexed.

Chile's banking sector is regulated by the Superintendency of Banks and Financial Institutions, an autonomous institution linked to the Ministry of Finance, and the Central Bank of Chile.

b. Insurance

At the end of 2002, there were 55 insurance companies operating in Chile, of which 23 were providers of property insurance and 32 were life insurance companies. Since 1997, three new general and nine life insurance companies have been incorporated, and four general and nine life insurance companies have closed down or were absorbed through mergers and acquisitions.

Chile's insurance sector is governed by the Insurance Law (Decree with Force of Law No. 251 of 1931). The Superintendency of Securities and Insurance is responsible for the enforcement of the Law and for regulating the Chilean sector.

Licences for insurance and reinsurance providers are granted by the Superintendency of Securities and Insurance. Any interested legal or moral person must meet a minimum capital requirement of U.F. 90,000 (equivalent to US\$2.7 million) for an insurance company, and U.F. 120,000 for a reinsurance company (US\$3.6 million). The Superintendency must be informed of the identity of any shareholders with a participation of 10% or more, who must fulfil the requirements of integrity and solvency. Foreign insurance providers that wish to offer insurance or reinsurance services in Chile must incorporate a Chilean company. In addition, foreign providers establishing a Chilean reinsurance company must have an international risk rating of at least BBB. Companies providing life insurance are not allowed to offer property insurance and vice versa. Insurance premiums are set freely by the individual companies and are not subject to approval by the Superintendency.

c. Capital markets

Since 1997, the Government has taken a number of measures aimed at modernizing the domestic capital market and allowing for greater financial integration. In particular, Law No. 19.769 of 11 October 2001 introduced a number of institutional and fiscal reforms. The law provides for a deregulation of the rules governing mutual funds, most notably by improving the flexibility of investment limits and thus allowing the design of more efficient portfolios. It also created the post of the General Fund Administrator, which allows asset managers to simultaneously manage mutual funds, investment funds, and housing funds. The law introduced various tax reforms, reducing stamp taxes, capital gains taxes, and interest taxes for foreign investors.

## Telecommunication

The Chilean telecommunications industry has expanded rapidly in recent years. The contribution of the communications subsector to Chile's GDP increased from 1.9% in 1996 to 3.1% in 2002. Growth rates have been particularly high for mobile connections, which increased more than 17-fold between 1996 and 2003. There are 14 fixed-net service providers, five providers of mobile services, and 20 companies providing international telecommunications services. Telefónica CTC has a dominant market position as a fixed-net provider in 10 of Chile's 13 regions. Since the early 1990s, Chile's telecommunication sector has been fully privatized; the State is not involved in the provision of telecommunications services.

## Transport

Chile's transport sector accounted for 7% of GDP in 2003, up from 4.5% in 1996. The Ministry of Public Works, through the Subsecretary of Transport is responsible for regulating Chile's transport sector.

Chile's GATS commitments for transport services are relatively limited, but no limitations are listed on market access and national treatment for the commercial presence of foreign suppliers for a number of services related to air transport. In the ongoing WTO negotiations on services, Chile expressed its hope that substantial progress would be achieved in the liberalization of air and maritime transport services, which have remained subject to weaker disciplines with little or no liberalization.<sup>33</sup>

## Assessment of Impacts of an FTA

In terms of assessing the possible impacts that a bilateral FTA between Chile and China would have on services, unfortunately the absence of a quantitative model as well as reliable data on bilateral trade in services, only allows us to undertake a qualitative analysis.

In the case of service imports, Chile at present does not have substantive restrictions on trade in services, thus an FTA that covers bilateral trade in services would have little direct impact on service imports from China.

However, given that the actual pattern of bilateral trade in services is directly related to trade in goods, it can be said that growth in trade would bring about a growth in services related to supporting that trade, specially in trading, financial services, transport services and professional services related to trade in goods.

In the case of China, it can be said that present restrictions on trade in services are quite substantial, thus a reduction in these restrictions would present interesting opportunities within the sector, and not only in those services trade related.

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<sup>33</sup> WTO document S/CSS/W/88, 14 May 2001.

Specifically, a substantial reduction in restrictions allowing a greater degree of market access as well as an adequate and transparent judicial framework would create opportunities in professional services, in particular those related to the financial sector and pension funds, the latter due to structural reforms in the pension system that will probably take place in the Chinese economy in the near future.

Also, in the case of services related to trade, it would be expected that greater trade would come hand-in-hand with a greater demand for services that would support this trade, specifically in transport services, be it maritime or air transport, as well as insurance brokerage, certification, marketing and distribution etc.

#### **IV.8. Investments**

Chile has achieved widespread recognition for its strong track record in attracting FDI. Between 1974 and 2003, materialized foreign investment totaled US\$ 64.4 billion, of which 86.6% entered the country after 1990. According to the World Investment Report 2003, published by the United Nations Conference on Trade and Development (UNCTAD), the stock of FDI in Chile reached almost 70% of GDP by 2002, up from just 33.2% in 1990.

During the 1990's, FDI inflows represented an annual average 6.4% of Chile's GDP, rising to 8.3% between 1995 and 2000. After the surge of FDI in the 1990's, and after reaching a US\$ 9.9 billion record-high in 1999, foreign investment inflows have been dropping, falling by 33% in 2002 and by an additional 35.5% in 2003. Although disappointing, these results do not reflect a change in Chile's competitiveness, but are the consequence of a sharp downturn in international economic conditions, which has affected FDI in almost all countries, with the exception of China (In fact, China displaced the United States as the largest recipient of FDI inflows for the first time in 2002).

As from 2001, the mergers and acquisitions market -previously the driving force of FDI around the world and in Chile- collapsed in the face of global economic uncertainty, a drop in share prices, and weaker corporate earnings, while multinational companies cut back their expansion budgets. To some extent, this trend represented a return to more sustainable and realistic levels of FDI, after the so-called "investment bubble" of the 1990's during which global capital flows reached record levels.

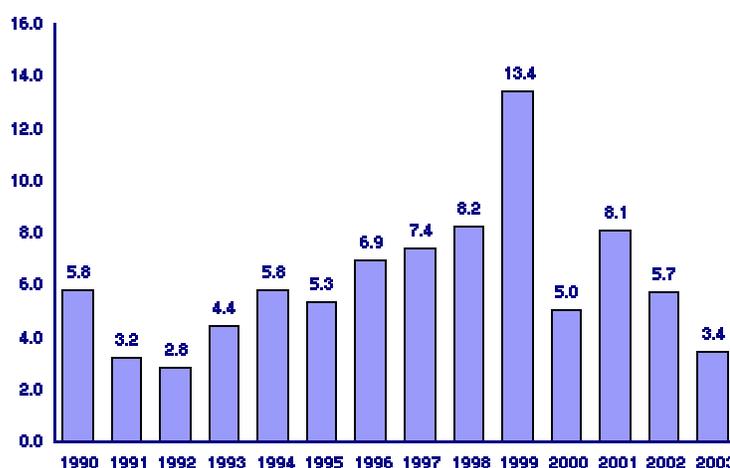
Moreover, FDI flows into Latin America have also been affected by instability in some of the region's countries, and the heavy losses sustained by a number of investors. As a result, risk aversion -accentuated by shareholder pressure in firms that have experienced difficulties- also helps to explain weaker FDI in the region. While there has been no scale withdrawal from Latin America, investment are being delayed and some investors, specifically foreign banks, have left the region.

In the case of Chile, FDI figures have also been distorted in recent years by a trend towards greater use of the local capital market by foreign investors. Encouraged by the high liquidity and dynamism of the country's financial sector and its historically low interest rates, an increasing number of overseas companies are sidestepping exchange rate risk by raising

finance locally, either borrowing from local banks or placing bonds on the local market. This trend, although very positive for Chile's financial market, is reflected negatively in the figures for incoming FDI.

The local debt market has proved particularly attractive to the infrastructure concessions companies that are developing long-term projects in Chile. The consortium that holds the concession contract for the new Autopista Central expressway in Santiago, formed Spain's Dragados and Sweden's Skanska, has, for example, raised US\$ 367 million in local inflation-indexed bonds. Similarly, the consortium, led by Italy's Impregilo, which is building the city's Costanera Norte expressway, has raised US\$ 265 million.

**Foreign Direct Investment in Chile\***  
**As % of GDP: 1990 - 2003**



\*Includes investment through Chapter XIV, Chapter XIX and the Foreign Investment Statute (D.L. 600)

Sources: Central Bank of Chile, Foreign Investment Committee

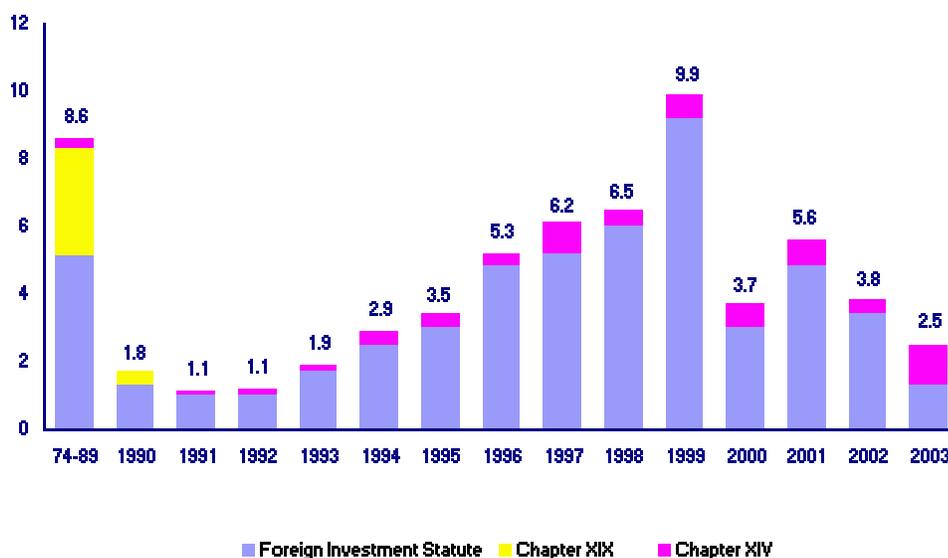
- **Investment Mechanism**

Since 1974, when the Foreign Investment Statute (D.L. 600) came into force, the vast majority of foreign investors have chosen to use this mechanism, under which an investor signs a legally binding contract with the State for the implementation of an individual project and, in return, receives a number of specific guarantees and rights (set out in the Policies, Regulations and Procedures section of this website). Between 1974 and 2003, investments worth US\$ 53.3 billion, representing 83% of the total FDI inflow, used this mechanism.

However, a simpler investment mechanism, Chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulations (CFER), also exists. Under this mechanism, foreign investors need only comply with registration procedures.

A third mechanism, Chapter XIX of the CFER played an important role between 1985 and 1991, when it was used for investments totaling US\$ 3.6 billion, mainly in the manufacturing and services sectors. However, this debt conversion mechanism is no longer in operation.

### Foreign Direct Investment in Chile, 1974 - 2003 (US\$ Billion)

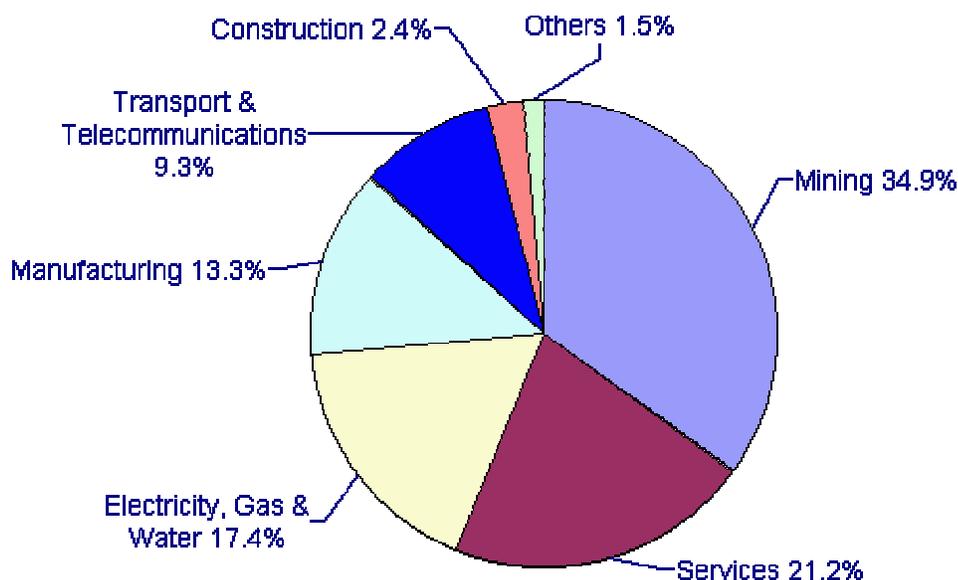


Sources: Central Bank of Chile, Foreign Investment Committee

- **Investment By Sector**

Between 1974 and 2003, Mining accounted for 34.9% of foreign investment materialized via D.L. 600, followed by Services (21.2%); the Electricity, Gas and Water industries (17.4%); Manufacturing (13.3%); Transport and Communications (9.3%); Construction (2.4%); and Agriculture, Forestry and Fishing (0.5% each). In the Services sector, the most important segments were Banking (22.3%), Investment Companies (20.7%), Insurance (16.9%), and the Wholesale and Retail Trade (11.3%).

### Foreign Investment Statute (D.L. 600) Breakdown by Sector



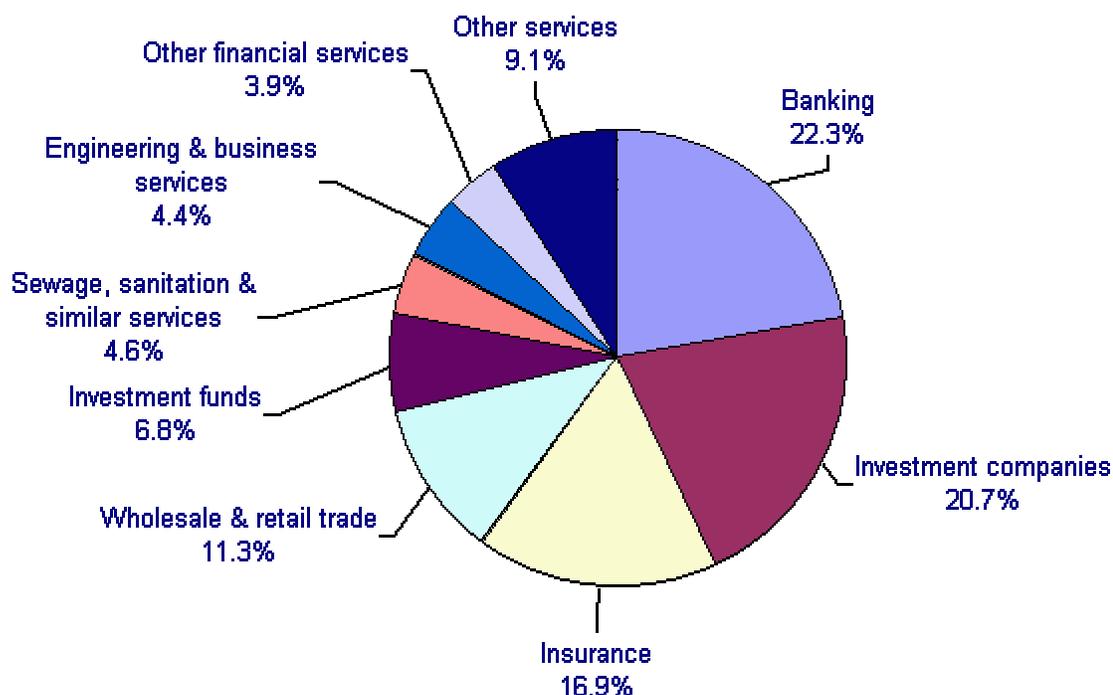
Source: Foreign Investment Committee

Until 1990, mining projects represented 47% of D.L. 600 investment, boosted by the government's decision to lift restrictions on private investment in the exploration and exploitation of mineral deposits. Similarly, investment in financial services was encouraged by the deregulation of the financial sector.

Since 1990, however, other sectors have gained in importance and the mining's share of D.L. 600 investment gradually diminished to an average 15% in 1999-2001. However, in 2002, it was again the largest recipient sector with 59.2% of materialized FDI -due mainly to the US\$ 1.1 billion acquisition of Exxon's La Disputada mine by UK-based AngloAmerican- and, in 2003, represented 30% of the total.

The relative decrease in the preeminence of mining investments was counterbalanced mainly by higher investment in the Transport and Communications industries (including telecommunications) and in the Electricity, Gas and Water sectors. This was mainly the result of privatizations in the energy and telecommunications sectors and of the intense competition that followed the deregulation of mobile and long-distance telephone services. In addition, an infrastructure concessions program, launched in 1995, opened the way for the participation of private capital, mostly from abroad, in the construction and operation of roads and airports. Water privatizations and a concessions program for water treatment services have also captured important inflows of FDI in recent years.

**Foreign Investment Statute (D.L. 600)**  
**Services Sector: Breakdown by Sub-sector (1974-2003)**  
**(Total Services: US\$ 11.3 Billion)**



Source: Foreign Investment Committee

From 1997 to 2001, in line with a worldwide trend, Chile saw a dramatic surge in M&A activity, mainly in the services, electricity and telecommunications sectors. In 1999, for example, Spain's Endesa paid US\$ 3.2 billion for local electricity company Enersis, while other large M&A operations included the acquisition between 2000 and 2001 of the Gener power producer by US-based AES Corp. and, in 2001, Telecom Italia's acquisition of the Entel telecommunications company.

Since 2001, the trend has again changed, shifting towards projects that require smaller amounts of capital but have a high impact in terms of job creation and the transfer of technology. In addition, projects of this type have reinforced Chile's position as a regional business center from which to export goods, or provide services, to other countries. This has, in turn, attracted new investment in service sectors, such as the hotel and office property markets.

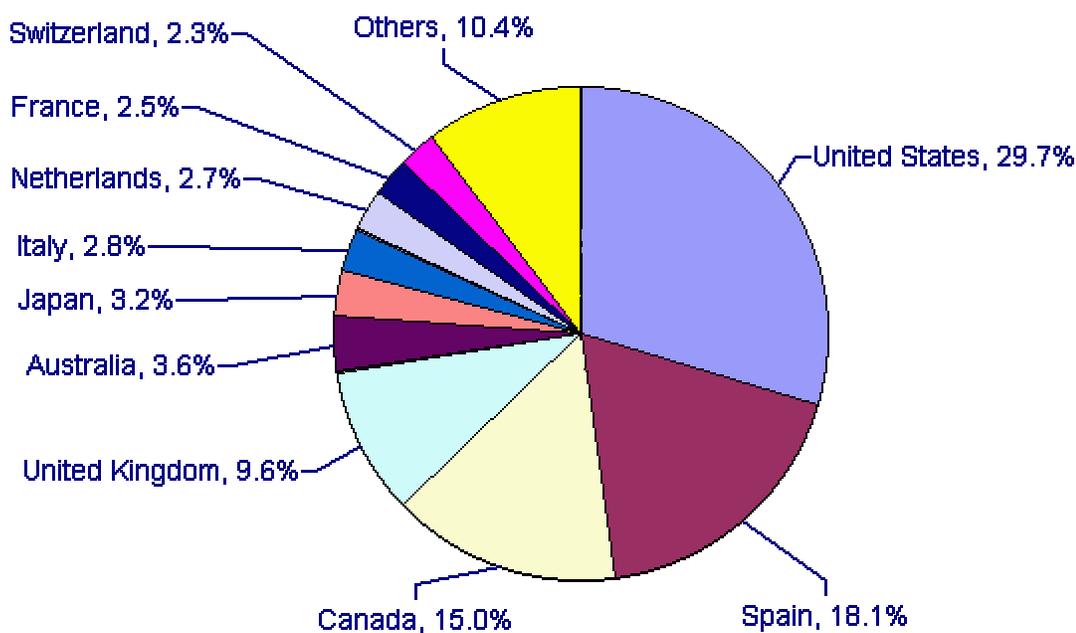
These smaller, high-impact projects are numerous and diverse, ranging from software development initiatives, call centers and shared services centers to new investment in the manufacturing and agribusiness sectors. Examples of the latter include a US\$ 25 million

breakfast cereal plant in Santiago, launched in April 2004, from which Switzerland's Nestlé supplies regional and international markets, and a new salmon feed plant, also representing an investment of US\$ 25 million, inaugurated in southern Chile by Netherlands-based Nutreco.

- **Origin of Investment**

Between 1974 and 2003, 29.7% of D.L. 600 investments in Chile originated in the United States, followed by Spain (18.1%), Canada (15.0%), the United Kingdom (9.6%), Australia (3.6%), and Japan (3.2%). During that period, the 15 pre-enlargement European Union member states accounted for 38.6% of total FDI materialized through D.L. 600, while, as a group, the OECD countries accounted for 93.7% of the total.

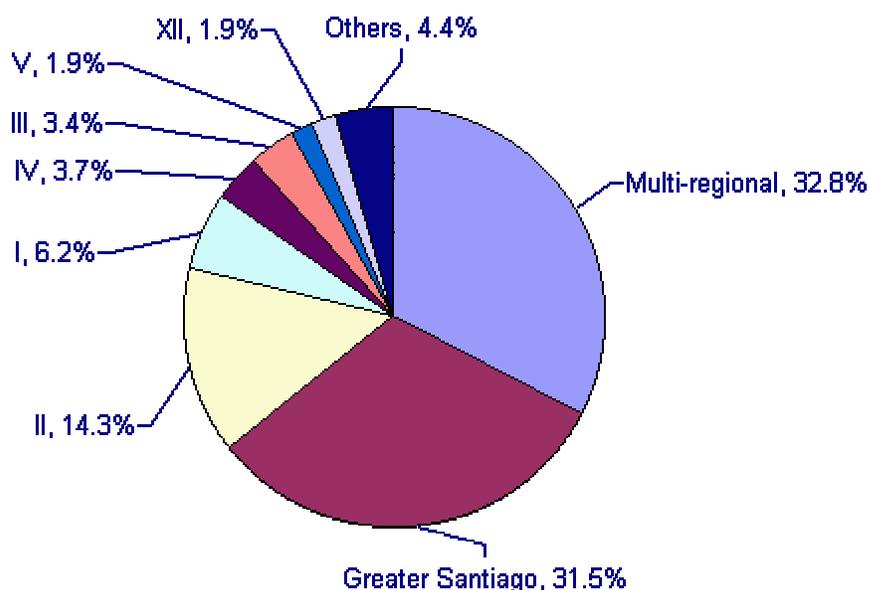
**Foreign Investment Statute (D.L. 600)  
Breakdown by Country of Origin (1974-2003)**



Source: Foreign Investment Committee

As regards the geographic destination of FDI within Chile, 32.8% of materialized FDI between 1974 and 2003 was invested in multi-regional projects, while 31.5% went to Greater Santiago, followed by Region II and Region I in the north of the country, which accounted for 14.3% and 6.2% of total inflows, respectively.

**Foreign Investment Statute (D.L. 600)  
Breakdown by Chilean Regions (1974-2003)**



- **Assessment of Impacts of an FTA**

In terms of investment one of the most important aspects of an eventual negotiation of a FTA between Chile and China, that includes investment issues, is the enhancement of judicial certainty for investors from both countries and their investments in the other party's country. That certainty would be reached through the establishment of different levels of market access in both countries, as the result of the consolidation of the restrictions and limitations that are applied regarding investment flows.

The latter, in terms of Chilean investment in China, together with greater trade flows, would probably bring about greater flows of capital towards the Chinese market in sectors that would be fostered by trade expansion and the necessity to count on adequate distribution channels within the Chinese market.

In terms of Chinese investment in Chile, given actual conditions in the world markets, the necessity for Chinese companies to guarantee the supply of their inputs becomes crucial. Thereof one could expect that an FTA that considers investment regime would become yet another incentive for Chinese companies to invest in natural resources as well as industrial commodities.

## V. ECONOMIC COOPERATION AND INFORMATION EXCHANGE ON OTHER ISSUES

### V.1. Intellectual Property Rights

#### V.1.A. Legal and Institutional Framework

The Chilean legal and institutional framework for Intellectual Property Rights (IPRs) follows the continental system, in consequence, it confers a wide and strong protection to human creations, distinctive signs, geographical indications, patents, and other forms of intellectual property. In accordance to this, Chile has been a member of the World Intellectual Property Organization (WIPO) since June 1975, and has signed a number of intellectual property rights (IPR) conventions (Table I). The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) was incorporated into Chilean law as a result of the ratification of the Marrakesh Agreement.

**Table I**  
*Chile's participation in international IPR agreements*

<b>Agreement, convention or treaty (latest Act in which Chile participates)</b>	<b>Date on which Chile became party (date it became party to an Act)</b>
Berne Convention for the Protection of Literary and Artistic Works (Paris Act)	June 1970 (July 1975)
Convention Establishing the World Intellectual Property Organization	June 1975
WIPO Copyright Treaty	March 2002
WIPO Performances and Phonograms Treaty	May 2002
International Convention for the Protection of New Varieties of Plants	January 1996
Paris Convention for the Protection of Industrial Property (Stockholm Act)	June 1991
Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations	September 1974
International Convention for the Protection of New Varieties of Plants (UPOV 1978)	January 1996
WIPO Performances and Phonograms Treaty (WPPT)	March 2003
WIPO Copyright Treaty (WCT)	August 2003

Many steps have been made towards improving Chile's IPRs regime. The ratification of the WIPO Internet Treaties; new commitments in bilateral treaties (with the EU, the US, EFTA, Central America, Canada, Mexico and Korea); implementation laws; new legislation which will increase penalties and also border measures, have intended to incorporate to our legislation modifications that are necessary to fulfil the obligations assumed by Chile by means of the ratification of the WTO Agreements and by means of the Free Trade Agreements with USA, Canada and Mexico. In fact, in late 2003, two sets of amendments were made to the copyright law to implement TRIPS and the Free Trade Agreements.

The main dedicated domestic statutes for the protection of intellectual property rights in Chile are the Intellectual Property Law (Copyright Law) (Law No. 17.336 of 2 October 1970) and its Regulations, the Regulations on the Distribution of Related Rights (Supreme Decree No. 4.764 of 8 January 1985), and the Law establishing Rules Applicable to Industrial Privileges and Protection of Industrial Property Rights (Law No. 19.039 of 25 January 1991) and its Regulations. These statutes cover the major areas referred to in the TRIPS Agreement.

The Department of Industrial Property of the Ministry of Economy is in charge of granting industrial property rights and will also be in charge of registering geographical indications. The Copyright Department of the Library, Archives and Museums Directorate is in charge of the Copyright Register. The Seeds Department of the Agriculture and Cattle Service administers applications for the protection of new plant varieties, while plant-breeder rights are granted by the Qualifying Committee of Plant Varieties.

#### V.1.B. Trademark

Chilean national law, provides for 10 years protection to trademarks right-holders, which may be renewed indefinitely. Right holders may initiate civil and criminal procedures when their rights are violated, and may collect costs and damages. The court may destroy tools and implements used for falsification or copying.

An industrial property bill<sup>34</sup> is in its final stage in Congress. This bill will implement a complete system of protection of foreign and national geographical indications, a system of protection of Layout Designs of Integrated Circuits and another one for Undisclosed Information. Among others, the bill establishes a system of international exhaustion of industrial property rights; clarifies exceptions to patentability; corrects the definition of trademarks; and modifies the structure of the appeal court of industrial property.

#### V.1.C. Copyrights and Related Rights

Regarding copyrights and related rights, right holders may also initiate civil and criminal procedures, and infringers may be forced to pay damages, fines and may also be imprisoned. The Customs Service may also enforce intellectual property rights at the border.

In 2003, Congress enacted a law called the Omnibus Bill and also an implementation bill of the Chile and US FTA. These laws deal with copyrights issues adding to the legal system a definition of computer programs. Original compilations of data and textiles designs were also incorporated as protectable subject matter. They clarified a presumption of ownership and set new rights for performers, as well as established a framework for the exceptions and limitations of the Law (three step test). They increased the term of protection from 50 to 70 years<sup>35</sup> and regarding the distribution right, established the international exhaustion of rights after the first licit flow.

Finally, a bill was introduced in Congress in January 12<sup>th</sup>, 2004, which improves the current laws for civil and criminal enforcement of IPRs, providing for high monetary penalties not currently included in the law, plus a dramatic increase of penalties for those who finance or are the heads of organizations infringing IP, as well as an increase of penalties in relation with the amount of monetary damages for those who are second infringers. Penalties for infringements without commercial gain are also included. In general, it facilitates the

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<sup>34</sup> The new law 19.039 was endorsed by the last competent committee of the Senate and was set as one of the legislative priorities for 2004 by the Government in March 2004.

<sup>35</sup> Life of the author plus 70 years. For works created by legal persons: 50 years from the date of the first publication

prosecution of such infringements, with new causes of preliminary injunctions among other facilitating provisions.

#### V.1.D. Geographical Indications

Nowadays, there is a special law to protect Chilean wine-growing areas and various types of Chilean alcoholic beverages. At international level, Chile, together with Canada, Japan, and the United States, presented a proposal for a multilateral system of notification and registration of geographical indications for wines.<sup>36</sup> The proposal calls for interested Members to submit to the Secretariat a list of domestic geographical indications for covered products recognized as eligible for protection under their national legislation, thus leading to a voluntary database of all notified geographical indications.

Some of Chile's preferential agreements also contains provisions on IPR protection. In the agreement with Canada and the European Union the geographical indication of Chilean "Pisco" has been specially recognized and a new framework, as it was mentioned before, is in its last stage to be approved for the National Congress. This new legal framework will implement a complete system for protection of foreign and national geographical indications.

#### V.1.E. Undisclosed Information

A whole chapter on undisclosed information has been introduced to the IP bill, both for trade secrets and for data submitted to government agencies for approval of pharmaceutical and agricultural chemical products. This information will be protected for 5 and 10 years respectively.

#### V.1.F. Patents and Utility Models

Economic models and business plans, discoveries, scientific theories and mathematical methods, surgical, therapeutic or diagnostic methods, plant varieties and animals may not be protected by patents or utility models. This system covers compulsory licences in cases of monopoly abuse, but the bill will provide for other causes, such as health crisis, national emergencies or public non-commercial use.

The abovementioned bill increases the term of protection of patents from 15 years from the granting of the patent, to 20 years from the filing; it also allows for parallel imports.

#### V.1.G. Industrial Designs

Designs that are novel are protected for 10 years from the date of filing. This period is non-extendable. This protection will be complemented with the new bill.

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<sup>36</sup> WTO document IP/C/W/133/Rev.1, 26 July 1999.

### V.1.H. Varieties of Plants

Chilean legislation is homologated to UPOV 1978 Act. Nevertheless, Chile committed to adhere to UPOV 1991 by the year 2009.

### V.1.I. Enforcement

Firstly, there are specific procedures for the suspension of release by customs authorities of any goods that infringe upon any rights established in the IP Law (Law 19.039) and the Copyright Law (Law 17.336), at the request of the right holder. Moreover, it also allows for ex-officio action for suspending the release of counterfeit merchandise and pirated goods. This expeditious and detailed procedure will, on the one hand, safeguard the rights of right holders, and on the other hand, it will avoid unnecessary barriers to importers of legitimate goods. This will be achieved, among others, by requesting from the person lodging the application for suspension, to provide a security or equivalent assurance to protect the defendant from abuses, that he identifies himself as the right holder and that he files suit after a brief period of time after the request of suspension. The applicant will also have to provide reasonable evidence and identify to the extent possible, the place through which the goods will presumably be imported.

Secondly, the Department for Industrial Property, the Arbitration Court for Industrial Property and, for issues related to plant varieties, the Agriculture and Livestock Service, are responsible for preventive and protective administrative action. The infringements of copyrights are prosecuted before ordinary judges; criminal cases related to copyrights are dealt with by ordinary courts. The National Customs Service is responsible for taking measures at the border.

Additionally, the bills currently in Congress<sup>37</sup> establish that persons convicted of offences against the owners of trade marks, patents, utility models and industrial designs, are required to pay costs and damages to the rights holder. Together with the modifications of the Industrial Property Law, which deals with improvements to the administrative system and the increase in penalties, it will regulate the granting of preliminary injunctions in civil and criminal procedures and under the above mentioned new frame for industrial property, the penalties will be increased. In case of trademark, patent, utility models and industrial designs infringement fines will be raised from a maximum of 100 UTM<sup>38</sup> (approximately US\$ 5.000) to a maximum of 1.000 UTM (approximately US\$ 50.000). And in the case of copyright and related rights, tools and implements used for falsification or copying must be destroyed and the objects produced illegally must be seized on behalf of the rights-holder.

Finally, in the year 2000 Congress passed new legislation for an overall modification of Chilean criminal system. This reform, which has been implemented in every Chilean Region, save for Santiago, is expected to introduce efficiency both to criminal courts and to the police.

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<sup>37</sup> The new Law 19.039 and a bill on enforcement of copyright and related right law.

<sup>38</sup> UTM: Monthly Tax Unit, for its acronyms in Spanish.

## V.1. J. Conclusions

Considering that every single FTA negotiated by Chile includes provisions on IPRs, we do not reject the idea of having an IPRs chapter in an eventual agreement.

## V.2. **Movement of Business Persons**

### V.2.A. Mobility of Business Persons

Chilean migration laws are contained in Decree Law No. 1,094 of 1975, on foreign citizens, and regulations there under established in D.S. No. 597 of 1984. Furthermore, this matter is governed by provisions contained in international treaties and agreements subscribed by our Government.

These legal texts vest the power to issue visas and resident permits for foreigners in the Ministries of Interior and Foreign Affairs.

The Ministry of Interior exercises these powers through the Department of Migration and Alien Affairs at central level, and through interior government offices at regional and provincial levels. In turn, the Department of Consular Affairs and Immigration of the Ministry of Foreign Affairs is responsible for foreign citizens affairs and issues consular authorizations and residence visas through Chilean Consulates abroad.

The migration legislation contains the following migration categories:

#### a. Tourists

Tourist is any individual entering the country for a period not exceeding 90 days, for recreation, sports, health, study, business, family, religious and other similar reasons, but not for purposes of immigration, residence or development of remunerated activities.

In some cases, for reasons of national interest or based on the principle of international reciprocity, individuals should obtain a consular authorization (visa) from the concerned Chilean Consulate abroad prior to their entry to Chile. However, holders of the APEC Business Travel Card do not require consular authorization.

#### b. Residence

- Residence Subject to a Labor Contract permit is granted to foreigners who enter the country under a work contract. This type of residence visa is subject to the performance of the activities agreed with the employer (who must be domiciled in Chile) and is issued for a maximum period of two years, and may be extended for similar periods while the contract duration.

- Student Residence permits are granted to foreigners who enter the country in the capacity of registered students in State or State-recognized educational institutions or a private institution recognized by a latter, or in a higher or specialized educational centers or institutions provided they can substantiate their corresponding enrollment. This permit only allows to do the relevant studies and is issued for a maximum period of one year, and may be renewed until completion of the relevant study program. I In the case of scholarships, the permit is issued for the duration of the scholarship.
- Temporary Residence permit is granted to foreigners with proven family ties or interests in the country whose residence is deemed useful or convenient.

Generally, this type of visa allows its holder to carry out any activity in Chile, to the extent that such activities are permitted by the laws. It is issued for a maximum period of one year, and may be renewed for like period.

- Asylum or Refugee is granted to foreigners who seek protection for reasons of political, religious, racial and other events prevailing in their countries of origin or residence, and request political asylum in Chile or at Chilean diplomatic representations abroad. It is furthermore granted to anyone accorded the status of refugee under international instruments subscribed by Chile. This type of visa is granted for a maximum period of two years, renewable, and enables the holder to carry out any lawful activity in the country.

c. Permanent Residence Permit (granted for an indefinite time)

This permit granted to aliens to live indefinitely in the country and undertake all kinds of activities, without any restrictions other than those established in all legal and regulatory bodies.

d. Residence for Business Persons

It should be noted that, although ordinary migratory legislation does not provide for any specific type of residence permit for business persons, the rules governing tourism, temporary residence permit and residence subject to a labor contract are extremely broad and allow to include there under the different categories of business persons, i.e. investors, traders and service providers.

V.2.B. Free Trade Agreements

The Free Trade Agreements (FTA's) Chile has negotiated, among others with: Canada, Mexico, the United States and Korea, represent a decisive step into a global foreign relations policy, including cultural, social and economic aspects. Consequently, the facilitation of entry for business persons (mobility) has become a relevant priority of Chile's foreign policy.

As a general rule, FTA's specific Chapter on "Temporary Entry of Business Persons", provides four different categories of persons. These categories are:

1. Business Visitors
2. Professionals
3. Intra – corporate Transferees, and
4. Traders and Investors.

Only Chilean nationals, and the national of the other Party (entered into the agreement) are the beneficiaries of the preferential terms of "entry" provided by the agreement.

The "entry" or "mobility" benefit can not be used to obtain "permanent residency" in Chile. In other words, the preferential "visa" terms, apply only to the circumstances in virtue of which the benefit was extended.

Business persons seeking to obtain a "business persons visa" to enter Chile, shall apply for the benefit at any Chilean General Consulate worldwide (Chinese business person shall approach to any General Consulate of Chile in the China). Notwithstanding, such qualification may be obtain in Chile, in which case, the national of the other party (Chinese business person)" shall approach the Migration Department of Chile located in Santiago or Provincial Governors in regions.

If the petitioner qualifies under any of the four categories described (above), a "temporary resident visa" will be extended to him/she. Such document contains an "entry permit" *per se*.

The "temporary residency" status allows the beneficiary to work in Chile without an additional "work permit". Working for two or more employers simultaneously is allowed, as long as, both activities relate to the same category of business person under which the "temporary residency visa" was extended, and the were included on the "visa petition".

The FTA's provisions do not replace, under any circumstances, the specific requirements related to, licensing, accreditation or certification provided by the domestic norms regulating the specific professional activity to be performed (i.e., engineers, lawyers, accountants, etc).

Neither, the FTA's provisions modify or supersede the general requirements related to, public order, national security, sanitary measures, and passports.

Relatives under custody of the business person entering Chile, may join the BP in his/her trip as long as they satisfy the Chilean immigration requirements. Additionally, relatives under custody are allowed to "study" at any educational institution, but they are not allowed to work under wage.

There is no limit in the "number of entries" for business persons and their dependent relatives during the period covered by the "temporary residence visa".

Once the visa has expired, the business person and his/her dependent relatives may apply for an extension of the residence, or apply to be considered under any of the migratory categories described by the Chilean Law, subjected to the specific requirements and regulations.

#### EXTENDED VISAS 2003

<b>BENEFIT</b>	<b>Beneficiary (BP)</b>	<b>Dependents</b>
STUDENT	14	0
UNDER CONTRACT	224	20
TEMPORARY	204	39
TEMPORARY ART. 10 N°3	1	0

#### V.2.C. APEC

Chile participate actively in APEC through the Mobility of Business People Group, becoming part mostly of the activities undertaken by this group.

In 1998 Chile joined the APEC Business Travel Card pilot project, receiving foreign applications. As of August 1999, Chile adhered to the ABTC scheme on a permanent basis. In 2001 the Chilean ABTC applications have been set up after the administrative arrangements, as the Exempt Decree N° 1101 of 11 August, 1999 and Exempt Decree N°1477 of 28 December, 2000, that contains the regulation of the ABTC system. On the other hand, was signed the Agreement of Collaboration between Chilean Government and National Chambers of Commerce, more representative Chilean business community. They are in charge of qualifying business persons.

A special immigration and emigration lane at Santiago's International Airport for the APEC Business Travel Cardholders and accompanying persons, as well, is facilitating the entry of ABTC holders through other entry points.

Chile is meeting the 30 days service standard through all over Chilean Consulates overseas and Department of Migration when those temporary entries are applied in Chile.

### V.3. **Transparency**

Transparency is one of the basic principles in Chilean administrative law and in Free Trade Agreements.

#### V.3.A Transparency in the Administrative Law

Law N° 19.880, “On the Basis of Administrative Proceedings”, published in the Official Gazette in 2003, sets the basis of the administrative proceedings that rule the acts of the organs of the Administration of the State. This law establishes the general rules that govern the administrative proceedings. However, in case that any special law establishes another special proceeding, the latter shall prevail.

In addition, the law decrees that Publicity and Transparency are the principles of the administrative proceedings. This means that the administrative proceeding shall be accomplished with transparency, in a way that allows and promotes the knowledge, content and basis of the decisions adopted therein. Therefore, unless the law or regulations otherwise dictate, the administrative acts of the organs of the Administration of the State are public, as well as the documents that sustain or complement them.

Other principles of the administrative proceedings related to transparency established by Law N° 19.880 are: writing; gratuitousness; procedural economy; impartiality and refutability.

Finally, the law establishes a group of rights which are related to Transparency, regarding the relations of the individuals with the Administration: the right at any stage of the proceeding to learn about the state of it; to obtain a legal copy of the documents; to identify the authorities and the personnel of the Administration in charge of the proceedings; to have access to the administrative acts and to related documents, according with the law.

### V.3.B. Transparency in Free Trade Agreements

Its main purpose is to facilitate communication between the Parties and to make available measures concerning any issue covered in the Agreement.

Transparency involves that Governments should provide the necessary means for individuals to become acquainted with the rules and thus allow compliance with them.

Its intended purpose is that laws, regulations, procedures and administrative rules of general application should be published without delay and that the other Party is afforded the opportunity to make observations there on. Additionally, transparency seeks that, to the greatest extent possible, one state notifies the other state of any actual or proposed measure that may affect the functioning of the Agreement or the interests of any Party there under.

Furthermore, this Chapter includes rules on due process in matters concerning administrative procedures, which may affect aspects covered in the Agreement.

Finally, it provides for the creation of information centers with a view to facilitating communication between the Parties in matters concerning the Agreement.

Free Trade Agreements signed by Chile with Canada, Mexico, Central America, Korea, the US, the European Union and with EFTA contain regulations concerning transparency. In

this regard, all of these FTAs have a special chapter on “Transparency”, with the exception of the FTA with Canada. In this particular case, the general rules are included in Part four on Administrative and Institutional Provisions, under Chapter L, which establish “transparency” commitments.

#### **V.4. Previous Bilateral International Agreements Between Chile and China**

The disciplines covered in an FTA require that those bilateral agreements which cover matters ruled afterwards by the FTA between the Parties shall cease, if appropriate.

#### **V.5. Trade and Investment Promotion**

The main target of Chilean policy in the two last decades has been the expansion and deepening of financial and trade exchanges. Chilean strategy to promote trade and investments, is based on three instruments that are intended to simultaneously achieve a broader liberalization and improved quality for the country’s integration to the international economy. Specifically, these instruments are: 1) unilateral programs for tariff reductions, liberalization and deregulation processes; 2) multilateral agreements to open up the country to the international economy; 3) the negotiation of trade agreements with individual countries or groups of countries. The main goals, policies and modalities of unilateral liberalization of tariffs and non tariff barriers has been explained and analyzed in chapter III, as well as Chilean policy and approach towards multilateral processes - in particular the WTO – and its bilateral agreements.

Chilean strategy to promote trade in services and investments, at the three levels (unilateral, multilateral and bilateral), has also been analyzed and detailed in chapter III. In synthesis the main goal is to establish the basis for a modern, transparent and competitive domestic market, integrated into a world with improved conditions of access and transparency, through the rule of international law commonly agreed, at the multilateral or bilateral level. In investments, to its coverage in the most of the FTAs, Chile has added 39 BITs, including one with China.

Chile has adopted several initiatives to facilitate access to customs laws, regulations and guidelines, in particular through digital procedures and internet. The web site of Chilean Customs, [www.aduanas.cl](http://www.aduanas.cl), offers the possibility to fulfill many custom procedures through internet, as well as information, laws, rules and statistics.

ProChile, the Chilean Export Promotion Bureau, is an agency of the Ministry of Foreign Affairs and its mission is to promote the development of Chile's exports of goods and services by providing the necessary support for the development of the export industry. ProChile has access to innovative export promotion tools such as: 1) to perform studies and develop methods to guide and train entrepreneurs in using new information technologies; 2) organizing international trade fairs and business missions; 3) developing programs to help SMEs enter the global marketplace; 4) conducting national calls for proposals for export promotion programs.

At present, having the support of a global network is a major advantage for conducting business in the world market. Because of its global presence, ProChile offers a major asset to Chilean exporters for doing business in the global marketplace through its trade bureaus in five continents and throughout Chile. ProChile's trade offices - strategically located in 56 markets - are run by specialized teams that use their market expertise to support Chilean export companies by helping them conduct their international operations. Among many other services, this network provides market data and makes it easier to establish business contacts. Through its 13 regional offices and its head office in Santiago, ProChile encourages the development of the range of export goods produced by national producers. Regional offices provide guidance and important and up-to-date information on international markets. In addition, they offer the strategic technical assistance needed to prepare and carry out Export Promotion Programs and other necessary actions for trade.

The Foreign Investment Committee is the agency that represents the State of Chile in its dealings with those investors who elect to use the Foreign Investment Statute (D.L. 600) as the legal mechanism to bring FDI into the country. The Foreign Investment Committee is formed by the Ministers of Economy (who acts as President of the Committee), Finance, Foreign Relations and Planning, plus the President of the Central Bank. Additionally, ministers who represent economic sectors to which a specific investment will be devoted to are required to participate at the Foreign Investment Committee's sessions.

The Foreign Investment Committee aims to consolidate Chile's position as an attractive destination for foreign investment. It conducts all operational tasks related to the management of the legal framework that regulates foreign investment; engages in promotional activities of various sorts; and participates in international negotiations that pertain to investment issues. The main tasks of the Foreign Investment Committee is: 1) to provide a stable and secure environment for foreign investments through the administration of the legal framework stated in D.L. 600; 2) to conduct all appropriate activities aimed at informing, promoting, coordinating and executing actions that foster the entry of foreign investment into Chile at the national, sector-specific and regional levels; 3) to participate in the international negotiations of BITs and of the investment chapters included in FTAs. If requested, it represents the State of Chile in cases of investment-related disputes before international dispute-resolution entities; 4) to maintain an up-to-date and accurate statistical database of FDI in Chile authorized and materialized under the D.L. 600.

The Foreign Investment Committee is managed and administered at the operational level by the Executive Vice-President, who is appointed by the President of the Republic. The Executive Vice-Presidency provides general guidance to any foreign investor regarding the country, its economic and social environment, legal framework and policies towards FDI. When requested, it gives information on how to begin the process of setting-up businesses in Chile as well as orientation on procedures and regulations that must be completed and fulfilled by any investor, whether they sign a D.L 600 contract or not, at the national, regional and sector-specific levels.

In order to promote Chile as an attractive place to invest, the Executive Vice-Presidency of the Foreign Investment Committee coordinates business missions abroad, organizes

seminars and conferences, and publishes regular reports on Chile's business climate and investment opportunities, both in print and in electronic form. In these promotional activities, it works closely with other ministries and state agencies as well as with the local and foreign private sector.

## **V. 6. Other Trade Facilitation Measures**

Chile strongly believes in the benefits of addressing trade facilitation issues in multilateral agreements, such as those contained within WTO. Moreover, Chile also foresees benefits from initiatives at WTO that have not taken place because of a number of reasons. Specifically, Chile supports in consolidating the grounds for negotiations of the so-called Singapore Issues. Within this context, business and trade facilitation play a key role in obtaining economic benefits from economic liberalization and coordination.

Within the aforementioned framework, Chile has performed and undertaken several initiatives in customs procedures. These advancements have been undertaken unilaterally or within cooperation fora, such as APEC-SCCP, where Chile is an active member and has fulfilled all Collective Action Plans set out in this Sub Committee.

As an example, Chile has fully implemented WTO's Customs Valuation Agreement since 2002, establishing the Regulations for the Application of Article VII of GATT. It should be noted that this is despite the fact that Chile could have exercised the rights of a five-year implementation period granted to developing countries.

Likewise, Chile has fully implemented the 2002 Harmonized System from January 1<sup>st</sup>, 2002. Furthermore, Chile is also working with other Spanish and Portuguese speaking countries in obtaining a WCO approved interpretative notes of the HS in Spanish. This has vastly improved the knowledge of Chilean technician in regards to the HS.

One of the main objectives of business facilitation through costumes procedures relates to paperless trading and automatization. In this regard, it should be pointed out that Chile has a 24-hour, electronic import/export declaration system (EDI), which has contributed to the fact that over 98 % of these declarations are done electronically. Moreover, the National Customs Service of Chile is ready to implement a "single window" procedure for all pre-requisites needed in foreign trade transactions, such as tax payments, sanitary certificates, dangerous materials certificate, etc. This system will be known as ISIDORA, according to its Spanish acronym.

Within this same framework, Chile is fully implementing the Revised Kyoto Convention in all of its areas, as any full participating signing members of that Agreement. Chile strongly believes in the benefits granted by the application of the Revised Kyoto Convention, and plans to fully implement any modification that may arise in the Agreement.

Chile has also moved forward in other issues relating to trade facilitation such as competition policies. The institutions and recent reforms on this matter are addressed in Chapter 1.

## V.7. Other Economic, Technological and Development Partnerships

The overall objective of comprehensive initiatives in this field should be to facilitate and encourage Chilean and Chinese partnership in the pursuit of increased competitiveness, therefore fostering innovation and creating new opportunities for trade and joint ventures, including mutual consultation and cooperation on labor and environmental issues.

That is the case of Canada, the first FTA, where, based on the new commercial opportunities opened by the FTA, Fundación Chile signed agreements to acquire licenses for the application of biotechnology to radiata pine. In the present negotiations with New Zealand and Singapore parties are discussing the content of a chapter that will identify initiatives for a Strategic Economic Partnership Agreement, in the fields of joint R&D and educational projects. With Mexico, both parties are exploring ways to expand the FTA already in force to the field of Cooperation.

The Economic and Cooperation Agreement of Chile and the EU also has a special section on cooperation. The Agreement explores new areas where actions should contribute to reinforce the positive impact of the agreement on trade, through cooperation, on technical regulations, customs procedures, and intellectual property rights. The Agreement with the EU also foresees an increased participation and consultation of civil society in matters of cooperation and establishes as main criteria for implementing projects its impact in social development, economic growth and environmental protection. Specifically, the cooperation and joint projects section includes: science, technology, and information society; culture, education and audio-visual sector; State reform and public administration; cooperation in social issues; and other fields of cooperation.

The present Chilean and Chinese relationship has covered fields of cooperation in environmental-related issues. In agriculture, it should be mentioned, in particular, the implementation of an experimental and demonstration farm close to Beijing with the deep involvement of Chilean fruit entrepreneurs.

The interest of the Chilean government, in the context of a broad and comprehensive set of strategic initiatives, including the possible FTA, is to reinforce partnerships on the above-mentioned issues, with a vision that encompasses three main elements:

1. ***Cooperation in Human Resource Development***, through institutional agreements for initiatives aimed at training human resources, developing professional and technical consultancy and fostering the exchange of experiences in selected areas
2. Identifying projects, institutions and professionals for developing a ***Partnership on Research, Development and Innovation (R+D+I)***, for mutual benefit and with a

concrete long-term vision to develop joint capacities in international markets. These initiatives would require the involvement of governmental R&D entities, private companies, social organizations, or could combine them.. As examples of these kind of initiatives we can mention: access to Chinese experience in biotechnology, specially in non commodity productions (e.g., tomato, pepper, and similar species); joint research teams on climate change and plague control; antipollution techniques; and irrigation systems for precision agriculture.

3. Common actions undertaken in order to implement a ***long term forward looking partnership*** and common visions in targeted areas, such as consultation on labour and environmental practices.

In labour areas, cooperation could be envisaged with special activities defined by both Parties by mutual consensus with ministries and agencies concerned with government to government programs and projects with domestic consultation and involvement as decided by each Party, in order to better understand each other systems, improve linkages and human capital/resources for economic development and share best practices.

## **VI. CONCLUSIONS**

### **VI.1. The Strategic Framework**

An on-going goal of Chilean governments throughout the 90s has been to expand and enhance commercial and financial trade. Chilean trade policy has crafted three instruments to simultaneously achieve greater opening to and better insertion into the world economy, namely: unilateral liberalization and facilitation of trade and investments; active participation in the multilateral system and negotiations, and opening up on an equal basis with Chile's most important partners in the world economy through FTAs. By implementing policies conducive to unilateral opening, Chile has sought to improve the allocation of productive resources, making domestic economic activities more efficient and competitive. At the multilateral level, Chile has actively participated in discussions and decisions in the WTO, and has modernized its economy to comply with the WTO's obligations.

Over the last ten years, the strategy of integration via bilateral or regional agreements has spread out at global and regional levels in response to the stagnation of multilateral negotiations. Thus, Chile has substantially improved its access conditions to an extended market of 1,3 billion people, covering 53% of total exports recorded in the first six months of this year, while the domestic economy has been opened up to foreign businessmen, products and services. FTAs recently concluded and enforced with the European Union, the United States of America and the Republic of Korea, have contributed to cementing the international integration of Chile in three highly relevant economic arenas and to strengthening its position as a trade platform. Initiatives adopted in this direction with East Asia and Oceania would enable Chile to cover its four most important international trading and financial centers.

Bilateral and regional comprehensive agreements have enabled Chile to address and move forward in key globalization issues, namely services, investment, trade remedies, intellectual property and competition policies, and also to address in a proper way new strategic issues such as labor standards, environment, and economic, technological and development partnership. In this sense, trade exchanges have been expanded and diversified, creating conditions to improve competitiveness, attract new investment and technology, and generate new jobs.

### **VI.2. Why China?**

Today, China, a huge market comprised of a population of more than 1,3 billion, has consolidated its position as one of the biggest industrial and commercial power in the sector of traditional labor intensive manufactures and is becoming an increasingly important market for other economies through trade complementarity, achieved under trade and investment facilitation and liberalization. China is also, fast becoming, the largest exporter in the Asia Pacific region and the world of fully assembled high technology products, relocating some stages of its productive processes in other economies and becoming in this way an active agent of productive and financial integration. Economic, technical and

development partnership is becoming a valuable tool to build closer economic relations with its main business partners.

The Chinese economy is going through a stage of liberalization and deregulation in response to a proactive policy implemented within the framework of the accession of China to WTO. Within this framework, authorities have modernized the guiding principles of China's international economic policy, adopting the strategy of bilateral and multilateral agreements. Today, China is negotiating an FTA with ASEAN, will initiate negotiations with New Zealand and is on the stage of the feasibility study of an FTA with Australia. The preferential treatment that this country would accord under these FTAs would translate into a strong advantage for their business partners against competitors.

### **VI.3. Achievements and Challenges of Economic Relations with China**

China, after the United States and Japan, has become Chile's main business partner, a position that has developed dynamically in the past five years. China, however, is not an important foreign investor in specific sectors of the Chilean economy, such as mining, where potential for joint ventures and individual ventures are very high.

Trade between Chile and China has grown at high rates in the last five years, close to an average annual increase of 42%, boosted by an average annual growth of imports of Chinese products close to 40%, and by the expansion of Chilean exports, close to an annual average growth of 104%. Balance of trade has leaned in favor of Chile in the last three years, generating surpluses ranging from US\$8,1 million to US\$575,2 million.

The dynamism of Chilean exports to China has been pegged to exports of copper and cellulose. The list of most important exports also includes foodstuff and beverages products and inorganic chemicals, but copper and cellulose concentrated more than 82% of shipments in 2003. Chilean exports to China have not expanded to products that have accessed other North East Asian markets, such as exports of forestry products, fruits, fishery and aquiculture, and non copper mining industries.

Traditionally, economic relations between Chile and China have been marked by high levels of transactions in goods while, in comparison, direct investment figures are minor. Chile does not have a strong presence of Chinese investors. Chinese investment from 1974 to 2003 has accounted for 0.2% of all FDI received by Chile. Chinese investment of US\$85 million in this period has concentrated in forestry, services (distribution) and fishery. China has not recorded any direct investment since 2000.

Traditionally, China has few investments abroad, but in the recent years China is increasingly implementing investment projects. The small size of the Chilean economy has conspired against a stronger role of Chinese businessmen in the Chilean economy, but the new patterns of China's integration into the world economy open encouraging prospects for investment projects that seek to ensure the quality, continuity and price stability of the supply of strategic raw materials. Copper mining ranks in the first place, but the Chilean web of FTAs, in addition, has enhanced its attractiveness as a production platform oriented

to regional markets and its insertion in more advanced and higher added value links in the global production chain, in the service sector: air transportation, maritime transportation, tourism, and trade-related services.

#### **VI.4. Effects of a Free-Trade Agreement between Chile and China**

##### **VI.4.A. General Effects**

###### **a. Trade in goods**

An FTA between Chile and China will have a positive impact on bilateral trade and economic welfare. The elimination of tariffs would increase bilateral trade in US\$259 million, based on estimations obtained through the use of static partial equilibrium models, which do not capture the dynamic effects of trade liberalization, namely, the expansion of trade towards new products and the positive impact of more efficient allocation of resources. In Chile and China, trade creation will exceed trade diversion, and thus have a positive impact on economic welfare.

A comprehensive FTA would mostly contribute to increased economic exchange with commonly agreed trade facilitation measures, namely customs procedures, rules of origin and SPS, which will reduce transaction and administrative costs.

###### **b. Trade in services**

Trade in services would improve the scope of coverage of an agreement, through new foundations for legal certainty. Chilean exports of services to China have concentrated in maritime transportation and occasionally in insurance and banking. Direct Chinese investment in the Chilean service sector, on the other hand, is volatile and has failed to reach consolidation, while Chilean sectoral investment in China is almost non-existent.

Chile and China apply very different commercial policies to the service sector. Provisions concerning services to be included in a FTA would contribute to generating a better business environment generally, by making effective regulations more transparent and by committing the Parties not to adopt restrictive measures. Like in the field of investment, the visibility and assurances provided by the negotiation and subscription of a Free-Trade Agreement would contribute to fostering sectoral trade.

The actual pattern of bilateral trade in services is closely related to trade in goods and would benefit directly from the expansion of bilateral commerce, in particular in trading, air and maritime transportation and professional services related to trade in goods. Enhanced transparency for Chile achieved by a modern chapter on services including the different modes, would be a valuable contribution for expanding trade of services. The latter necessarily implies the adoption of mechanisms that would allow integral licensing for business operations, in other words, a transparent licensing process that covers the complete scope of operations.

### c. Investment

The Chilean-Chinese business environment would improve as a result of investment-related provisions that would be adopted under a broad FTA. Chile's experience in other FTAs indicates that the mere fact of subscribing an agreement of this nature ascertains the image of the country among new investors, more so if the counterpart is an economic world power that has not yet subscribed any bilateral free trade agreements. It is estimated that higher Chinese investment in Chile may be encouraged through an FTA, together with investment diversification into higher added value activities.

Due to the existing openness of the Chilean foreign investment system, there would be no effects attributable to the elimination of currently existing barriers, such as foreign investment controls or performance requirements.

Considering the experience of other FTAs subscribed by Chile, the support that any such Agreement lends to Chilean foreign investment policies would contribute to improving the positioning of the Chilean economy in Chinese investors' plans, particularly among corporate businesses that are today investing abroad for purposes of supplying the Chinese market with processed natural resources, mainly products from the mining sector.

In any case, considering the profile of Chinese investment abroad (i.e., low as compared with China's participation in world trade and focused on raw materials supply), the encouragement of Chinese investment in new sectors of our economy is recommended. Such initiative should include technological cooperation and partnerships. *Service complexes* built around transport, intermediation and sales of large volumes of goods, appear to be a promising area. Tourism, both business-related and traditional, is also a sector of great prospects.

#### VI.4.B. Effects on Sectoral Trade

##### a. Agriculture, Fruit, Livestock, Forestry and Extractive Fishery

China was the destination of sectoral shipments amounting to US\$21 million in 2003, representing only 4,8 percent of total Chilean sectoral exports. Cellulose and fish meal shipments accounted for 85% of sectoral exports in 2003.

Chilean exports of agricultural products, in particular counter-seasonal shipments of fruits, agroindustrial products related to the foodstuff sector and meat and edible meat products, will benefit from a comprehensive elimination of tariffs brought about by a bilateral FTA.

However the full benefits of tariff reductions, will be appreciated only if there is a significant reduction in non tariff barriers, such as, import quotas, SPS and licenses, as well as clear and transparent customs procedure disciplines. Thereof, the best way of allowing a bilateral FTA to reach its full potential, in terms of creating greater and more robust trade flows, is that the FTA addresses the establishment of a greater elimination of import quotas, the establishment of clearer and more transparent regulations on SPS measures through ad-

hoc mechanisms, sound rules related to efficient and less bureaucratic customs procedures and mechanisms of comprehensive licensing that includes import and commercialization procedures.

Chile has not been able to place in the Chinese market higher added value processed wood products, such as construction items and furniture, although these have successfully penetrated other world markets, including Asia. Trade liberalization and facilitation embodied in an FTA would contribute to enhance joint opportunities.

Average tariffs stand at 10,4 percent, while the average tariff applied to agriculture is 15,1 percent, with a peak of 70 percent. In addition to ad valorem or specific duties (poultry), Chinese tariffs applicable to agricultural products include a number of other duties, which seek to protect the sub-sector from sharp international price fluctuations or cheap imports. Finally, as regards trade-related services, it is alleged that practices and regulations governing the Chinese distribution sector make access thereto difficult for foreign producers.

In conclusion, there is a wide range of Chilean export products that would benefit from an FTA, provided tariffs are lowered or eliminated, tariff peaks are reduced, and import procedures are expedited. China is an important importer of food in the world, and Chilean shipments are counter-seasonal. Notwithstanding, Chile supplies only an insignificant part of the Chinese market's demand. An FTA would contribute to diversify the range of agricultural products traded between Chile and China. Based on Chilean agricultural and livestock products exported to Japan and South Korea, fruit (pears, apples); other frozen fruit; and more elaborated products, such as processed fruit and vegetables, tomato paste and juice, apple juice and nectar, canned peach, other fruit or vegetable juices, canned cherry, and wine, which presently face the highest tariffs.

A comprehensive FTA should also contribute to formalizing procedures related to the management of internationally accepted sanitary standards on food and similar products. Chile has become competitive in pork meat and poultry, but being a country free from foot and mouth disease, it could also export beef meat to the Chinese market, although high tariffs do not allow it.

China is competitive in East Asian markets of fishery products, recording a favorable trade balance of US\$ 1,47 billion, but China is also a big market for foreign business, importing US\$ 1,87 billion in 2003. Protection to local production through tariffs ranges from 8% and 18%, and implies trade liberalization would benefit Chilean exports.

Chile and China's prospective patterns of specialization reveal high potential for increased bilateral trade and partnership, based on the specialization of China in non ocean water aquiculture and Chile in ocean water aquiculture. Therefore, the scope of products could increase and include frozen salmon, algae, sea urchin, frozen shellfish, agar-agar, and canned seafood. Trade liberalization and facilitation benefits reaped under an FTA, if complemented with other initiatives concerning promotion of investment, and joint research and development, could build the basis for future partnership in fishery and aquiculture.

## b. Mining Sector

In the mining sector, trade relations between Chile and China are very close but concentrated in copper. China is the most important market for Chilean copper exports and 73,7% of total Chilean exports to China comprised primary mining shipments. Chile and China share a complementary economic bilateral relationship in this sector, but it should be noted that although many tariffs applied by China to imports from Chile are null, a 2% tariff faced by products such as copper cathodes, does have a relevant impact for exports of this commodity.

An FTA would indeed have a positive effect on Chilean non copper mining exports to China. In metal and non-metal industrial minerals segment, a great market growth potential is observed, based on China's interest in looking for strategic supplies.

## c. Industrial, Textile, Footwear and Other Manufactures

Bilateral exchange in this sector records a clear surplus in favor of China of US\$ 814 million in 2003 and China's exports to Chile are concentrated in this sector, which represented near 95%.

The impact of an FTA between Chile and China for imports of Chinese products into the Chilean market will concentrate in 99,6% in industrial goods. The largest increases are focused in metal, machinery and equipment products, basically due to the rise in imports of electrical products and machinery and equipment. In second place ranks the imports of textile and apparel sub-sector, in particular textiles, clothing and footwear. Finally, imports of products originated in processed and unprocessed chemical sub-sector would also increase, mainly rubber products, plastic products, basic chemicals, and prepared chemical products.

Chilean exports to China of industrial products will also benefit from tariff elimination, the elimination of tariff escalation, and the removal of non-tariff barriers, increasing by an estimated annual growth rate of 10%. Shipments of foodstuff and beverages, together with basic chemical products, would figure amongst the most important, concentrating an estimated 92% of the increase of industrial exports. It should be noted that a comprehensive FTA will contribute to expand exports towards foodstuff products based on fishery, meat and edible meat, where Chile has consolidated comparative advantages. Shipments of non organic chemicals would also increase. Potential exports face a wide range of tariffs, from low levels under the Chinese quota system, to 16%, and in general, Chile has a low market share in inorganic chemical products where it is competitive, such as light oils, petroleum ether preparations, mineral fertilizers, boric acid and by-products, molybdenum oxide, and methanol.

In conclusion, the Chilean and Chinese chemical industries are, generally, complementary. Chile exhibits comparative advantages in the inorganic area, while China has comparative advantages in the petrochemical area.

## **VI.5. Evaluation of a Comprehensive FTA on Trade-Related Issues**

### **VI.5.A. Intellectual Property Rights**

From the standpoint of Intellectual Property, no inconveniences are foreseen for the application of an FTA with China, as Chile has adjusted its national legislation concerning this matter, to bring it in line with international protection measures, particularly those established in the TRIPS Agreement.

Considering the above, an FTA with China would be an additional tool to reassert the effective protection and respect for intellectual property rights, according to international rules, seeking a balance between the rights of right holders and the legitimate interests of users and the community with respect to protected subject matter. This would be particularly useful to promote and encourage coordination between the Parties in order to develop both compliance with intellectual property legislation and at the same time avoiding over-protection. Lastly, an agreement would promote cooperation between the respective local intellectual property agencies, for instance, through the exchange of information and experiences in the implementation of international commitments, with a view to harmonizing a common approach to the different areas of concern and achieving a more uniform and consistent application of international rules.

### **VI.5.B Competition Policy**

Competition Policy is an important component of an FTA and aims at ensuring that the potential benefits of the liberalization process contained in such agreement are not diminished or cancelled out by anti-competitive business conducts, undertaken by public or private enterprises.

The interface between trade and competition policy becomes more important in a process of ever increasing economic cooperation and globalization. However, globalization may enhance competition by opening markets on the one hand, but may also increase the risk of anti-competitive practices on the other.

Therefore, it becomes highly important that the Parties undertake to duly apply competition laws and practices in a consistent manner so as to avoid that anti-competitive practices affect the expected benefits of the FTA.

Each Party should adopt or maintain competition practices that proscribe anti-competitive business with a view to preventing distortions or restrictions stemming from anti-competitive agreements, concerted practices or arrangements that would result in a dominant position that would affect the legitimate interest of the other Party.

Each Party should establish or maintain a competition authority responsible for enforcement of measures to proscribe anti-competitive business conduct. The enforcement policy of each Party's competition authority should include: not discriminating on the basis of the nationality that operate within the territory of both Parties or that negatively affect the

interests of the other Party; ensure due process in any anti-competitive investigation; and ensure transparency in all decisions that might affect the competitive position of the other Party.

In order to facilitate the application of competitive practices to actions that may affect the interest of both Parties, the Parties should agree to cooperate and coordinate between their competition authorities through a process of notifications; consultations and exchange of information, including the possibility of requesting investigations in the territory of the other Party for conducts that may affect the interest of a given Party.

With regard to public enterprises and enterprises to which special or exclusive rights have been granted, the Parties shall ensure that no measure is adopted or maintained that distort trade in goods and services between the Parties, which is contrary to the objectives of this Agreement and contrary to the Parties' interests, and that such enterprises shall be subject to the rule of competition.

#### VI.5.C. Standardization

##### a. Sanitary and Phytosanitary Measures

In the area of agricultural, livestock, meat, edible meat, forestry and aquiculture products, the Chinese market is of high interest for Chilean exporters. Chile has a high phyto and zoosanitary level, being free from plagues and diseases that may constitute a restriction to exports. A direct bilateral relation with China in these areas could mean a more agile market opening for products of interest.

In the areas where no smooth relations have yet been established, closer ties arising from this type of negotiations would lead to a deeper understanding of Chilean technical departments, control systems, certification, epidemiological surveillance, and others, and thereby Chilean processes would achieve recognition and credibility in China. Thus, equivalence could be established for certain procedures, thereby facilitating the access of Chilean product to that Asian market. In recent years, a good bilateral relation has been built between the Chilean SAG and the Chinese AQSIQ, with excellent results as regards the authorization of new agricultural products, based mainly on the recognition of sanitary conditions in Chile and compliance with the standards contained in the SPS-WTO Agreements.

A formal instrument concerning the SPS area - such as a chapter on cooperation between competent authorities with regard to animal and plant health, and hydrobiological products and foodstuff safety - could be convenient to review progress made and problems still to be solved in connection with compliance with the principles arising from the SPS-WTO Agreements.

Moreover, given the experience of Chile in this area, the importance of formal instruments foreseen within the agreement to address SPS issues is of great importance. However, the latter must be complemented by the creation of ad-hoc mechanisms that have the mandate of

finding efficient solutions to the problems that both Parties face in this area, under the guidelines that the agreement hands down.

The organizational structure, in China, in these areas is rigidly hierarchically arranged and the technical decision-making powers of competent agencies are not equivalent to those of Chilean agencies. Therefore, we consider that matters under discussion would be swiftly settled in Chile, a situation that favors China as regards, for instance, plague-free country or region recognition, certifications, control and surveillance.

b. Technical Barriers to Trade

Technical standards related measures can play an important role as non-tariff measures, it is therefore convenient to include disciplines in this regard in order to promote free-trade. Chile has followed this principle in the recent FTAs that it has agreed.

Although the WTO already establishes the framework to deal with standards related issues, to include them as a chapter of an FTA with China would certainly facilitate bilateral trade, and it is very likely to increase the export of industrialized Chilean products to China.

If adequate disciplines are negotiated, i.e. disciplines that go beyond WTO, this chapter would enable exporters to become familiar with the Chinese system, and most important, conformity assessment should be facilitated, allowing exporters to certify that their products meet Chinese technical requirements in a cheaper, more efficient and less trade restrictive way than it does today. It is also very important to define a framework to deal with eventual problems that might arise, in order to seek mechanisms to resolve them.

c. Government Procurement

For any agreement covering public sector procurement, and following the spirit of Chile's policy regarding government procurement in national laws and regulations and FTAs, a chapter regulating government procurement must provide market access with widest coverage to Chilean goods, services and suppliers in a non-discriminatory and transparent manner.

Bearing in mind that Chile and China are members of APEC, there is enough common ground for a mutually satisfactory understanding on matters of government procurement and therefore, Chile looks forward to the possibility of initiating discussions with China on this topic.

d. Movement of Business Persons

In general terms, the provisions of Temporary Entry of Business Persons are intended to facilitate business travel between the territories of the Parties as a necessary complement to achieve the FTA objectives of liberalizing investment regulations and reducing barriers to trade in goods and services. These provisions simplify procedures for temporary entry of

business persons and ensure border security, protect the domestic labor force and permanent employment in the territory of the Parties.

For this reason and considering the trading relationship between Chile and China, it is convenient to include a Chapter of Temporary Entry of Business Persons.

#### VI.5.D. Trade Remedies

Chile considers that, in the context of a Bilateral FTA negotiation with such an important potential trade partner, the Anti-dumping and Countervailing duties mechanisms must be maintained under the provisions of Article VI of the GATT of 1994, the WTO Agreement on Antidumping and the WTO Agreement on Subsidies and Countervailing Measures. The same criterion should be observed with regard to the Global Safeguards Regime in which both Parties to the FTA confirm their rights and obligations under Article XIX of the GATT of 1994 and the WTO Agreement on Safeguards.

In order to facilitate the negotiation and adoption of a meaningful and rapid process of tariff reduction and elimination that leads to a significant increase in trade flows on goods, it is necessary to rely on conditions that give assurances to domestic producers that they will have the adequate time, conditions and special mechanisms to adapt to the new situation of trade competition.

#### VI.5.E Dispute Settlement Mechanisms

A dispute settlement mechanism is essential for ensuring the proper functioning of an FTA. Dispute settlement rules have a wide scope of application which provide for a secure, impartial and according to the rule of law, settlement of any dispute that may arise between the Parties related to trade issues ruled by the disciplines of the FTA.

FTAs establish the endeavor of the Parties to arrive at a mutually satisfactory resolution of any dispute, through cooperation and consultations. Additionally, these rules determine the scope of application of the system and optional forums. Generally, a dispute settlement system comprises four well-defined stages, namely consultations, intervention of the Free-Trade Commission (good offices, conciliation and mediation), initiation of proceedings before an Arbitral Panel, and compliance with the Final Report, which is binding for the Parties.

#### VI.5.F. Transparency

The main purpose of addressing transparency in FTAs is to facilitate communication between the Parties and to make available measures concerning any issue covered in the Agreement. Transparency contributes to assure that Governments provide the necessary means for individuals to become acquainted with the rules and thus allow compliance with them.

Its intended purpose is that laws, regulations, procedures and administrative rules of general application should be published without delay and that the other Party is afforded the opportunity to make observations there on. Additionally, transparency seeks that, to the greatest extent possible, one State notifies the other State of any actual or proposed measure that may affect the functioning of the FTA or the interests of any Party thereunder.

In addition this Chapter includes rules on due process in matters concerning administrative procedures, which may affect aspects covered in the FTA, and, finally, it provides for the creation of information centers with a view to facilitating communication between the Parties in matters concerning the Agreement.

Based on these arguments, an FTA with China would benefit from a special chapter on Transparency.

## **VI.6. Elements for Building a Strategic Economic Partnership**

### **VI.6.A Economic, Technical and Development Partnership**

The full dynamic effects of FTAs are enhanced by incorporating in a global perspective a framework on economic, technology and development partnership initiatives, in order to facilitate and encourage bilateral joint ventures in the pursuit of increased competitiveness. The strategic objective is to foster innovation and create new opportunities for trade and joint ventures. The framework provided by FTAs allows to target new areas where actions should contribute to reinforce the positive impact of the agreement on trade. FTAs can facilitate increased participation and consultation of civil society in matters of cooperation, and contribute to implement projects with a positive impact in social development, economic growth and environmental protection. A section on partnerships and joint projects should include: science, technology, information society and human capacity building.

The present Chilean and Chinese partnership has covered fields of cooperation in agriculture and dialogues on social issues (labor relations and social security systems). The interest of the Chilean government, in the context of a broad and comprehensive set of strategic initiatives with China, including the possible FTA, is to reinforce partnership on the above-mentioned issues. The global framework should allow to identify projects for engaging partnership on research, development and innovation, for mutual benefit and with a concrete long-term vision to develop joint capacities in international markets. These initiatives would require the involvement of governmental R&D entities, private companies, and social organizations, in areas such as biotechnology, joint research on climate change and plague control, exchange of antipollution techniques, and irrigation systems for precision agriculture, among others.

### **VI.6.B Labor Standards and Environment**

FTAs negotiated by the Chilean government are cornerstones for achieving sustainable economic development lead by international trade and investment. The strategic goal is to improve the integration of Chile to the global economy and build the foundations for the

participation of the Chilean population and social actors to the benefits of economic growth and development, while simultaneously laying the basis for sustainable development.

The policy of Chilean governments has been to address labor and environment issues, although according to different templates, so as to show the commitment of the country to these issues and to Chilean enforcement of its own laws, while at the same time adopting a realistic approach to the specific relationship with each trade partner. Chile has also sought to encourage participation of its civil society, as well as public access to procedures for the enforcement of the Parties labor and environmental laws.

In issues related to environment and labor, the Chilean government aim at harmonizing trade and environment and labor policies, based on an approach that recognizes the right of each Party to establish domestically its own levels of protection, its policies and priorities and to adopt or modify its own legislation.

In recent years, China and Chile had exchanges about its labor relations and social security systems, including health, safety and pensions systems. The interest of the Chilean government, in the context of a broad and comprehensive set of strategic initiatives with China, is to address labor issues together with environmental issues in a proper way, based on each Party's own reality, laws and systems, sharing mutual commitments already established by both countries and specially based in cooperation and transparency so as to allow the opportunity for both countries to develop their trade, investment and economic and social development.

Environment and labor cooperation could be envisaged by mutual consensus with participation of the respective ministries and agencies with government to government programs and projects with domestic consultation and involvement as decided by each Party, in order to better understand each other systems, improve linkages, enhance human capital/resources for economic development and share best practices in these areas.

## **VI.7. Conclusions**

The conclusion of a comprehensive and broad FTA with China, under the assumption that a broad and comprehensive agreement addresses both a substantial proportion of bilateral trade, with no economic sector excluded, as well as it covers the complete scope of issues that relates to bilateral economic relations between Chile and China, would have a very positive effect for the Chilean economy, enhancing the scope of economic relations, with a leading industrial power and consolidating the presence of the Chilean economy in East Asia and its role as a transpacific business platform.

The global effect of an FTA, with a view to substantially improve the business environment with one of the leading economies in the world, would consolidate the role of Chile as a productive and business platform to South America, thus generating greater potentials for Chinese investment, interested in optimizing its industrial and financial presence in one of the most important markets in the world.

Considering the structure of Chilean imports from China, intensive in equipment and capital goods, an FTA would, through tariff reductions, favor competitiveness in a wide range of industrial activities, thereby consolidating their export potentials.

The subscription of an FTA with China would contribute to minimizing trade deviations induced by agreements that Chile has negotiated with the European Union, the United States and Korea. Thus, the positive effect of all the agreements that Chile has been negotiating with its main trade partners would be synergized.

Considering the extension and depth of economic relations with China, a broad and comprehensive FTA would be an essential contribution to the consolidation of a second stage in Chilean exports, based on activities in which it has developed comparative advantages. Mining, in particular, emerges as a promising field for related services and supporting industry. Likewise, trade, agroindustry and food manufacturing-related services appear as areas for cooperation and exchange, which could be greatly developed under an FTA, permitting the exchange of technology, with a view to boosting competitiveness.

An FTA with China would have a positive impact on the Chilean economy and would further strengthen bilateral trade and investment. Therefore, it is suggested that the maximum effort should be made to conclude an broad and comprehensive bilateral FTA.

## II. ECONOMIC RELATIONS BETWEEN CHILE AND CHINA

### II.1. Bilateral Trade in Goods

In 2003, bilateral trade between Chile and China reached a record high of 3.155 million dollars. This places China as Chile's third global trading partner, behind Argentina and the United States, but also above countries like Japan, Brazil and all of the European Union economies. The latter strongly diverge from what was recorded a decade ago, when bilateral trade flows ranked in the fifteenth place. The strong growth in trade between Chile and China is the result of a dynamic evolution in exports and imports, thus generating an increase in bilateral exchange in no less than 662% between 1994 and 2003, surpassing in more than six times the growth of Chile's global trade in the same period (94%)

**TABLE II.1**  
**TRADE BETWEEN CHILE AND CHINA, 1994 - 2003**  
(millions of dollars and %)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. China</b>										
Exports (FOB)	133,3	287,9	354,1	433,4	459,7	359,1	907,2	1.021,8	1240,1	1865,4
Imports (CIF)	280,7	390,3	515,0	659,1	753,1	660,1	951,4	1.013,7	1102,4	1290,2
Trade Balance	(147,4)	(102,4)	(160,9)	(225,7)	(293,4)	(301,0)	(44,1)	8,1	137,7	575,2
Trade Exchange	414,0	678,3	869,1	1.092,5	1.212,8	1.019,1	1.858,6	2.035,4	2342,5	3155,6
<b>II. Global</b>										
Exports (FOB)	9198,7	11604,1	15.394,6	17.017,0	14.753,9	15.914,6	18.425,0	17.668,1	17.676,3	20.627,2
Imports (CIF)	10543,6	11149,1	16.810,0	18.111,6	17.087,4	14.022,0	16.842,5	16.233,9	15.753,2	17.663,6
Trade Balance	(1.344,9)	455,0	(1.415,4)	(1.094,6)	(2.333,5)	1.892,6	1.582,5	1.434,2	1.923,1	2.963,6
Trade Exchange	19.742,3	22.753,2	32.204,6	35.128,6	31.841,3	29.936,6	35.267,5	33.902,0	33.429,5	38.290,8
<b>III. Participation</b>										
Exports	1,4	2,5	2,3	2,5	3,1	2,3	4,9	5,8	7,0	9,0
Imports	2,7	3,5	3,1	3,6	4,4	4,7	5,6	6,2	7,0	7,3
Trade Exchange	2,1	3,0	2,7	3,1	3,8	3,4	5,3	6,0	7,0	8,2

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

The trade balance, exports minus imports, in 2003, also marked a record high with a surplus for Chile of 575 million dollars, sum that is far from the 147 million dollar deficit of 1994. The traditional deficit in favor of Chile dates to 2001 and has increase since then.

As in total trade exchanges, in 2003, the Chinese economy represented the third destination of Chilean exports, accounting for 1.865 million dollars. Between 1994 and 2003 Chilean exports destined to China grew in an accumulated amount of 1.299%, meaning an average of 130% annually, growth that is ten times greater than that shown by total Chilean exports.

Imports coming from China in 2003, reaches a sum of 1.290 million dollars, placing China as the fourth supplier of imported goods to Chile. Although imports from the Asian giant haven't shown the spectacular surges as those in imports, these do not seem to amaze given

that between 1994 and 2003 imports reached a growth rate of 360%, fact that is of no minor importance considering that global imports only grew in 124% in the same period.

#### II.1.A. Exports

Ten years ago, the People's Republic of China accounted for only 1,4% of Chile's exports, ranking China as the seventeenth external buyer of Chilean products. In 2003, the latter changes given that in the past ten years China has raised its relative importance, reaching a point where it provides close to a tenth of all currency inflows from exports, thus transforming China into the third global destination of Chilean exports, overtaking Japan who has been our traditional second destination.

**TABLE II.2**

**CHILE'S EXPORTS TO CHINA**

(millions of dollars and %)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. Exports to China</b>	133,3	287,9	354,1	433,4	459,7	359,1	907,2	1.021,8	1240,1	1865,4
<b>II. Global Exports</b>	9198,7	11604,1	15.394,6	17.017,0	14.753,9	15.914,6	18.425,0	17.668,1	17.676,3	20.627,2
<b>I. Over II.</b>	<b>1,4</b>	<b>2,5</b>	<b>2,3</b>	<b>2,5</b>	<b>3,1</b>	<b>2,3</b>	<b>4,9</b>	<b>5,8</b>	<b>7,0</b>	<b>9,0</b>
	<i>growth rate (%)</i>									
<b>Exports to China</b>		116,0	23,0	22,4	6,1	(21,9)	152,7	12,6	21,4	50,4
<b>Global Exports</b>		26,1	32,7	10,5	(13,3)	7,9	15,8	(4,1)	0,0	16,7

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

Without a doubt the Chinese market has been the most important buyer measured in terms of export growth, between 1994 and 2003 exports grew in no less than 1.299%, averaging annually a rate of 130%, which compares to the 124% growth in global exports in the same period (an average of 16% annually). On the other hand, it is interesting to point out that this increase in imports has also been continuous along the whole period - with the exception of 1999- including 1998, the year that global exports suffered the major decline (13%), due to the effects of the Asian financial crisis.

The excellent results that Chilean exports towards China have shown, not only in the past decade but also the first four years of the present decade, are mainly the result of the robust expansion that the Chinese economy has shown during the past 25 years, process that has intensified in the past ten years. This phase of economic growth, which has been translated in growth rates that average 9% annually, started with the first process of economic reform in 1978. This reform has been mainly based in the attraction of foreign direct investment towards the Chinese export sector.

Although China may represent a huge market with 1.3 billion potential consumers, a fifth of the world population, that fact still remains that of the 1.3 billion inhabitants only a small fraction have a level of income that could appear attractive to capitalists. Therefore,

economic growth has been based on manufactures exports taking advantage of comparative advantages given by the abundance of cheap labor and scale economies.

TABLE II.3

## CHILE'S EXPORTS TO CHINA ACCORDING TO ISIC, 1994 - 2003

(millions of dollars FOB)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. Agriculture, Fruit, Livestock, Silviculture and Extractive Fishery</b>	<b>0,0</b>	<b>1,9</b>	<b>1,8</b>	<b>3,2</b>	<b>55,0</b>	<b>35,6</b>	<b>20,6</b>	<b>18,3</b>	<b>39,7</b>	<b>20,9</b>
Agriculture, Fruit and Livestock	-	1,8	0,0	0,3	52,6	32,3	17,9	15,6	36,9	16,5
Silviculture	0,0	0,0	-	0,6	0,0	0,0	0,0	0,0	0,0	0,1
Extractive Fishery	-	0,0	1,8	2,3	2,3	3,3	2,7	2,6	2,9	4,2
<b>II. Mining</b>	<b>81,5</b>	<b>189,7</b>	<b>217,7</b>	<b>302,8</b>	<b>234,3</b>	<b>257,0</b>	<b>668,5</b>	<b>631,0</b>	<b>801,7</b>	<b>1.375,1</b>
Copper	70,0	178,8	204,4	291,8	222,0	250,1	659,1	606,8	756,6	1.317,1
Other	11,6	10,9	13,3	11,0	12,3	6,9	9,3	24,2	45,1	58,0
<b>III. Industry</b>	<b>51,8</b>	<b>96,4</b>	<b>134,6</b>	<b>127,3</b>	<b>170,4</b>	<b>66,4</b>	<b>218,2</b>	<b>372,4</b>	<b>398,3</b>	<b>468,1</b>
Foodstuff and beverages	4,8	17,5	57,7	48,9	64,8	46,3	46,0	89,2	135,7	158,0
Textiles and apparel	4,4	4,1	4,5	2,7	2,1	1,7	2,2	1,8	1,0	1,1
Forestry and Furniture	1,4	1,2	0,5	0,5	0,3	1,3	3,0	6,3	11,3	16,0
Cellulose, paper and by-products	35,7	64,7	64,8	59,9	90,9	7,7	140,3	234,4	206,9	214,5
Processed and unprocessed chemicals	5,4	7,7	6,7	12,5	11,3	8,0	24,2	33,3	27,0	51,3
Glass, clay and porcelain products	-	-	-	-	0,2	-	-	-	0,1	0,0
Basic steel and iron industry	0,1	0,2	0,3	1,1	0,7	1,3	2,0	4,9	10,2	27,0
Metal products, machinery and equipment	0,0	1,0	0,1	1,6	0,1	0,2	0,5	2,5	6,2	0,2
Non specified manufactures	-	-	0,0	0,0	0,0	0,0	0,0	0,0	0,1	0,0
<b>IV. Others</b>	<b>0,0</b>	<b>-</b>	<b>-</b>	<b>0,1</b>	<b>0,0</b>	<b>0,0</b>	<b>-</b>	<b>0,1</b>	<b>0,3</b>	<b>1,3</b>
<b>V. Total Exports</b>	<b>133,3</b>	<b>287,9</b>	<b>354,1</b>	<b>433,4</b>	<b>459,7</b>	<b>359,1</b>	<b>907,2</b>	<b>1.021,8</b>	<b>1.240,1</b>	<b>1.865,4</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

A sample of the success of the Chinese economy are the economic results of 2003, where exports reached 438 billion dollars, accounting for 30% of GDP for that year (1.436 billion), with a surplus trade balance of 5.7 billion dollars. Although China's imports have also grown considerably during the same period, this is simply the result of a raise in demand for industrial imports, such as natural resources as well as capital goods, so as to feed its industrial processes. An example is that ten years ago China was a net producer of crude oil, today it is the world's second consumer of this commodity, behind the United States.

In 2003, Chinese, exports reached, for the fourth consecutive time a record high of 1.865 million dollars, representing an increase of 50% compared to the previous year. This strong growth, that outweighs and mainly explains the growth in Chile's total exports (16,7%), is mainly due to a huge growth in sales of copper, commodity that saw a strong raise in price as a result of international demand fueled mainly by the Asian markets.

*i. Export Sectors*

Table II.4 allows to appreciate that Chilean exports towards China are concentrated mainly within two sectors (mining and industry), which account for 98,9% of total exports to China. Although the mining sector has clearly been the dominant sector, its importance has been

quite variable throughout the decade, due to fluctuations in international prices of these types of products.

**TABLE II.4**  
**STRUCTURE OF CHILE'S EXPORTS TO CHINA ACCORDING TO ISIC, 1994 - 2004**  
(%)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. Agriculture, Fruit, Livestock, Silviculture and Extractive Fishery</b>	<b>0,0</b>	<b>0,6</b>	<b>0,5</b>	<b>0,7</b>	<b>12,0</b>	<b>9,9</b>	<b>2,3</b>	<b>1,8</b>	<b>3,2</b>	<b>1,1</b>
Agriculture, Fruit and Livestock	-	0,6	0,0	0,1	11,4	9,0	2,0	1,5	3,0	0,9
Silviculture	0,0	0,0	-	0,1	0,0	0,0	0,0	0,0	0,0	0,0
Extractive Fishery	-	0,0	0,5	0,5	0,5	0,9	0,3	0,3	0,2	0,2
<b>II. Mining</b>	<b>61,2</b>	<b>65,9</b>	<b>61,5</b>	<b>69,9</b>	<b>51,0</b>	<b>71,6</b>	<b>73,7</b>	<b>61,8</b>	<b>64,6</b>	<b>73,7</b>
Copper	52,5	62,1	57,7	67,3	48,3	69,7	72,7	59,4	61,0	70,6
Other	8,7	3,8	3,7	2,5	2,7	1,9	1,0	2,4	3,6	3,1
<b>III. Industry</b>	<b>38,8</b>	<b>33,5</b>	<b>38,0</b>	<b>29,4</b>	<b>37,1</b>	<b>18,5</b>	<b>24,1</b>	<b>36,4</b>	<b>32,1</b>	<b>25,1</b>
Foodstuff and beverages	3,6	6,1	16,3	11,3	14,1	12,9	5,1	8,7	10,9	8,5
Textiles and apparel	3,3	1,4	1,3	0,6	0,5	0,5	0,2	0,2	0,1	0,1
Forestry and Furniture	1,1	0,4	0,1	0,1	0,1	0,4	0,3	0,6	0,9	0,9
Cellulose, paper and by-products	26,8	22,5	18,3	13,8	19,8	2,2	15,5	22,9	16,7	11,5
Processed and unprocessed chemicals	4,0	2,7	1,9	2,9	2,5	2,2	2,7	3,3	2,2	2,8
Glass, clay and porcelain products	-	-	-	-	0,0	-	-	-	0,0	0,0
Basic steel and iron industry	0,1	0,1	0,1	0,3	0,2	0,4	0,2	0,5	0,8	1,4
Metal products, machinery and equipment	0,0	0,3	0,0	0,4	0,0	0,0	0,1	0,2	0,5	0,0
Non specified manufactures	-	-	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0
<b>IV. Others</b>	<b>0,0</b>	<b>-</b>	<b>-</b>	<b>0,0</b>	<b>0,0</b>	<b>0,0</b>	<b>-</b>	<b>0,0</b>	<b>0,0</b>	<b>0,1</b>
<b>V. Total Exports</b>	<b>100,0</b>									

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

It is worthwhile to highlight that the sector that has shown a greater growth has been the mining sector (1.587%), where copper exports represent the largest share of the exports for this sector. The latter is a clear example of the growth in the demand of inputs of the Chinese economy due to the growth in GDP based on industrial production. Moreover, it should be noted that this phenomenon has caused some level of distortion in global trade flows provoking strong trade deviations towards China, thus, elevating international commodity process as well as generating a surge in international transport costs.

In terms of the industrial sector, although it hasn't shown the same levels of growth as the mining sector, there is no question that the growth of this type of exports are not a minor issue given that, in the same period, sales have grown in no less than 800%. Within this sector, the main export products is cellulose, which has shown an important raise in sales since 2000 coinciding with the international increase in the price of commodities. The other type of product that belongs to this sector that has favorably evolved (3.191%) has been fishmeal, good that belongs to the foodstuff industry, sub sector that accounts for 158 million dollars worth of exports.

The latter clearly shows that close to 97% of all of Chilean exports to China can be explained by three types of products: copper, cellulose and fishmeal. Therefore, it is clearly laid out that Chile is a net exporter of inputs to the Chinese economy. This implies that the

level of elaboration that Chilean products that are exported to China is extremely low given that the great majority are raw materials.

**TABLE II.5****CHILE'S MAIN EXPORTS TO CHINA, 2002 - 2003***(millions of dollars FOB and %)*

HS	Description	Value (CIF)		Structure (%)		Growth (%)
		2002	2003	2002	2003	2003
74031100	Copper cathodes	568,0	923,6	45,8	49,5	62,6
26030000	Copper minerals and ors	184,9	370,1	14,9	19,8	100,1
47032100	Cellulose	118,9	127,3	9,6	6,8	7,0
47031100	Cellulose	51,5	53,0	4,2	2,8	2,9
23012013	Processed fishmeal contain protein superior	32,4	52,8	2,6	2,8	63,2
23012011	Processed fishmeal contain protein inferior	5,0	24,3	0,4	1,3	381,7
26011210	Iron pellets	13,8	21,5	1,1	1,2	55,4
23012012	Fishmeal	52,5	20,3	4,2	1,1	-61,2
47032900	Cellulose from different types of coniferous woods	26,1	19,5	2,1	1,0	-25,4
29051100	Methanol	-	18,5	-	1,0	-
28342100	Potassium Nitrate	10,5	16,8	0,8	0,9	60,4
74020010	Unrefined copper	2,8	14,8	0,2	0,8	431,8
44071019	Other wood sawn or chipped lengthwise	10,5	13,4	0,8	0,7	27,0
26011111	iron ors	13,9	11,9	1,1	0,6	-14,4
22042991	Other red wines	7,4	10,0	0,6	0,5	34,5
48010010	Paper	7,3	9,2	0,6	0,5	25,4
28369100	Lithium carbonate	5,7	9,0	0,5	0,5	58,8
8061030	Fresh grapes	23,1	8,1	1,9	0,4	-64,8
72091800	Steel and iron plates	-	7,5	-	0,4	-
16059090	Other seafood	8,2	7,0	0,7	0,4	-14,9
	<b>Subtotal</b>	<b>1.142,5</b>	<b>1.738,4</b>	<b>92,1</b>	<b>93,2</b>	<b>52,2</b>
	Others	97,6	127,0	7,9	6,8	30,1
	<b>Total Exports</b>	<b>1.240,1</b>	<b>1.865,4</b>	<b>100,0</b>	<b>100,0</b>	<b>50,4</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

*ii. Export products*

Chile, in 2003 exported 258 products to the Chinese market. This figure only represents 5% of the total number of products that Chile exported to the world in the same year. Table V shows the twenty main export products sold to China, as it can be seen, these twenty products, that only account for 8% of the total number of products sold to China, explain 93% of all sales to China.

Also it can be seen that out of the twenty products, only two hold no relation to the mining sector, be it primary or industrial, these are cellulose and fishmeal. This isn't a minor issue taking into consideration that the top twenty listed products, which are all different types of inputs, face very low or even non-existent levels of tariffs of non-tariff barriers which are very limited in comparison to other products that Chile exports to other parts of the world,

specially those goods that belong to the food sub-sector for human consumption as well as agricultural products.

## II.1.B. Imports

As it has been said before, the Peoples Republic of China is the fourth supplier of imported goods to Chile, registering in 2003 imports of 1.290 million dollars. This represents an important raise of 17% in comparison with the previous year and, at the same time, represents the fourth year in a row that imports have grown from China.

**TABLE II.6**  
**CHILE'S IMPORTS FROM CHINA, 1994 - 2003**  
(millios of dollars CIF and %)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. Impors from China</b>	280,7	390,3	515,0	659,1	753,1	660,1	951,4	1.013,7	1102,4	1290,2
<b>II. Global Imports</b>	10543,6	11149,1	16.810,0	18.111,6	17.087,4	14.022,0	16.842,5	16.233,9	15.753,2	17.663,6
<b>I. Over II.</b>	<b>2,7</b>	<b>3,5</b>	<b>3,1</b>	<b>3,6</b>	<b>4,4</b>	<b>4,7</b>	<b>5,6</b>	<b>6,2</b>	<b>7,0</b>	<b>7,3</b>
	<i>growth rate (%)</i>									
<b>Imports from China</b>		39,1	32,0	28,0	14,3	(12,4)	44,1	6,5	8,8	17,0
<b>Global Imports</b>		5,7	50,8	7,7	(5,7)	(17,9)	20,1	(3,6)	(3,0)	12,1

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

In terms of the behavior of imports coming from China between 1994 and 2003, these have tended to show continuous levels of growth along the whole period, with the exception of 1999 where an important fall in Chilean internal demand triggered a significant fall in imports across the board including those originating from China. The continuous growth in imports from China contradicts the global tendency that shows successive fall in the amount of imports due to the adjustments in internal demand as a result of the harsh consequences of the international financial crisis of 1997.

**TABLE II.7****STRUCTURE OF IMPORTS ACCORDING TO TYPE OF GOOD, 1994 - 2003***(%)*

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. Consumer Goods</b>	72,8	72,9	76,7	76,6	75,8	73,6	72,1	70,2	68,0	65,7
<b>II. Intermediate Goods</b>	20,9	22,1	17,8	16,4	17,5	19,4	20,4	21,5	21,9	23,9
Petroleum	-	-	-	-	-	-	-	-	-	-
Other fuels and Lubricants	0,1	0,0	0,0	0,2	0,3	0,7	0,5	1,0	0,2	0,3
<b>III. Capital Goods</b>	6,3	5,0	5,5	7,0	6,7	7,0	7,5	8,4	10,1	10,5
<b>IV. Total Imports</b>	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

## a. Imports of goods

Table II.8 shows the type of goods that are imports from China. It is apparent that the majority of imports are concentrated in good for consumption that account for 66% of total imports originating from China. It's important to note that in this type of product, China accounts for 26% of all imports there for becoming our main provider of consumer goods. This is of no minor importance taking into consideration that in 1994 China only provided a tenth of all consumer product imports.

**TABLE II.8****CHILE'S IMPORTS FROM CHINA ACCORDING TO TYPE OF GOOD, 1993 - 2004***(millions of dollars CIF)*

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. Consumer Goods</b>	204,4	284,6	394,8	504,6	571,0	485,9	685,9	711,6	749,7	847,3
<b>II. Intermediate Goods</b>	58,6	86,4	91,8	108,1	131,4	127,8	193,8	217,5	241,2	308,0
Petroleum	-	-	-	-	-	-	-	-	-	-
Other fuels and Lubricants	0,2	0,0	0,0	1,2	2,1	4,7	5,0	9,9	1,7	3,9
<b>III. Capital Goods</b>	17,6	19,3	28,4	46,4	50,6	46,4	71,6	84,7	111,5	135,0
<b>IV. Total Imports</b>	280,7	390,3	515,0	659,1	753,1	660,1	951,4	1.013,7	1.102,4	1.290,2

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

The latter, together with the fact that global imports in consumer goods have been stable over the years, imply that there has been a deviation in imports where the Chilean economy prefers to buy goods from China at lower prices than that of other traditional suppliers

In second place, in terms of importance within Chile's import mix, come imports of intermediate goods, in other words those goods that are used in some type of productive process, accounting for 24% of total exports. Finally capital goods imports account for only a tenth of total exports.

In terms of how the import mix has evolved over the 1994 – 2003 period, it can be said that there has been a certain amount of shuffling within the types of goods, where consumer goods have lost relevance to a raise in intermediate and capital good's imports. This is basically explained by an evident change in China's supply, which starts to compete head to head with technological products at lower prices thus provoking a deviation of imports from other suppliers like Chinese Taipei or Japan.

**TABLE II.9**  
**IMPORTS FROM CHINA ACCORDING TO ISIC, 1994 - 2003**  
(millions of dollars CIF)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
<b>I. Agriculture, Fruit, Livestock, Silviculture and Extractive Fishery</b>	<b>0,5</b>	<b>0,5</b>	<b>1,3</b>	<b>1,4</b>	<b>2,6</b>	<b>1,1</b>	<b>1,9</b>	<b>1,4</b>	<b>2,1</b>	<b>2,9</b>
Agriculture, Fruit and Livestock	0,5	0,5	1,3	1,4	2,5	1,1	1,8	1,4	2,1	2,8
Silviculture	-	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,1
Extractive Fishery	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0
<b>II. Mining</b>	<b>0,4</b>	<b>0,6</b>	<b>1,3</b>	<b>0,5</b>	<b>1,2</b>	<b>0,1</b>	<b>2,8</b>	<b>7,0</b>	<b>2,8</b>	<b>4,1</b>
Copper	-	-	-	-	-	-	-	-	-	-
Other	0,4	0,6	1,3	0,5	1,2	0,1	2,8	7,0	2,8	4,1
<b>III. Industry</b>	<b>279,7</b>	<b>388,7</b>	<b>512,4</b>	<b>657,2</b>	<b>749,2</b>	<b>658,6</b>	<b>946,6</b>	<b>1.005,1</b>	<b>1.097,1</b>	<b>1.282,8</b>
Foodstuff and beverages	1,7	1,2	1,1	1,5	1,6	1,7	2,1	2,2	2,6	4,9
Textiles and apparel	122,1	163,5	234,4	275,3	324,6	289,2	397,9	429,6	438,2	480,5
Forestry and Furniture	1,9	2,9	4,8	7,1	7,8	6,9	10,5	11,0	14,7	18,1
Cellulose, paper and by-products	1,3	1,9	1,4	2,8	3,2	3,2	4,6	3,8	3,7	4,5
Processed and unprocessed chemicals	26,0	46,0	56,7	67,5	75,9	72,1	107,0	126,4	143,1	187,6
Glass, clay and porcelain products	6,9	9,3	12,1	12,7	16,9	14,4	22,9	21,5	21,4	25,6
Basic steel and iron industry	0,9	6,4	3,3	3,7	2,7	2,9	4,9	7,2	8,7	7,6
Metal products, machinery and equipment	77,4	103,3	134,9	194,1	215,7	192,7	297,3	315,3	380,6	457,6
Non specified manufactures	41,6	54,2	63,7	92,5	100,9	75,5	99,4	88,1	84,2	96,3
<b>IV. Others</b>	<b>0,0</b>	<b>0,5</b>	<b>0,0</b>	<b>0,0</b>	<b>0,1</b>	<b>0,3</b>	<b>0,2</b>	<b>0,1</b>	<b>0,3</b>	<b>0,4</b>
<b>V. Total Exports</b>	<b>280,7</b>	<b>390,3</b>	<b>515,0</b>	<b>659,1</b>	<b>753,1</b>	<b>660,1</b>	<b>951,4</b>	<b>1.013,7</b>	<b>1.102,4</b>	<b>1.290,2</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

Table II.9 shows imports according to productive sectors according to ISIC. As it can be seen 99,4% of all imports come from the industrial sector and are mainly textiles, Chemical products including plastics and metal products, machinery and equipment.

#### b. Imported products

On the contrary to exports, imports show a higher degree of diversification given that in 2003, Chile imported from China 3.456 different products, which accounts for 52% of the number of products that Chile imports from the world. Table II.10 shows the top twenty products that Chile imports from China, which represent on aggregate only account for 18% of total imports that are of Chinese origin, thereof giving an example of how diversified imports are. It can also be seen that the majority of the products belonging to the top twenty are textiles or technology such as TV's, Chips and cellular phones.

**TABLE II.10**  
**CHILE'S MAIN IMPORTS, 2002 - 2003**

*(millions of dollars CIF and %)*

HS	Description	Value (CIF)		Structure (%)		Growth (%)
		2002	2003	2002	2003	2003
61091011	T-shirts y shirts made from cotton	14,4	17,6	1,3	1,4	22,4
62034291	Long trousers	14,0	15,9	1,3	1,2	14,0
85219000	Other recording apparatus	7,9	15,1	0,7	1,2	90,2
64039992	Other Shoes	16,8	14,9	1,5	1,2	-11,5
85273190	Radio receivers	13,9	13,9	1,3	1,1	-0,0
61103010	Sweaters and jerseys made of polyesters	12,2	12,9	1,1	1,0	5,3
84716031	monitors	13,4	12,7	1,2	1,0	-4,8
95039010	other plastic toys	8,8	12,7	0,8	1,0	44,7
85421000	cards containing integrated circuits	14,4	11,6	1,3	0,9	-19,3
62052010	Cotton shirts for men	10,7	10,9	1,0	0,8	2,7
42031010	Coats and jackets	13,4	10,7	1,2	0,8	-20,2
62046291	Cotton trousers made from cotton	5,9	10,3	0,5	0,8	73,6
64041990	Other shoes with rubber soles	8,2	10,2	0,7	0,8	24,6
64039991	Shoes	10,7	10,0	1,0	0,8	-6,6
61102000	Sweaters, jerseys and pullovers	7,5	9,2	0,7	0,7	22,7
85252030	Cellular phones	6,4	9,2	0,6	0,7	42,7
61103090	Other sweaters and pullovers	8,6	9,1	0,8	0,7	6,5
85273130	Other radio receivers	8,3	9,1	0,8	0,7	8,9
64029991	Other shoes	6,7	8,9	0,6	0,7	31,6
62053011	Polyester fiber shirts	8,0	8,9	0,7	0,7	10,1
	<b>Subtotal</b>	<b>210,3</b>	<b>233,8</b>	<b>19,1</b>	<b>18,1</b>	<b>11,2</b>
	Others	892,1	1.056,3	80,9	81,9	18,4
	<b>Total Imports</b>	<b>1.102,4</b>	<b>1.290,2</b>	<b>100,0</b>	<b>100,0</b>	<b>17,0</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Banco Central de Chile.

## II.2. Bilateral Trade in Services

Unfortunately, in this area of the bilateral relation there is no reliable data accounting the bilateral flow of services between the Peoples Republic of China and Chile. Even though there is no record of Chinese trade in services to Chile, we have detected some minor activity of Chilean services in China. In terms of specific services sectors, these are focused in trade such as maritime transport services, insurance and banking, always related to some type of investment.

## II.3. Bilateral Investments

### II.3.A. Chilean Investment in China

Although there are no official statistics on Chilean investment in China, given that there is not yet any official methodology for accounting for this type of investment, some investments by Chilean companies can be identified, mainly concentrated in the service sector, specifically related to maritime transport, trading and insurance.

### II.3.B. Chinese Investment in Chile

Economic relations between Chile and China have traditionally been marked by high levels of transactions in goods, basically products although some services can be detected, while, in comparison, direct investment levels have not been significant. As an example, we may indicate that the aggregate Chinese investment for the period 1974-2003 accounted for only 85 million dollars, less than a month's imports from China, and only represented 0.2% of all foreign direct investment received by Chile in the same time period.

**TABLE II.11**  
**FOREIGN DIRECT INVESTMENT**  
**FROM CHINA, 1974 -2003**  
(millions of dollars)

	1974 - 1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	1974-2003
<b>I. China</b>	41,2	6,5	25,8	1,2	5,7	1,8	1,8	-	-	-	-	<b>84,0</b>
<b>II. World</b>	10.142,5	2.525,0	3.037,7	4.836,2	5.217,8	6.034,4	9.198,4	3.022,5	4.781,8	3.376,5	1.276,4	<b>53.449,0</b>
<b>I. Over II.</b>	<b>0,4</b>	<b>0,3</b>	<b>0,8</b>	<b>0,0</b>	<b>0,1</b>	<b>0,0</b>	<b>0,0</b>	-	-	-	-	<b>0,2</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Foreign Investment Comity

This performance pattern reflects, however, the general pattern of Asian investment both worldwide and in Latin American and the Caribbean, characterized by a strong asymmetry between Asian presence in international trade, on the one hand, and the low profile of direct foreign investment, on the other.

Asian investors in South America have traditionally developed projects aimed at ensuring the quality, continuity and stability of raw material prices. In the case of Chinese investments these clearly depart from this pattern, given that the most important sectors targeted for investment are construction and forestry, concentrating 98% of total investment.

**TABLE II.12**  
**FOREIGN DIRECT INVESTMENT FROM CHINA BY SECTOR, 1974 - 2003**  
*(millions of dollars and %)*

	1974-1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	1974-2003	Structure (%)
Agriculture	0,5	0,0	-	0,0	-	-	-	-	-	-	-	0,6	0,7
Construction	-	-	-	-	-	-	-	-	-	-	-	-	-
Electricity, Gas and Water	-	-	-	-	-	-	-	-	-	-	-	-	-
Industry	-	-	0,4	-	-	-	-	-	-	-	-	0,4	0,4
Mining	-	-	-	-	-	-	-	-	-	-	-	-	-
Fishing	0,3	-	-	-	-	-	-	-	-	-	-	0,3	0,4
Services	25,2	-	19,2	-	0,0	-	-	-	-	-	-	44,4	52,8
Forestry	15,1	6,5	6,2	1,2	5,7	1,8	1,8	-	-	-	-	38,4	45,7
Transport and Telecom	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total</b>	<b>41,2</b>	<b>6,5</b>	<b>25,8</b>	<b>1,2</b>	<b>5,7</b>	<b>1,8</b>	<b>1,8</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>84,0</b>	<b>100,0</b>

Source: Dirección de Estudios, DIRECON (May 2004), based on data from Foreign Investment Comity

### **III TRADE AND INVESTMENT POLICIES AND SYSTEMS**

#### **III.1 Introduction.**

The basic features of the trade policy of Chile and its institutions were presented in preceding chapter, a detailed presentation of its policies and instruments will be further developed in this chapters and its sections.

#### **III. 2. Measures affecting Trade in Goods**

##### **III.2.A. Tariffs**

###### **a. General Tariffs**

As a result of the Uruguay Round, Chile lowered its tariffs from 35 to 25 percent, save for those applicable to dairy products, wheat, wheat flour, sugar and vegetable oils, which were reduced to 31.5 percent. Today, tariffs in Chile stand at 6 percent (as from 1 January 2003), according to a five-year reduction schedule, under Law No. 19,589 of 14 November 1998. Chile has a flat MFN custom tariff of 6% for most products, which represents more than 98% of tariff lines. However, there are some exceptions for sugar, wheat and wheat flour, which are subject to the *price band system* (thus to a specific duty), plus some measures for poultry (from heading 0207), which has a tariff of 25%. On the other hand, there are some products that are duty free, including fire fighting vehicles, helicopters, aircraft, cargo and fishing vessels, books and computers and some of their components.

Chile has lowered its effective tariff rate to 2.9 as of December 2003 through the implementation of recent FTAs and other former trade agreements. In accordance with Chile's approach, in every FTA most of the products have been included in immediate or short run lists. The products subject to special treatment (included in long term lists or not subject to tariff elimination) are in general the same in attention to the sensitiveness of these sectors in Chile. However, there are also products protected just in some or one agreement in attention to the specific sensitiveness with respect productive characteristics of the counterpart. Products that have gotten special treatment in all agreements are sugar, wheat and wheat flour and to a lesser extent dairy products, rice and others.

Imported second-hand goods are subject to the tariffs applicable to new goods, with a 50 percent surcharge, except for some goods such as capital goods and goods subject to the exemptions established in section 0 of the Chilean Customs Tariffs (diplomats, armed forces, charities, and others).

A 10 percent tariff on added value applies to repairs or work done to domestic products abroad.

Chile applies the MFN tariff treatment to WTO member States and also to non-WTO countries subject to such treatment under bilateral agreements, i.e. Russia, Vietnam, Saudi Arabia, Lebanon, etc. The preferential treatment is only accorded to countries with which Chile has trade agreements. The purpose of such bilateral trade agreements is to reduce tariffs to 0 percent.

Chile applies special tariff treatments to goods imported under Section 0 of the Chilean Customs Tariffs (diplomats, armed forces, gifts to aid organizations, and others), consisting in total or partial tariff exemptions. Most goods included in this Section are duty-free, but others are subject to ad valorem duties of 1, 5, 6, and 8 percent, which in turn apply only when they are less than the duties established in customs tariffs for the same goods. In addition, these duty-free goods are not subject to import prohibitions and other import restrictions.

Chile does not apply tariff quotas, save in cases of reciprocity (Article 88 of the Central Bank Law).

b. Specific Tariffs

Chile imposes specific duties as a result of the application of price bands, which are mechanisms established for purposes of stabilizing domestic prices. Such specific duties apply to cooking oils, sugar, wheat, and, as from 1993, to wheat flour. The price stabilization mechanism works as a variable tax, since the duty levied on these products varies according to their import price. Thus, if the price of the imported product is less than the reference price, a specific duty expressed in US dollars is added to the ad valorem duty in order to put the import price at the same level as the reference price (up to the level of the maximum tariff, set at 31.5 percent). On the other hand, if the import price exceeds the reference price, the effective tariff is reduced.

III.2.B. Non-Tariff Measures

a. Taxes and Duties

Most imports are subject to the 18 percent Value-Added Tax (VAT), which is also applicable to domestic products. VAT is calculated on CIF value plus import duty. Capital goods imported for investment purposes may be VAT exempt when imported under the Chilean Foreign Investment Law (Decree Law No. 600 of 1974), or when the imported goods are not locally manufactured or when such manufacturing is insufficient<sup>39</sup>.

Several products, including different luxury items, alcoholic beverages, gasoline and vehicles are subject to other local taxes.

An airport tax (pursuant to Article 62 of Executive Order No. 172 of the Under-ministry of Aviation, published in the Official Gazette on 10 April 1974) equivalent to 2 percent of the

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<sup>39</sup> Lists of such goods are prepared by the Department of Foreign Trade of the Ministry of Economy.

effective duty applies to all air-freighted imported goods, except to Canadian goods, which are exempt from this tax, and Mexican products, pursuant to Articles 3-10 of the relevant Free-Trade Agreement.

A customs clearance tax equivalent to 2 percent of CIF value applies when the goods concerned are duty-free pursuant to Article 190 of Law No. 16,464. This tax does not apply to products originating in countries with which Chile has trade agreements. At present, a bill to repeal this tax (Article 21) has been passed in the first stage of parliamentary approval procedure and should complete such procedure before the year-end.

b. Prohibited Imports

The Central Bank Law provides for the free importation of goods. Nonetheless, there still are some import prohibitions. For example, importation of second-hand vehicles is prohibited on sanitary and environmental grounds, i.e. pursuant to measures established by the authorities to combat air pollution in the main cities. However, such prohibition does not apply to second-hand vehicles imported under section 0 of the Customs Tariffs nor to those who may be imported under total or partial duty exemptions.

Import prohibitions also apply to goods that may offend public morals or affect sanitary and phytosanitary safety. For instance, the importation of fruit infected with fruit fly is prohibited.

Pursuant to the Convention on International Trade in Endangered Species, ratified by Chile, the importation of endangered plants and animals is prohibited. However, these species may be imported with a special permit issued by the National Commission for Scientific and Technological Research.

Chile applies a duty free quota of 60,000 tons. for sugar within the framework of WTO, as a result of the renegotiation of its bound rate of tariff. On the other hand, preferential duty free quotas to several products are being applied within the framework of the FTAs.

c. Others

i. *Price Band System*

This system was modified in 2003, in conformance with the recommendations of the WTO. A new legislative piece introduced reforms for a more predictable, transparent and non discretionary system. Moreover, the new law eliminate edible oils from its application, establishes a new upper and lower borders of the band, and the way these borders are decreasing until 2014.

In relation to the elimination of the price band scheme, the law does not establish a deadline, rather, it establishes that in 2014 the President has to asses the modalities and conditions of application of the system, which could result in its elimination or in its modification.

III.2.C. Import and Customs Procedures

Generally, the Central Bank should approve an import report prior to the shipment of and payment for goods, but the import authorization may also be obtained from and processed through commercial banks. The import report is mandatory for all imports, save for those whose value is less than US\$3,000 FOB, regarding which the importer is responsible for the payment. Although it is possible to import goods for a value of less than US\$100,000 without the prior import report approval by the Central Bank, such report should be approved *ex post*.

Imports received via inland freight require the International Waybill/Customs Transit Declaration, which allows goods to be cleared at border customs houses. Otherwise, goods should be transferred to regional customs houses.

Goods imported on a temporary basis are subject to a *bona fide* self-valuation and some customs administrative functions have been transferred to customs agents.

For imports and exports originating in Free Zones there is a "remote clearance" system. Customs procedures are completed electronically through the Information Technology Center, where all information is recorded either directly from the free zone or from a special transmission center. The information required is basically the same as for other types of imports.

#### III.2.D. Measures Affecting Exports

##### a. Export Subsidies

Chile has notified the WTO of three mechanisms containing export subsidy components: i) the simplified system of customs duty refund; ii) the deferred payment system for customs duties, fiscal credits and other tax-related benefits; and iii) the automobile law. National authorities are committed to eliminating or bringing such mechanism in line with the Agreement on Subsidies and Countervailing Measures.<sup>40</sup> Thus, the customs duty refund system is gradually being adjusted to eliminate the subsidy component by the end of 2002. In the second case, the subsidy component was eliminated in late 1998. Finally, regarding the third case, the immediate repeal of its only subsidy component still in effect is established in the above referred to bill<sup>41</sup>.

##### i. *Simplified System of Customs Duty Refund*

Establish under Law No. 18,480 of 1985, this system benefits exporters of minor non-traditional export products. Minor non-traditional export products are those whose FOB value was less than or equal to US\$2,5 million in the biannual period 1983-1984, or US\$5 million in 1990. Products that are inconsistent with the definition of minor non-traditional exports are included in a list comprised of some 200 items, among which are copper, cellulose, fishmeal and fruit, all of which account for nearly 90 percent of Chilean exports.

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<sup>40</sup> WTO documents G/SCM/N/2/CHL y G/SCM/N/2/CHL/Suppl.1, dated 2 May 1995 and 16 October 1995, respectively.

<sup>41</sup> See latest notice given by Chile to the WTO: G/SCM/N/60/CHL, dated 4 July 2000.

At 1 January 1999, two different refund systems were in place. The first, currently in effect, allows exporters to get a refund amounting to 8, 5 or 3 percent of the FOB value of exported goods, relative to their full value. The second system, repealed on 1 January 1999, set forth the same refund rates for national or nationalized supplies intended for the manufacturing, elaboration or production of export goods.

Refunds granted under the simplified system are not equivalent to the duties paid on imported supplies; in practice, their amount may be more or less, thus the alleged subsidy component that has been notified to the WTO.

Law No. 19,589 (Official Gazette of 14 November 1998) established the gradual adjustment of this instrument to the WTO Agreement on Subsidies and Countervailing Duties. The subsidy component therein will be fully eliminated by the end of 2002.

In fact, Law No. 19,589 progressively reduces the refund rate, from the original 10, 5 and 3 percent to a flat 3 percent (current rates are 8, 5 and 3 percent). In addition, as from 1 January 2003, the 3 percent simplified refund will be granted solely to exports incorporating at least 50 percent of imported supplies. Therefore, the refund will reflect the tariff paid on imported components (as the flat 3 percent refund rate will be less than or equal to the 6 percent tariff paid for the 50 percent or more of imported supplies).

ii. *Deferred Payment of Customs Duties, Fiscal Credits and Other Tax-Related Benefits*

These benefits were established by Law No. 18,634 of 1987, and are intended for importers of capital goods and first buyers of capital goods manufactured in Chile. Among capital goods that may claim these benefits are machinery, vehicles, equipment and tools directly or indirectly used to produce goods or services or in their marketing, with a minimum useful life of three years. The value of such goods may not be less than US\$3,602.33 or, in the case of vehicles, US\$4,563.33.<sup>42</sup> This value is updated on an annual basis.

Prior to November 1998, exporters of goods and services using capital goods purchased under the deferred payment or fiscal credit system could write off refunds and even get a debt remission. Write-offs were fixed in terms of the exports results exhibited by the concerned company, calculated according to the total exports - total sales ratio of the two-year period preceding the debt due date.<sup>43</sup>

It should be noted that deferred payment of tariffs and fiscal credits does not constitute a subsidy in itself. A subsidy did arise when the purchaser of capital goods had its fiscal debt

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<sup>42</sup> Vehicles used for the sole purpose of inland transport may claim these benefits, provided they have a load capacity in excess of 2,000 kg or are fitted with at least 15 seats (including the driver's seat).

<sup>43</sup> Law No. 18,634, Official Gazette of 5 August 1987.

partially or totally remitted according to its export results. However, Law No. 19,589 provided for the elimination of this subsidy, as from its effective date (14 November 1998).

iii. *Automobile Law*

Law No. 18,483 of 1985 allows the national automobile industry to claim a partial or total reduction of import duties on fully disassembled parts (CKDs) or partially disassembled parts (SKDs). When said manufacturing companies export national parts, according to a program approved by the Automobile Commission, imports of CKDs and SKDs are fully or partially exempt of the ad valorem duties, which correspond to the general customs duties to be paid for foreign goods.<sup>44</sup> This benefit applies to imports up to a value equivalent to that of nationally manufactured parts exported within a 12-month period. In total, this benefit is limited to 35 percent of the customs valuation of the finished vehicle.

It should be noted that the automobile law included benefits other than duty exemptions, by means of fiscal credits for national incorporation and for export incentives. However, both benefits expired on 31 December 1998.

As regards the customs duty exemption, its immediate repeal is included in a bill presently being discussed by Congress, which brings several aspects of the Chilean legislation in line with undertakings arising from the WTO agreement.

iv. *Customs and Fiscal Allowances*

Chilean exporters may get a rebate for the Value Added Tax applicable to all purchases of national and imported goods and services used in productive processes.

Law No. 18,708 provides for a duty refund system that benefits all exporters who have used imported supplies. Exporter are refunded import duties paid on all supplies incorporated in or used during the productive process. This system does not allow the refund of surcharges or countervailing duties. This mechanism does not either involve a subsidy component, unlike the simplified duty refund system mentioned above under "Export Subsidies".

v. *Support to Exports*

Export activities have no access to prime rates. However, the Production Development Corporation (CORFO), through Chilean and foreign commercial banks, provides interest rate support to importers of non-traditional Chilean exports (all exports, except for copper, iron, cellulose, fishmeal and fruit). CORFO provides the necessary funds for those credit lines through private financial institutions and does not compete against the private sector in connection with fund provisions.

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<sup>44</sup> This is set at 9 percent for the year 2000, and will be reduced in 1 percent annually until the year 2003, when it will remain at 6 percent. This ad valorem duty was set at 11 percent until the end of 1998 (equivalent to the customs tariff), and was later amended together with the scheduled tariff reduction set forth in Law No. 19,589, Official Gazette of 14 November 1998.

There are no preferential insurance mechanisms for exports.

The Guarantee Fund for Non-Traditional Exporters, established in 1987, secures up to 50 percent of loans, both public and private.

### III.2.E. Technical Barriers to Trade

#### a. Basic Principles

Consistent with Chile's international trade policy, the elaboration, adoption and application of standards, technical regulations and conformity assessment procedures is based on non-interference with the free operation of markets, non discriminatory treatment between domestic and foreign products and the use of international standards as a basis for standards and technical regulations.

#### b. Standards

The Chilean institution in charge of the development of standards is the National Standardization Institute (Instituto Nacional de Normalización, INN). The INN is a Private Right Foundation and affiliate of "Production Promotion Corporation" (Corporación de Fomento de la Producción, CORFO).

In September of 1995, the INN accepted the Code of Good Practice for the Preparation, Adoption and Application of Standards of the Agreement on Technical Barriers to Trade of the World Trade Organization (WTO). The Chilean Standard base (NCh1) establishes that in all the cases that is possible, the standards must be based in the international standard and keep them as similar as possible (ISO, IEC, Codex Alimentarius, etc.), and if this is not possible, in a regional standard (COPANT, CEN, etc.) trying that the modifications are minimal.

Chile is member of the International Standardization Organization (ISO) through the INN. Also, INN is member of The Interamerican Metrology System (SIM), International Organization of Legal Metrology (OIML), the Inter-American Accreditation Cooperation (IAAC), the Pan-American Standards Commission (COPANT), and International Accreditation Forum (IAF). Moreover, Chile participates in the CODEX Alimentarius Commission. In 1997, the National Committee of the Codex Alimentarius was institutionalized, with the participation of the Ministries of Health, Agriculture, Economy and Foreign Affairs, as well as representatives of the food industry, academic sector and consumers. Chile is also technically represented by the INN in the General Conference of Weights and Measures, International Committee of Weights and Measures, and the International Bureau of Weights and Measures, where the official representing is the RREE Ministry.

Standards are adopted through a process of consensus-building among the interested parties from both the public and private sectors. The public consultation process is announced on a

nationwide newspaper, and the text of draft standards is available to anyone requesting them. Once a standard has been approved by the INN Council, it is given official status by the relevant Ministry, yet they keep being voluntary standards.

It Exists a Documentation Center that depends of the Information and Diffusion Division from INN. This Center keeps all Chilean standards (both officials and yet in study) and is available to the public trough two media: Documentation Center Library; and the web page [www.inn.cl](http://www.inn.cl) (the information published on the internet includes the standard code, title, value, scope and application field).

Currently, there are about 2.600 which compliance is not mandatory. The process of study of such standards is conducted according to widely accepted international criteria. An important number of the standards developed in recent years, are equivalent to international standards or present minor deviations from international standards in aspects that do not affect the technical content. However, in some cases the international standards have not been taken into account for the development of national standards, because they have been considered as inadequate for national application. Such is the case of seismic designs and structures because of local seismic conditions.

The “stock” of national standards is subject to alignment with international standards whenever standards go through a revision process or when an obstacle to trade has been detected.

Accordingly, Chile is making important efforts in order to meet its commitments on the APEC’s Voluntary Action Plan, through the alignment of national standards with international standards in those products identified as "priority" by the APEC’s Sub-Committee on Standards and Conformance. This program began in 1996 and it will continue as long as new priority areas are defined.

*i. Technical Regulations*

Technical regulations are those which compliance is mandatory. They are developed by the Ministries, and other governmental Agencies with competence in the specific area to be regulated. Each Ministry develops its own regulations –most of them refer to international standards-which are approved by either a decree or a resolution. They are published on the “Diario Oficial de la República de Chile” (Official Gazette).

Among the main institutions with competence to adopt technical regulations, is worth to mention: The Ministries of Economy, Agriculture, Health, Transportation and Telecommunications.

Chile notifies to the WTO the technical regulations, pursuant to the obligations established in the Agreement on Technical Barriers to Trade. This information is public and available on the Ministry of Economy web page ([www.economia.cl](http://www.economia.cl))

*ii. Conformity Assessment*

In Chile, the conformity assessment process is conformed in one hand by mandatory mechanisms under the supervision of the Ministries with competence in health, hygiene, and safety matters, and in the other hand by non-mandatory mechanisms such as the one administrated by the INN.

*iii. Voluntary*

The conformity assessment with voluntary standards, is administrated by the INN. For this purpose, the Institute has developed a National Accreditation System that includes the accreditation of: Products and Quality System Certification Bodies; Auditors of Quality Systems; Quality System Certification Bodies; Inspection Bodies and Calibration and Testing Laboratories.

This system operates under international criteria (ISO/IEC guides). The accreditation is given for a certain period of time, during which there is a continuing evaluation of the competence of the conformity assessment bodies.

Both domestic and foreign conformity assessment bodies participate in the process. They include: Universities and private institutions as well as transnational subsidiaries (*Bureau Veritas, Societé General de Surveillance, Lloyd Register, etc.*).

Finally, consistently with the Chilean foreign trade policy, the INN is seeking to increase its international credibility through the international recognition of its accreditation system. The aim behind this policy, is to achieve the recognition of the Chilean conformity assessment results by those markets to which Chile exports its products. For this objective, INN intends to present the application to be part of the plurilateral recognition agreements IAAC, ILAC and IAF.

*iv. Mandatory*

In this case, the conformity assessment process is under governmental control. The assessment of conformity in some cases is carried out directly by the competent Agency through its own infrastructure, and in other cases the process is carried out by conformity assessment bodies which are authorized by the Agency for that purpose.

As a way to facilitate the mutual recognition of the conformity assessment results, the authorities are working on the standardization of the criteria to approve conformity assessment bodies, as well as on the criteria for certification in specific regulated areas. To facilitate this process, INN has developed arrangements with some Agencies in order that its accreditation of those conformity assessment bodies be accepted by the Agencies. This has happened in the areas of liquid combustible products, fishing products and extinguishers. Other products, such as sanitary and medical devices are in a advanced stage of study.

Chile is committed to facilitate the international trade through the participation in several recognition arrangements, both in the APEC context and with a group of economies that

includes APEC economies, all those arrangements are for a particular area. The priority areas are Electricity, Food and Toys.

Chile participates in the Part I of the APEC EEMRA (Mutual Recognition Arrangement on Conformity assessment of Electrical & Electronic Equipment).

Chile subscribed the APEC Arrangement for Exchange of Information in Toys Safety.

The Superintendence of Electricity and Fuels (SEC) recognizes test results and certification from a specific list of organizations from the United States, Germany, France, Italy, the Netherlands, Austria, Switzerland, England, Canada, Japan, Denmark, Sweden, Norway and Belgium. The organizations interested in having this recognition may request to SEC to be included in that list after compliance with some requirements.

v. *Metrology*

Between the years 1995 through 1997, Chile started the development of a National Metrology System which was implemented through a National Metrology Network coordinated by INN. The Network operates as a central laboratory, using the preexistent capabilities in the country, endowing them with the necessary technological support to achieve their international technical recognition. In order to divulge the information from the network, a web page is under construction and would be administered by the same servers as the network. The National Metrology Network has signed several agreements (5 MOU, 2 MRA, 4 Adhesion Acts and 2 Contracts/Other; 4 of them aren't binding and 9 are binding, as for example the Convention du Metre).

The system's main characteristic is that, the metrological execution is performed by the most recognized laboratories coming from Universities, private and public sectors. This situation substantially defers from what happens in other countries, in which the entire operation is centralized in a single National Control Center.

Currently, this process is under execution, and the authorities are designating the "custody laboratories" for the magnitude of Mass, Temperature, Force, Length, Pressure, and Electrical Magnitudes. These "custody laboratories" are already providing services. The process is expected to expand and include as many magnitudes as possible, in order to reach a certain degree of coherency among them, so they can have a real economic impact.

c. Main Features of Standards and Technical Regulations

i. *Objectives*

The authority has basic legitimate objectives to accomplish on issues related to the protection of human health or safety, animal or plant life or health, or the environment. Then the official policy is that what does not fall under a legitimate objective has to be left to the market to decide on what standards a product must comply with, if any, and they are

of a voluntary nature. This is the reason why, the number of technical regulations is fairly limited.

Chilean technical regulations do not constitute a barrier to trade. The reduced number of complaints made by our commercial partners, either during bilateral meetings or through international publications, confirm the situation.

Indeed, the findings on technical barriers to trade made by the United States (*National Trade Estimate*), and the European Union (*Market Access Database*) do not show an important number of claims regarding the Chilean standards and regulations. In fact, they only make reference to the strictness of some sanitary and fitosanitary measures, or to the differences between the international standards and the Chilean regulations in the building sector. However, this situation has been explained before in the present work.

ii. *Alignment with International Standards*

A great number of national standards and technical regulations are aligned with international standards.

Given that a substantial portion of the domestic technical regulations are based on domestic technical standards, most recent technical regulations are already aligned with international standards. However, this does not necessarily occur with old technical regulations, since there is no official updating procedure.

Chile, as a small and export-oriented economy, has not supported the idea of developing neither a national or regional standards (there are justified exceptions). Chile's official policy is to focus on international standards. This policy is consistent with Chile's open, multi-targeted, and export oriented economy.

iii. *Market Surveillance*

Another characteristic of the Chilean system is that, as a general rule (excepting food, drugs and a few others), the verification of compliance with mandatory requirements for products (national or imported) is made effective once products have entered the market. This policy was adopted a long time ago and seeks to facilitate the flow of trade.

iv. *Fulfilling the Obligations under Agreement on Technical Barriers to Trade*

The responsibility for implementing and administering the Agreement on Technical Barriers to Trade lies on the Ministry of Economy through its Foreign Trade Department. Through document G/TBT/2/Add.16/Suppl.1, Chile updated its notification to the WTO on implementation and administration of the Agreement on Technical Barriers to Trade, according to article 15.2 of the TBT Agreement.

c. *Bilateral and Multilateral Agreements*

Chile signed the Agreement on Technical Barriers to Trade of the Tokyo Round in 1980. The Agreement on Technical Barriers to Trade of the Uruguay Round came into force as a Law in Chile on May 1995.

Most of Chile's bilateral agreements include a chapter on technical barriers to trade. This fact, together with the commitments assumed before the WTO, have generated a need for "interdisciplinary team-work" between the Parties involved in the area of technical barriers to trade. The agreements make reference to the creation of "Commissions" which develop working programs and constitute an instance to solve problems concerning the impact of a specific measure on the trade relations between the Parties. In all of these cases, the compromises include disciplines that extend beyond the TBT Agreement provisions in areas such as transparency, equivalence, mutual recognition, and risk assessment. In addition, the Canada-Chile FTA and the Mexico-Chile FTA include provisions on this area in the telecommunication sector.

#### d. Legal Framework

Chile does not have a unified legal framework for the development of technical regulations and conformity assessment procedures. Therefore, the process of elaborating such regulations is not homogeneous and generates sometimes coordination difficulties on the notification process to the WTO.

In order to approach this issue, in 1997 was created the National Commission on Technical Barriers to Trade. The Commission is headed by the Ministry of Economy, and has played a fundamental role on dealing with this issue. By centralizing the process, and dealing with all the agents involved in the development of technical regulations, the Commission provides all the parties involved, with a common forum to express their concerns and expectations related to the nation's standardization agenda.

Another measure oriented to improve the implementation of the Agreement on Technical Barriers to Trade is law 19.912, published in November 2003. Among other provisions, it ratifies the Ministry of Economy as the responsible authority for the notification process under WTO obligations, and also defines the nature of the process itself

To implement the law above mentioned, a draft regulation has been developed, , together with the different Government Agencies, which establishes basic criteria for the development, adoption and application of technical regulations and conformity assessment procedures, including the notification process. By May 2004, the draft regulation was finalizing its proceeding.

All things combined, will improve Chile's capacity to meet its current international commitments, including those assumed under the WTO, and other international organizations, as well as the specific compromises arising from the negotiation of commercial agreements.

### III.2.F. Sanitary and Phytosanitary

#### a. Local Competent Authorities

In their respective fields of competence, the Ministries of Agriculture, Health and Economy are responsible for complying with the obligations assumed by Chile under the WTO Agreement on Application of Sanitary and Phytosanitary Measures, and for exercising its rights thereunder.

The Ministry of Agriculture is the competent authority responsible for managing — through the Agriculture and Livestock Agency (SAG), all requirements involving sanitary (animal health) and phytosanitary (plant health) matters that apply to the import and export of animals, plants and by-products thereof; the sanitary and phytosanitary measures applied to reduce the risk of introducing animal-borne diseases and plant pests, and for controlling the eradication or the spreading thereof; and also for issuing the sanitary and phytosanitary export certificates for animal and plant products, including the certification of fitness for human consumption for primary products.

The Ministry of Health is the local sanitary authority vested with the necessary legal powers for approving and controlling the installation and operation of establishments dedicated to the production, processing, packaging, storage, distribution and sale of food, as well as slaughterhouses for poultry and cattle, and public and private cold storage facilities. At the slaughterhouse plants, the Ministry of Health is entitled to conduct, either directly or through other appropriate public entities, a medical veterinary inspection of the animals slaughtered there, and the resulting meat products. In addition, the Ministry of Health is vested with the authority to authorize or reject the import and marketing of all imported food intended for human consumption.

To ensure compliance with the laws and regulations governing food safety, the Ministry of Health inspects facilities and monitors the sanitary quality of the products. These inspection and monitoring activities are performed throughout the country on an ongoing basis, and they are based on specific surveillance programs.

The legal powers of the Ministry of Health are established in the Sanitary Code, which is the main statute governing all matters related to the promotion, protection and recovery of the health of the Chilean population, with the exception of matters governed by other laws. On the other hand, the Sanitary Code establishes supplementary regulations applicable to specific matters. With regard to food safety, the Food Sanitary Statute is the standard that establishes the sanitary conditions applicable to the production, importation, processing, packaging, storage and sale of food for human consumption, in order to protect the health and nutrition of the population, and guarantee that the products supplied are healthy and safe. This statute also applies to all natural or artificial persons that intervene or participate in the aforementioned processes, and to all facilities, modes of transportation and distribution channels involved.

In order to comply with its legal obligations, the Ministry of Health has a network consisting of 29 Regional Health Offices, which act as the sanitary authority in the jurisdiction where each of them must manage and implement the food safety programs.

The Ministry of Economy participates in the food industry through its regulatory powers with regard to fisheries and the proper operation of the markets, consumer protection; surveillance and resolution is carried out by agencies attached to the Ministry. The agency in charge of fisheries is the Office of the Under-Secretary for Fisheries (SUBPESCA) and the National Fisheries Bureau (SERNAPESCA). SUBPESCA holds the appropriate authority to manage all fisheries and marine related activities together with being entitled to propose initiatives for its development by defining, following-up and disseminating national fishing and aquaculture policies and establishing regulations for its implementation, with the purpose of achieving sustainability in the use of the hydrobiological and environmental resources for the benefit of the entire Chilean population. On the other hand, SERNAPESCA is the agency responsible for implementing national fishery policies, by regulating the exploitation of fisheries resources. At the same time, it is the agency responsible for the sanitary control and certification of the hydrobiological products for export, and for establishing epidemiological surveillance systems aimed at preventing, controlling and eradicating disease among aquatic animals.

The Ministry of Foreign Affairs, through its General Directorate for International Economic Affairs (DIRECON), is the agency in charge of coordinating the different regulatory agencies responsible for supervising compliance with SPS measures. It determines national positions regarding these matters in the WTO Sanitary and Phytosanitary Committee. In addition, it supervises compliance with the commitments assumed under the Agreement on the Application of Sanitary and Phytosanitary Measures, and other trade agreements.

A Inter-Ministerial National Commission on Sanitary and Phytosanitary Matters was established in March 2001, headed by DIRECON. Its objectives are: to assess the SPS chapters of the different trade agreements; analyze trade concerns, follow - up Action Plans derived from the SPS Committees of the FTAs and other agreements; discuss national positions with regard to the Codex Alimentarius, International Plant Protection Convention (IPPC) and the International Office of Epizootics (IOE).

The regulatory framework, drafting procedures, and adoption of the Sanitary and Phytosanitary Measures by Chile were reported to the Secretariat of the SPS Agreement in December 1995<sup>45</sup>.

#### b. SPS Policies

Closely coinciding with the provisions established in the SPS Agreement of the WTO, drafting of new standards in Chile is based on scientific grounds, following the principles established in the WTO Agreement, avoiding measures that may pose hidden barriers to

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<sup>45</sup> Distributed as document G/SPS/W/39.

trade, and promoting a balance between sanitary and phytosanitary protection and a necessary smooth flow of trade.

To apply this policy, Chile has an active participation at the multilateral level for guidelines (WTO) and the regulations or standards (OIE, IPPC, CAC). At bilateral sphere, Chile look for achieving a better and clearer implementation of the SPS Agreement.

- **Imports Policies**

All animal imports and products thereof, must be accompanied by a sanitary certificate issued by a competent authority from the country of origin. The certificate confirms compliance with the zoosanitary requirements that are mandatory in Chile, which are based on the Zoosanitary Code of the OIE (International Office of Epizootics). A phytosanitary certificate issued by the competent authorities of the exporting country is required for plants or parts thereof, whether processed or in their natural state, that may constitute or transmit pests, and for articles that may represent a hazard to plants (including plant by-products, living organisms, containers, agricultural materials and soils).

Irrespective of their country of origin, animals are placed in quarantine. Plants and seeds are placed in quarantine based on the phytosanitary conditions of their country of origin. The decision is based on a risk analysis, which is performed in accordance with the procedures established in the International Plant Protection Convention.

With regard to food imports, the Regional Health Offices of the Ministry of Health authorize food imports for human consumption based on the regulations in force. The import process contemplates sanitary controls including laboratory analyses. Risk criteria and historical data on food safety are applied in the analyses, in order to define the recurrence and impact thereof.

The Ministries of Agriculture and Health accept certificates issued by the official sanitary agency of countries that comply with the guidelines established by international scientific organizations, such as FAO, Codex Alimentarius, International Plant Protection Convention (IPPC) and the International Office of Epizootics (IOE).

A sanitary certificate indicating strict compliance with the requirements established must accompany imports of live aquatic resources. Sanitary regulations are in agreement with the Aquatic Animals Health Code of the IOE.

From July 1997 to May 2004, Chile has submitted 168 notifications on sanitary and phytosanitary regulations and emergency measures to the Sanitary and Phytosanitary Committee (SPS Committee) of the WTO<sup>46</sup>.

A chapter on SPS measures has been included in the preferential trade agreements subscribed by Chile, in the FTA signed with Mexico, Central America, the United States of

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<sup>46</sup> WTO Documents series G/SPS/N/CHL/.

America, EFTA and South Korea, and an specific Annex as an integral part of the Association Agreement between Chile and the European Union. On the other hand, the agreement signed with MERCOSUR confirms the rights and obligations of the parties under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

- **Export Policies**

With regard to exports, guaranteeing the health of the products and complying with all the sanitary regulations, it is essential to gain the confidence of the destination markets.

The Regional Health Agencies of Chile, are responsible for certifying the origin of the products and their compliance with the local sanitary regulations since they are the agencies authorized to approve and control the installation and operation of the pertinent establishments and the processes involved in the food production chain and the food safety control programs.

The inspection and certification of the sanitary and phytosanitary condition of all animal and plant products and by-products for export, and the verification of compliance with the sanitary and phytosanitary requirements of the destination country is a responsibility shared by the Agriculture and Livestock Agency (animal and plant products) and the National Fisheries Bureau (hydrobiological products).

With the purpose of adequately implementing the WTO SPS Agreement, efficiently solving trade problems and facilitating trade activities, SPS Committees have been established in the agreements with Mexico, United States of America, Canadá, Korea and European Union.

d. Compliance with the Principles Established in the SPS Agreement

Chile works and participate in all of the principles established in the SPS Agreement, but today is supporting the discussion in the WTO SPS Committee in Regionalization.

- **Regionalization**

Regarding trade, Chile acknowledges the regional conditions of animal and plant health, the special status of animal disease (including zoonosis) and pests affecting a territory or region, and the concept of regionalization for trade.

### Multilateral Scope

At the level of the WTO SPS Agreement, Chile has favored establishing guidelines to better implement the principle<sup>47</sup>, particularly with regard to acknowledging phyto- and zoosanitary conditions because, even though there are standards that have been approved by the corresponding international organizations, their use is very limited, mainly due to

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<sup>47</sup> Chile has presented documents G/SPS/W/139 – G/SPS/GEN/381 – G/SPS/W/140 – G/SPS/W/140/Rev.1. - G/SPS/W/140/Rev.2.

administrative problems, and sometimes they require more than simply verifying the scientific basis.

### Bilateral Scope

Chile also applies the principle of regionalization in its bilateral relationships, granting sanitary recognition to different parties.

At the same time, Chile is recognized as a country free from the main diseases classified under List A of the IOE, and from the most important quarantine pests in terms of plant health.

### III.2.G. Rules of Origin

Rules of origin regulations do not apply to imports made under the MFN treatment. In Chile, a certificate of origin is only required when goods are imported under preferential systems. Origin is also recorded on commercial certificates

## **III.3. Services**

### III.3.A. Measures Affecting Trade in Services

There are a few measures that discriminate between national and foreign service providers, which affect the principle of national treatment, and a few minor exceptions to the MFN. Chile has some quantitative non-discriminatory restriction, mainly related to technical considerations, while in certain sectors local presence is required to better protect consumer interests or domestic market stability.

#### a. Telecommunications

The Chilean telecommunications industry has expanded rapidly in recent years. The contribution of the communications subsector to Chile's GDP increased from 1.9% in 1996 to 3.1% in 2002.

There are 14 fixed-net service providers, five providers of mobile services, and 20 companies providing international telecommunications services. Telefónica CTC has a dominant market position as a fixed-net provider in 10 of Chile's 13 regions. Since the early 1990s, Chile's telecommunication sector has been fully privatized; the State is not involved in the provision of telecommunications services.

The telecommunication sector is regulated by the Sub-secretary of Telecommunications (Subtel). Subtel is in charge of implementing and overseeing the application of the Telecommunication Law (Law No. 18.168 of 2 October 1982).

From the legal and constitutional standpoint, there is no discrimination between national and foreign investors, being there no restrictions for their participation in Chilean companies.

Domestically, the Chilean regulatory framework allows ample room for market development and only controls possible abuses arising from a dominant market position. This is achieved through the so-called "tariff-setting decree", which establishes for a five-year period the maximum rate to be charged for long-distance, local and Internet services. This type of regulation, in addition to the implementation of the "calling party pays" system (charges for calls made from cellular phones are paid by the calling party and under no circumstances by the receiver of the call), has been highly effective in fostering competition in all services provided by this sector.

Pursuant to Article 8 of the Telecommunication Law, a concession is required for offering public telecommunications services. Concessions are granted by Subtel by means of supreme decrees. Once granted, a concession to provide telecommunication services is valid for 30 years. A concession or licence is required for the use of the radio-wave spectrum; the fees for the different types of concessions or licences are set out in Article 32 of the Telecommunication Law.

The National Council on Television (*Consejo Nacional de Televisión*) may establish, as a general requirement, that programs broadcast through public (open) television channels include up to 40 percent of Chilean production.

The owner of a social communication medium such as sound and image transmissions or a national news agency, shall, in the case of a natural person, have a duly established domicile in Chile, and, in the case of a juridical person, shall be constituted with domicile in Chile or have an agency authorized to operate within the national territory.

Only juridical persons duly constituted in Chile and having domicile in the country may be the titleholders, or make use of permits, for limited radio broadcasting telecommunications services and cable television or microwave television services.

A ruling by the Telecommunications Under-Secretary is required to carry out Complementary Telecommunication Services, which are additional services provided through the connection of equipment to the public network

Telecommunication services, including domestic and international telephone services, mobile telephones and value added network services are completely open to competition from both, national and foreign providers.

In the case of social communication mediums, only Chilean nationals may be president, administrators, or legal representatives of the juridical persons at stake. In the case of public radio broadcasting services, the majority of the members of the Board of Directors must be Chilean nationals. The legally responsible director and the person who replaces him or her must be Chilean with domicile and residence in Chile.

Requests for public radio broadcasting concessions, submitted by a juridical person in which foreigners hold an interest exceeding 10 percent of the capital, shall be granted only if proof is

previously provided verifying that similar rights and obligations as those that an applicant will enjoy in Chile are granted to Chilean nationals in the applicant's country of origin.

The following special limitations apply:

Maritime and aeronautic telecommunications which are reserved to the Chilean Navy and the Aeronautic Civil Board, respectively.

- Only Chilean individuals and foreign individuals with permanent residency in Chile may obtain amateur radio aficionado licenses. This license can also be obtained by amateur radio individuals from countries where Chile maintains reciprocity agreements, and foreign individuals with temporary residency in Chile previously qualified by the Undersecretary of Telecommunications.

The future trend points to market liberalization, facilitating the entry of new national and foreign competitors not only through specific trade agreements but also through direct foreign investment. This, together with an attractive technological progress, has situated Chile in a privileged position at world level in the area of telecommunications, and also provides an important basis for future business expansion into Latin America and other business partners countries.

- E-commerce

Chile has supported all initiatives designed to analyze the impact of e-commerce, as well as those designed to disseminate and foster discussion on the issue, both at private and public level, establishing work in these areas as one of the main goals of its policy.

As regards the modernization of the telecommunications regulatory framework, in May 1999 the Tariff-Setting Decree introduced the concept of Local Stretch, reducing in more than 60 percent the cost of using the network for switch access services.

In our country, legislation is already in force concerning electronic documents, pension fund forms, payments of health scheme contributions, electronic bank payments, import and export declarations, and payments of customs duties.

The program designed to modernize the Government Procurement and Contracts System represented in 1999 the first step to process government procurement operations via Internet. This system allows to publish, store and distribute information related to State purchases and contracts. Thus, the State has a transparent and dynamic medium to control the procurement function.

As an example, the Customs Service has a automated system to entry and exit declarations. At present, 98% of import declarations is done by electronic media (EDI) and 100% of export declarations is done by Internet.

The Privacy Act, introduced in late 1999, establishes the need to obtain the consent of concerned parties whenever using their personal information, as well as the obligation of direct marketing companies to implement systems designed to provide concerned parties their personal information on request.

As mentioned above, our country is aware of the vital importance of creating an appropriate regulatory framework if it wishes to become part of economic globalization.

The Chilean government has adopted as its legal and regulatory strategy the gradual creation, with strict respect to personal freedom and through reforms and legal and administrative innovations, of new institutions, restructuring old ones according to needs and partially moving forward in the different areas, among which we may highlight the Electronic Signature Bill, which is presently being discussed by Congress.

Likewise, different programs aimed at developing small and medium-size companies, based on their participation in e-commerce, have been implemented.

Furthermore, Chile has participated in different international fora - within the context of APEC, WTO, ALCA, and some bilateral initiatives - on e-commerce.

b. Transportation

i. *Maritime Transportation*

Sectoral exceptions to market access remain in maritime transport.

Chile's policy in recent years has been aimed at liberalizing this sector, pursuant to effective legislation, which execution is entrusted to the Ministry of Transportation and Telecommunications. The general guiding principle of this policy is the free participation of any vessel, Chilean or foreign, in the transportation of cargoes originating in the country, provided there is reciprocity as regards access to traffic and foreign-bound cargoes.

For our country, building an efficient, modern and geographically extended port infrastructure has been a priority task in recent years.

In 1999, 47 percent of maritime trade was handled by State ports and 53 percent by privately owned ports. State-owned ports are managed by ten independent Port Companies, successors to the now extinct EMPORCHI. This was provided for in Law No. 19,542, which amended the administration system of State-owned ports and established the decentralization of port asset management, the creation of the above-mentioned independent companies, and the concession of docks. The State continues to exercise the regulatory function.

The government has given in concession the auxiliary services provided at State-owned ports. Authorities have stated that no more public investment is to be made in new port assets, in order to promote private investment. Some port services, such as loading,

unloading and storage, are entrusted to private companies. The main idea is to provide ports the necessary tools for them to improve their efficiency and performance, as the conviction exists that the private sector will be able to carry out this function better than anyone else.

In general, Chile's international maritime transportation policy is based on the principle of freedom of navigation. However, where other country accord preferential treatment to vessels flying certain flags, Chile may apply reciprocity measures and maritime authorities may also accord preferential treatment in such cases. Under a 1974 bilateral agreement, all maritime transport between Brazil and Chile has to be performed by Chilean or Brazilian vessels, with the exception of the transport of oil and its by-products and natural liquefied gas. Freightage has to be divided between the two countries. Transport in third-country vessels is only permitted when no other means of transport are available; the agreement does not cover coasting. No measures involving any preferential treatment apply to the provision of auxiliary services nor to access to or use of port facilities.

As regards international trade, no discriminatory measures are applied to foreign vessels in connection with access to ports and port installations or their use. In 1995, 25 percent of maritime cargo was transported by Chilean vessels and the remaining 75 percent by foreign vessels.

*ii. Air Transportation*

Because of its geographic situation, Chile requires expeditious, low-cost routes, both within and outside its borders. The development of a foreign-trade-based economy renders it necessary to have means of transportation suitable for the country's exportable bases. Thus, the air freight sector grew hand in hand with the development of exports, particularly export products such as seeds and fresh fish, fruit and vegetables. These products require to be rapidly delivered to consumer markets, which, in the case of Chile, are located very far away. At the same time, this economic model brought about the growth of imports, which to a large extent are air freighted into country.

The Commercial Aviation Law recognizes Chilean and foreign companies alike the freedom to offer both national and international air transport services. In other words, any foreign or Chilean company may offer such services without any restriction, save for those related to technical and safety considerations.

Under this legal system, domestic traffic grew 1,000 percent over the period 1979-1999, with more than 3.2 million passengers carried yearly. In the 90s alone, domestic air traffic grew at average annual rates of 18 percent.

This has not only permitted to develop productive centers in remote regions of the country, but also to shorten distances in a country more than 4,000 km long, and with fares that make air transport increasingly affordable.

On the other hand, the consolidation of three private airlines and the presence of a fourth that recently initiated operations (with Peruvian capitals), plus several regional airlines, reflect the dynamism of this sector.

At international level, this absolute freedom has one exception: reciprocity established in bilateral agreements or practice. Thus, foreign companies may operate in Chile insofar as their governments grant similar rights to Chilean airlines in their respective territories.

The Chilean experience and the development of its industry have shown that the greater the opening to foreign competition and the fewer the barriers or restrictions, the quicker the growth of traffic in the sector.

In turn, international cargo traffic has grown more than 8,000 percent since 1979, according to data provided by the Santiago Chamber of Commerce. Eight percent of Chilean exports leave the country via air, a figure that in the case of trade with the United States climbs to 16 percent and to 20 percent in the case of the United Kingdom.

### III.3.B. International Commitments Related to Services

Among the main objective of our country at international level is the establishment of clear regulations for services and investment, with a view to creating a wider and stable market for our services and goods abroad. In this sense, we seek to progressively open up our markets for service providers and to strengthen the integration processes that may contribute to the expansion of trade and foster the creation of joint ventures to penetrate different markets.

As a result of the Uruguay Round, commercial disciplines extended beyond those related to trade in goods to cover areas such as services, investment and intellectual property. In recent years, our country has continued to participate in WTO working groups on services and investment. Furthermore, our country assumed certain obligations in connection with Telecommunications and Financial Services under the GATS agreement. Moreover, Chile has actively participated in preparatory work for the negotiations scheduled to take place in the year 2000.

Chile has also participated in other multilateral fora, such as the Asian Pacific Economic Forum (APEC) and the Service Group in the FTAA - the free-trade area of the Americas -, carrying out important work in said areas and actively participating in negotiations on services.

At bilateral level, some concrete results have been achieved through the subscription of legal instruments that cover issues and disciplines additional and complementary to trade in goods, as a means to achieve a better and more profound liberalization of trade.

In this context, we should note that the Free-Trade Agreements with Canada, Mexico and Central America include specific chapters governing cross-border trade in services. These Agreements also contain chapters and annexes that regulate and supplement these

disciplines, such as those dealing with telecommunications, professional services and temporary admission of business people.

The above-mentioned Agreements are based on principles such as non-discrimination and transparency, which are applied to trade in services and investments; they set forth the restrictions that both investors and service providers from both countries may face when entering the different markets; and establish the mechanisms for the progressive removal of such restrictions.

On the other hand, in pursuing its objectives, our country has assumed different obligations or undertaken different initiatives that involve future negotiations aimed at further liberalizing services and investments with other countries or groups of countries. In this context, during 1999, a Service Negotiation Group was created within the framework of the Mercosur Agreement, which is now reviewing a negotiation proposal submitted by our country.

### **III.4 Foreign Investment System**

#### **III.4.A. General Regime of Foreign Investment**

Chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulations correspond to general regime of foreign investment in Chile. It establishes rules for investment, capital contributions, and foreign credit. Under Chapter XIV, the Central Bank is not allowed to reject foreign investments, although it may impose conditions based on its monetary policy on the transfer of funds into and out of Chile, such as a one-year retention requirement. Foreign capital entering Chile under Chapter XIV receives national treatment, but it is excluded from the benefits of the foreign investment contracts possible under the Foreign Investment Statute, in particular the choice of invariable taxation. Foreign capital entering Chile under Chapter XIV has to be registered with the Central Bank. This may be carried out at any commercial bank, prior to converting the capital into Chilean pesos.

#### **III.4.B Special Regime of Foreign Investment**

The Foreign Investment Statute (Decree Law No. 600 of 1974, amended on 16 December 1993), correspond to a special voluntary investment regime.

Foreign investors receive national treatment, subject to a limited number of exceptions established under law. The main exceptions include international land transport, maritime cabotage, fisheries, and radio and print media. Furthermore, land owned by the State, within a distance of ten kilometers from the borders and five kilometers from the high-water line, cannot be sold to foreigners.

To attract foreign investment, the Foreign Investment Statute establishes rules and procedures for foreign investors who opt for this mechanism. Investors wishing to invest at least US\$5 million in foreign currency or US\$250.000 in tangible assets may submit an investment application. Under this statute, applications submitted by investors for foreign

investment are subject to authorization by the Foreign Investment Committee.<sup>48</sup> The Committee is composed of the Minister of Economy, who presides it, the Ministers of Finance, Foreign Affairs, and Planning and Cooperation, and the President of the Central Bank. It accepts or rejects applications for foreign investment, and establishes the terms and conditions for the relevant investment contracts. If the Committee rejects an application, the capital may enter Chile under Chapter XIV of the Central Bank's Compendium for Foreign Exchange Regulations (see below). The Committee has not rejected investment applications in recent years.

Under the Foreign Investment Statute, foreign investors conclude a contract with the State of Chile, which authorizes and protects the transfer of capital for the investment. Under Article 9 of the Statute, both the investment and the respective company are subject to the general laws applicable to domestic investment. The contract, which is indefinite in duration, may be modified only with the consent of both parties. It sets out the period in which the foreign investor must bring in the capital, which cannot exceed three years (eight years in the case of mining investments). The Committee may extend this period to eight years for investments of at least US\$50 million when warranted by the nature of the project, and twelve years in the case of mining projects when prior exploration is required. Capital brought in under DL600 may only be repatriated following a one-year waiting period; profits may be transferred abroad at any time.

Pursuant to Article 8 of the Foreign Investment Statute, foreign investors have the right to include a clause establishing invariability of indirect taxes and customs duties for certain imported capital goods for the term authorized to effect the investment.

Foreign investors may also opt for a system of invariable direct taxation, under which a company's operations are subject to a fixed overall income tax rate of 42%. Investors who choose this option may, only once, waive this right and ask for the application of ordinary tax laws. Tax invariability is available for a maximum period of ten years, but may be extended for up to 20 years on industrial and extractive projects with a value exceeding US\$50 million.

Article 11 of the Foreign Investment Statute allows regulations limiting the access of foreign investors to domestic credit. This provision has not been applied in recent years.

In conclusion, Foreign investors have the choice between the two statutes when bringing capital to Chile; most foreign investment enters Chile under the provisions of the Foreign Investment Statute.

Finally, the foreign capital investment funds (FCIFs) are governed by law 18.657 and are permitted to receive preferential tax treatment. FCIFs are required to obtain a favorable report issued by the Chilean Securities and Insurance Supervisor ["Superintendencia de Valores y Seguros" (SVS)] in order to conduct business in Chile. FCIFs may not remit

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<sup>48</sup> The application form for FDI under Decree Law No. 600 is available online at: [http://www.foreigninvestment.cl/fdi\\_inchile/solicitud.pdf](http://www.foreigninvestment.cl/fdi_inchile/solicitud.pdf).

capital for five years following the investments of such capital, although earnings maybe remitted at any time. A FCIF may hold a maximum of 5% of a given company's shares, although this can be increased to a maximum of 10% if the company issues new shares. Furthermore, no more than 10% of a FCIFs assets may be invested in a given company's stock, unless the security is used or guaranteed by the Republic of Chile or the Central Bank, and all together, and no more than 25% of the outstanding shares of any listed company may be owned by FCIFs.

#### III.4.C. Special Tax-Free Regimes

The Investment Platform Law (Law No. 19.840) of 23 November 2002 is aimed at permitting multinational companies to use Chile as a regional base under a special regime granting tax-free status on earnings from international operations. At the same time, the Law contains various provisions designed to prevent the use of Chile as a tax haven or the misuse of the regime by domestic entrepreneurs to avoid paying domestic taxes. The Chilean operations of these companies are taxed under the regime that normally applies to foreign investment.

#### III.4.D. BIT's and Other Agreements

Chile has bilateral investment agreements to promote and protect investment, with Argentina, Australia, Austria, Belgium, Bolivia, China, Costa Rica, Croatia, Cuba, the Czech Republic, Denmark, Ecuador, El Salvador, Finland, France, Germany, Greece, Guatemala, Honduras, Italy, Indonesia, Lebanon, Malaysia, Nicaragua, Norway, Panama,, Paraguay, Peru, the Philippines, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Ukraine, the United Kingdom, Uruguay, and Venezuela. Further bilateral investment agreements have been or are being negotiated, with Brazil, Colombia, the Dominican Republic, Egypt, Greece, Hungary, Iceland, the Netherlands, New Zealand, South Africa, Tunisia, Turkey, and Viet Nam.

In addition, Chile is a member of the Multilateral Investment Guarantee Agency (MIGA), and of the International Center for the Settlement of Investment Disputes. It has ratified the Inter-American Convention on International Commercial Arbitration, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and the Convention on the Settlement of Investment Disputes between States and Nationals of other States. Furthermore, a draft law on private international commercial arbitration was submitted to Congress in 2003.

#### III.4.E. Investment Agreements

In the 90s, Chilean investment has shown a remarkable dynamism against the backdrop of a policy that seeks to ease off regulations and the increasing international insertion of the Chilean economy. Direct Foreign Investment in Chile shows, just like our foreign trade, a relatively high volume in relation to our economy. Chile is among the ten non-OCDE countries with the highest level of foreign investment in recent years, while Chilean companies have become important investors abroad, mainly within their own region, since the early 90s.

According to this scenario, one of the main objectives of our country has been to ensure the establishment of clear investment rules, with a view to creating a wider and safer market. Furthermore, it has completed negotiation processes in order to gradually liberalize the markets for investors, as well as to strengthen integration processes that may contribute to trade expansion and the creation of strategic alliances to tackle global markets.

To ensure a predictable business environment that allows productive activity and investment planning, Chile has bilaterally negotiated two types of investment-related agreements: Investment Promotion and Protection Agreements (IPPAs) and the investment chapters included in Free-Trade Agreements (FTAs) subscribed with Canada and Mexico.

The main difference between these two types of instruments resides in that FTAs, in addition to pertaining to a comprehensive Agreement governing different disciplines, guarantee access, whereas IPPAs, in the case of Chile, do not. In other words, FTAs consolidate non-conforming effective measures related to the obligations of National Treatment (NT), Most Favored Nation (MFN), Performance, and Senior Managerial Personnel Requirements, but cannot increase non-conformity in the future. On the other hand, IPPAs establish that investment shall be made "under the laws and regulations of the contracting Party", in other words, they allow discriminatory measures to become even more discriminatory (less liberal) in the future. Thus, IPPAs do not provide access guarantees to investors.

a. Investment Chapters in Free-Trade Agreements

Investment chapters in FTAs subscribed by our country provide a broad definition of investment, covering both investments existing at the date in which the Protocol enters into force and those made or acquired at a later date. Likewise, these rules apply to every level of government, i.e. to federal, state and local, etc. government, as appropriate.

On the other hand, the treatment accorded to investments and investors is based on the principle of non-discrimination, which is materialized through the National Treatment (NT) and Most Favored Nation (MFN) concepts. The NT implies, for purposes thereof, that each Party accords to investments and investors of the other Party a treatment no less favorable than the one accorded, under similar circumstances, to its own investments and investors in terms of establishment, acquisition, expansion, management, conduction, operation, sale or other forms of investment disposals. In turn, the MFN treatment implies, for purposes thereof, that each Party accords to investments and investors of the other Party a treatment no less favorable than the one accorded, in similar circumstances, to investments and investors of a non-party country in terms of establishment, acquisition, expansion, management, conduction, operation, sale or other forms of investment disposals. In this sense, such treatment offers greater certainty to investors, in the sense that they will not be affected by a discriminatory treatment in respect of any later liberalization measure accorded to third countries only, which could not be foreseen at the time of making the investment. It should be borne in mind that an investment is a long-term relationship between the investor and the recipient State.

From these principles arose a clause that provided for the possibility that each Party should give the other Party the option of choosing the best treatment under either the MFN or NT (known as the level of treatment). Likewise, they ensure a fair and equitable treatment, and a non-discriminatory treatment in view of events such as civil unrest or armed conflicts, save for subsidies and gifts.

Furthermore, these Chapters prohibit the establishment of other types of protectionist barriers, such as the application of certain performance requirements. Said clause sets forth two aspects mainly: on the one hand, it prohibits Parties to impose certain requirements and also to subject a benefit to the fulfillment of certain requirements. However, it allows Parties to impose certain conditions, such as the location of production, or training, among others. Furthermore, it provides that nationality may not be a requirement to curb an investor's capacity to exercise control over his investment.

Under an article covering transfers, investors are guaranteed the right to effect transfers freely and without delays. Chile has an Annex wherein it reserves the right to exercise some powers, aimed at ensuring the stability of its currency.

These FTAs are based on a liberalization schedule of negative lists; they recognize, however, that countries have sensitivities and discriminatory legislation in different sectors, wherefore they build in reserves concerning the obligations referred to above, such as the NT, MFN, and the non-application of performance requirements or restrictions to senior managerial personnel. Countries undertake not to make measures more restrictive, and to seek greater liberalization. The above-mentioned reserves are effected through the following Annexes.

- Annex I: Existing Measures and Liberalization Commitments
- Annex II: Reserves concerning Future Measures
- Annex III: Exceptions to the Most Favored Nation Treatment

Likewise, these agreements include extensive provisions on expropriation and compensation, which ensure that the former is well grounded and the latter fair, immediate and paid in a freely convertible currency.

As regards investment, there is the obligation to protect the environment and the prohibition of easing off environmental measures for purposes of attracting investment.

Finally, in addition to the dispute settlement system contained in the Agreement, this Chapter provides a mechanism to settle controversies arising between one Party and investors from the other Party, which ensures equal treatment to investors of both Parties and due process of law before an international court. In addition, then, to the dispute resolution system contained in the Agreement, this chapter establishes a second system to settle controversies between one Party and investors from the other Party.

b. Investments Promotion and Protection Agreements

In essence, IPPA provisions are similar and seek to create favorable conditions for investment by nationals and companies of one Party in the territory of the other Party.

These Agreements arise from the fact that in today's world the only way to establish and maintain appropriate international capital flows is through clear, balanced, fair and institutionalized rules, making up a satisfactory regulatory framework for investments, although naturally in compliance with the laws of the recipient country.

When making an investment, foreign investors' main fears are unstable legislation and economic policies, and particularly the risk of seeing the value of their investments affected by nationalization or expropriation without due compensation or uncertainty concerning repatriation of capital and profits, as well as the likelihood of denial of access to justice.

To prevent these circumstances from happening - which are referred to as political risks, in other words risks beyond the normal business risks of an operation - the Government of Chile has continued to negotiate the above-mentioned Investment Promotion and Protection Agreements, with a view to placing our country in a better position within world competition and thus attract foreign investment and duly ensure Chilean investment abroad.

Among the general principles included and recognized in such Agreements, the following should be highlighted:

- i. Free transfer: any investor may send the benefits derived from his investment to his country of origin, and also repatriate invested capital in the event of termination of activities or liquidation of the investment;
- ii. Compensation in the event of expropriation or nationalization; and
- iii. A fully regulated dispute resolution mechanism, to settle controversies arising between the contracting Parties or between one Party and investors from the other Party. In this latter case, the investor is entitled to choose whether to submit to the jurisdiction of national courts or to initiate an international arbitration proceeding before the ICSID (International Center for the Settlement of Investment Disputes) or before an ad-hoc tribunal constituted according to the UNCITRAL rules (United Nations Commission on International Trade Law). Once chosen, jurisdiction is final; in other words, it may not be changed thereafter.

The procedure to select the countries with which Chile is interested in subscribing IPPAs is the following: once a year, the International Economic Relations Office, in coordination with the Foreign Investment Committee, prepares an agenda for the different Agreements to be negotiated. For such purposes, international political priorities set by the different Foreign Affairs Departments are taken into account.

As regards economic and trade considerations that may affect the establishment of negotiation priorities with countries included in the Agenda, it should be noted that often times it is difficult to assess the actual impact of an IPPA on investment growth in the territory of the other Party. Thus, the importance of such an Agreement resides, in essence, in the existence of a legal framework that, in the event of effective investments, sufficiently ensures the rights of investors through clear, pre-established rules. In this sense, it is reasonable to assume that a foreign investor, faced with two States offering similar economic advantages, would prefer to make his investment in the country where an IPPA is in effect.

Chile has subscribed fifty Agreements on this matter, thirty-one of which have been published in the Official Gazette (see a complete list at [www.direcon.cl](http://www.direcon.cl)).

Lastly, it should be mentioned that additional obligations included in IPPAs - such as consolidated access to foreign investors in the recipient country and pre-establishment (protection for the investor and his investment during the stage prior to the establishment) - have been agreed upon in FTAs subscribed with Canada, Mexico and United States with the relevant restrictions and due safeguards for the regulatory powers of the Central Bank.

### **III.5 Trade Remedies**

#### **III.5.A. Safeguards**

Chile's legal framework for safeguard measures comprises: Article XIX of GATT 1994, the WTO Agreement on Safeguards, Law No. 18.525 (amended in May 31, 1999, by Law 19.612), and the Regulations on the Application of Safeguard Measures issued by the Ministry of Finance in Decree No. 909 of 17 June 1999. Law No. 19.612, Chile's first law on safeguard measures, establishes the National Commission (mentioned in Law No. 18.525) as the authority to initiate and conduct investigations relating to safeguard measures and to propose the imposition of safeguard measures.<sup>49</sup>

Pursuant to Article 9 of the revised Law No. 18.525, the President of the Republic may apply *ad valorem* tariff surcharges through a Supreme Decree of the Ministry of Finance, subject to a favorable report by the National Commission. At the written request of the domestic industry or on its own initiative, the National Commission may initiate investigations to determine serious injury to the domestic industry or the threat thereof, due to a surge of imports.

As established by the Regulations on the Application of Safeguard Measures, serious injury is understood to mean a significant impairment in the position of a domestic industry. In determining the existence of injury or threat thereof, the Commission must evaluate all relevant objective and quantifiable factors.

Within ninety days from the initiation of the investigation, the Commission must decide whether, the available information leads to the conclusion that imports of a product have

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<sup>49</sup> Chile's notification is available in WTO document G/SG/N/1/CHL/2, 24 August 1999.

increased in such volume and under such conditions as to cause or threaten to cause serious injury to domestic producers of like or directly competitive products. If this is the case, it must adopt a Resolution recommending the application of tariff surcharges: the Resolution, together with the background information and conclusions of the investigation, are transmitted to the President of the Republic, who makes a final decision through a Decree of the Ministry of Finance. Where, the available information does not permit the establishment of a safeguard measure, the Commission must dictate a resolution to end the investigation and transmit the decision to the Minister of Finance to be summarized and published in the *Official Gazette*.

In critical circumstances where delay would cause damage that would be difficult to repair, the Commission may recommend to the President of the Republic to apply provisional tariff surcharges within a period of thirty days from the initiation of the investigation. The Commission's recommendation must be based on a preliminary determination of the existence of clear evidence that the increase in imports has caused or threatens to cause serious injury.

The surcharges may not be applied for more than one year, including the period of provisional application of the measure. This period may be extended for one further period not exceeding one year, subject to a favorable report by the Commission. The Commission may at any time recommend that the application of the tariff surcharges in effect should be modified or abolished before their expiry date. The Law does not provide for the imposition of quotas. Commission decisions are by majority of the votes cast. The approval of three quarters of the members of the Commission is required if the application of a surcharge increases the tariff in place above the WTO bound tariff rate.

Since the Safeguard Legislation has been in force, Chile has imposed seven safeguard measures, out of eleven investigations (Table III.5). None of the measures taken is in force at present time.

### III.5.B. Antidumping Measures and Countervailing Duties

The Agreement on Implementation of Article VI of the GATT 1994, the Agreement on Subsidies and Countervailing Duties, Article VI of GATT 1994, and the WTO Agriculture Agreement, all apply with the force of law in Chile since the enactment of the Marrakesh Agreement by Supreme Decree No. 16 of the Ministry of Foreign Affairs of 5 January 1995 (Chapter II), Law No. 18.525 of 30 June 1986 and its further amendments, Decree No. 575 of the Ministry of Finance containing the Regulations on Article 11 of Law No. 18.525, and the Chile-Canada Free-Trade Agreement.<sup>50</sup>

The various definitions contained in the WTO Agreements on Anti-Dumping and on Subsidies and Countervailing Duties apply fully, as these Agreements are an integral part of the Chilean legislation.

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<sup>50</sup> See Chile's notification in WTO document G/ADP/N/1/CHL/2.

The National Commission for Investigations on Price Distortions through Imports, created by Article 11 of Law No. 18.525, carries out investigations related to all aspects of anti-dumping and countervailing measures. The Commission is composed of: the National Economic Prosecutor's Office, who chairs it; two representatives of the Central Bank of Chile, one representative respectively of the Ministries of Finance, Agriculture, Foreign Relations, and Economy; and the National Director of Customs. The Central Bank provides the Technical Secretariat for the Commission.

The Commission conducts an investigation if the complainant can provide evidence of a distortion (dumping or the existence of a subsidy) and the manner in which it causes or threatens material injury to the Chilean industry. Complaints can be submitted by any industry group or in the name of any industry group. The Commission may also conduct investigations on its own initiative when it possesses information that justifies so doing. The authorities indicate that this has not occurred since 1995.

After a complaint has been lodged the Commission must publish a notice of the opening and subject of an investigation in the *Official Gazette*. Within thirty days from the date of this notice, the Commission shall receive all information interested parties wish to submit, and request any reports it considers necessary. Before reaching a decision, it must conduct public hearings. If the Commission considers that, on the basis of available information, it is possible to establish the existence of price distortions and that these distortions cause or threaten to cause material injury to the affected domestic industry, this is stated in its decision recommending the establishment of anti-dumping or countervailing duties.

The anti-dumping and countervailing duty proposed by the Commission must not exceed the margin of distortion, which is calculated by comparing dumped with non-dumped imports. The Commission may also recommend to the President the application of provisional duties. Anti-dumping and countervailing duties can be imposed for a maximum of one year. However, a new investigation can be initiated if the Commission considers that there is evidence for the duty to be maintained.

Against the background of increased worldwide use of anti-dumping measures, Chile has contributed to the WTO Negotiating Group with a view to clarify and improve at the multilateral level various provisions of the Anti-Dumping Agreement. They cover, *inter alia*: duration of anti-dumping measures, facts available, constructed value, zeroing, assessment of injury, price-undertakings, lesser duty, and review of anti-dumping orders.

The latest anti-dumping measures were adopted in 1998 and affected the imports of hot rolled steel from Russia and Ukraine. The latest countervailing duty applied was in 2000 and affected imports of powder milk from United States and the European Union.

### III.5.C. Institutional Arrangement

Included in 3) e) i, and 3) e) ii.

### **III.6. Chilean Commitments Regarding the WTO**

The WTO Agreements were adopted by Chile through Supreme Decree No. 16 of 5 January 1995 of the Ministry of Foreign Affairs. They form an integral part of national legislation, with the status of an ordinary law, and may be invoked before Chilean courts. WTO Agreements take precedence over domestic legislation if they contain a greater degree of specificity, when covering the same subjects, or if they establish a new set of rules covering subjects not dealt with by domestic legislation, or when they regulate institutions or subjects setting rules whose legal sense and effects are in contradiction with the sense and effects of prior domestic legislation. Moreover, when the WTO Agreements were enacted after the prevailing relevant domestic legislation, the principle of tacit derogation applies. However, this does not detract from the validity of the provisions of an existing law that do not conflict with or contradict newer laws (Article 52 and 53 of the Civil Code).

Law No. 19.589 of 14 November 1998 provided for a reduction of Chile's MFN tariffs and revised some export promotion programs with a view to bringing them into line with Chile's WTO commitments (particularly with the SCM Agreement).

A law on miscellaneous WTO-related matters entered into force as of November 4, 2003. The law No. 19,912 aims to bring various individual provisions of Chile's legislation into line with the WTO Agreements. It contains provisions on customs valuation, technical regulations, taxation, and intellectual property. The law provides for notification procedures for technical regulations and conformity assessments. It also provides for the abolition of the dispatch tax on goods imported duty-free, and of the trade-related investment measures in the automotive sector. Furthermore, it amends Chile's intellectual property legislation by specifying protection for computer programs, data compilations, and textile designs.

Chile does not have any pending implementation of WTO Agreements.

#### ***Participation in the World Trade Organization***

Chile is a founding member of the GATT, and as such it has unwaveringly maintained its commitment to the multilateral trading system as represented by the WTO. Thus, it actively supported efforts to launch a new round of negotiations in the Ministerial Conferences in Seattle (1999) and Doha (2001). Chile welcomed the launching of the Doha Development Round, which represents an opportunity to settle serious problems in our trade relations which have proven impossible to solve in the context of bilateral or regional agreements. This has been the case, in particular, for agricultural subsidies and the abuse of anti-dumping measures. Likewise, the Doha Development Round has provided Chile with a potential to considerably improve access for its exports to important markets with which it has no preferential trade arrangements, particularly in Asia.

In line with these objectives, Chile has submitted various negotiating proposals and has participated actively in formal and informal coalitions with other Members which share its interests. These coalitions include, in particular, the Cairns Group and, more recently, the G20 in agriculture, and the Friends of the Anti-Dumping Negotiations (FANs). We have

also been active in other areas of the Doha Development Round such as market access for non-agricultural products and the reform of the Dispute Settlement Understanding.

The importance that Chile attributes to the WTO is not limited to the gains to be achieved through negotiation. For Chile, the WTO also derives its importance from the ongoing work of its different technical bodies, above all the Dispute Settlement Body. This is the mechanism that ultimately ensures that multilateral trade rules are respected and that countries of extremely varied political and economic weight can solve their problems on the basis of commonly agreed rules, on an equal footing, and with the full opportunity to present their arguments, rather than being subjected to the decisions of the most powerful. Chile has in fact been active in using the DSB as complainant, respondent and third party.

## IV. ANALYSIS OF THE EFFECTS OF TARIFF REDUCTION ON CHILEAN IMPORTS AND EXPORTS.

### IV.1 Introduction

This section analyses the effects that a tariff reduction would bring about in bilateral trade between China and Chile. The latter considers a set of partial equilibrium models, one for exports and one for imports, taking into consideration Chilean trade data from 2003. Both models consist in studying each market separately and determining the effect of a full tariff reduction on the quantities demanded and supplied of goods, and does not take into account the relationships between these markets and the rest of the economy, as well as macro restrictions of resources in the economy. The final results in terms of imports and exports are given by the difference between demanded and supplied goods after the application of the tariff reduction.

### IV.2. Models

#### IV.2.A. Model to Estimate the Impact on Imports

The formulas proposed by Cline (1998)<sup>51</sup> were used in order to calculate the expansion in Chilean imports from China that would be brought about by a reduction in Chilean tariff. This model seeks to determine trade creation and trade diversion that would arise from a preferential tariff reduction on Chilean imports from China. Trade would be created in those goods for which China may offer a lower price than the international price, i.e. goods for which China is the cheapest supplier. Thus, by eliminating the tariff, with the resulting price reduction perceived in the internal market, consumption increases and quantities offered by domestic producers decrease, when national production competes with imports; consequently, there is a net increase of imports, since this implies an increase of goods available for consumption. Trade creation has a positive effect derived from the tariff reductions.

Trade creation will be estimated based on the definition of price elasticity of import-based demand. The model assumes that an FTA will translate into the full elimination of *ad valorem* tariffs and that the increase of Chilean imports will generate a variation (in foreign currency terms) in the internal price of imported goods, therefore that the change of tariff is equivalent to the change in domestic price. Thus, the change in the value of imports would only arise from changes in imported quantities, and the calculation of trade creation for each product will be done as follows:

$$TC = M_0^{RPCH} \cdot h_p \cdot Dt_{CH} / (1 + t_0) \cdot (1 - h_p / e_p^{RPCH})$$

Where,:

<sup>51</sup> Cline, W. et al. "Trade negotiations in the Tokio Round: A Quantitative Assessment". Washington D.C., Brookings Institution, 1998.

TC	:	Chilean trade creation in benefit of Chinese exports
$M_0^{RPCH}$	:	Value of initial imports from China, before tariff reduction.
$\eta_p$	:	Price elasticity of import-based demand
$\Delta t_{CH}$	:	Differential between the present Chilean tariff and the FTA tariff (0).
$t_0$	:	Initial <i>ad valorem</i> duty. <sup>52</sup>
$\varepsilon_p^{RPCH}$	:	Price elasticity of export-based supply.

On the other hand, trade deviation will emerge in relation to those goods for which China offers a higher price than the cheapest international supplier, since a preferential tariff to China would push the price down in the domestic market, thus enabling Chile to substitute Chinese imports for goods offered by more efficient international suppliers. Trade deviation does not imply greater availability of goods, and only represents a substitution of supply sources due to the relative price change arising from the preferential tariff granted to the trade partner. Trade deviation represents a Free-Trade Agreement-derived efficiency cost for the economy, as it ends up importing goods at a price higher than that available before the agreement (because CIF prices at both sources have not changed). This translates into lower tariff revenues for the State, which is transferred as an implicit subsidy to partner countries and therefore leads to lesser welfare.

To calculate the increase of imports arising from trade deviation we use the concept of elasticity of substitution between goods imported from different suppliers (China and the rest of the world). In addition, it is assumed that the increase of Chilean imports does not affect the CIF value of imported goods. With this, deviation are calculated as:

$$TD = (r \cdot P_r \cdot M_0^{RPCH} \cdot M_0^{RM}) / (M_0^{RPCH} + M_0^{RM})$$

where:

TD	:	Chilean trade deviation in benefit of Chinese exports
$\rho$	:	elasticity of substitution between imports from China and imports from the rest of the world.
$M_0^{RM}$	:	value of initial imports from the rest of the world
$M_0^{RPCH}$	:	value of initial imports from China.
$P_r$	:	proportional variation in relative prices. The latter is expressed as:

$$P_r = [(1 + t_1^{RPCH}) / (1 + t_1^{RM})] / [(1 + t_0^{RPCH}) / (1 + t_0^{RM})] - 1$$

Where  $t_1^{RPCH}$  and  $t_0^{RPCH}$  are the tariffs applied to Chinese imports before and after tariff reduction. On the other hand,  $t_1^{RM}$  y  $t_0^{RM}$  are the tariff applied by Chile to the rest of the world before and after tariff reduction towards Chinese imports.

It may then conclude that, firstly, an FTA would have a positive effect if the benefits derived from trade creation were to exceed the costs of trade deviation. This model, however, has the problem of underestimating the impact of tariff reductions on imports, as it fails to

<sup>52</sup> The Chilean unilateral tariff for 2003 is 6%.

capture the effect on goods that were not initially imported because of tariff barriers, the trade of which may become profitable as a result of the tariff reduction.

Another problem is that the model is static in nature and thus disregards dynamic effects, as it fails to capture the impact of an FTA on the rate of growth of product. In fact, the model calculates the effect on trade flows, and thus on product level, on a one-time basis, due to the reallocation of resources driven by changes in relative prices as a result of the tariff reduction.

#### IV.2.B. Model to Estimate the Impact on Exports

In the case of exports, an equation developed by Panagariya<sup>53</sup> (1995) was used. The latter allows to estimate the impact on Chilean exports of the reductions of tariffs in the Chinese market. The equation is based on the calculation of the deviation in Chinese trade with the rest of the world in favor of Chilean exports. As in the case of imports, the effects will be calculated under the assumption that an FTA will bring the elimination of *ad valorem* tariffs and that the increase of Chilean exports to China will generate a variation (in foreign currency terms) in the price of imported goods in China, with which the change of tariff is equivalent to the change in domestic price, thus creating an artificial price advantage towards Chilean goods.

The latter will be expressed by the following equation:

$$TD = M_{RPCH} \cdot \epsilon_p \cdot \Delta t_{RPCH} / (1 + t_1)$$

Where,

TD	:	Chinese trade diversion in benefit of Chilean exports
$M_{RPCH}$	:	imports originating from Chile
$\epsilon_p$	:	price elasticity of Chilean export-based supply
$\Delta t_{RPCH}$	:	differential between the Chinese tariff before and after the FTA
$t_0$	:	Chinese tariff rate before the FTA

This equation is applied to each tariff line, as long as it satisfies the following conditions:

- c) trade before the tariff reduction exists, in other words that trade in that good is greater than zero, and
- d) the tariff is greater than zero

If any of these conditions do not occur, the equation would tend to zero. This is due to the fact that the model, as the import model, only takes into account existing trade, therefore disregarding the possibility of trade creation in those products where trade is non-existent and where a tariff reduction will make a Chilean product more attractive to Chinese consumers. In the case of a zero initial tariff, this would mean that in the presence of a

<sup>53</sup> Panagariya, A. "Rethinking the New Regionalism". The UNDP-World Bank Trade Expansion Project Conference. Enero, World Bank, Washington, D.C., 1995.

general tariff reduction brought about by an FTA, these products would face the exact same conditions, and thus no price advantage towards Chilean products would exist.

With regards to the data that was used to calculate the effects of an bilateral FTA, the Central Bank of Chile trade data base for 2003 was used for export and import statistics. For China's tariff rates, the WTO database was used, under the assumption that the present tariff of China is the same as that bound in the WTO. In terms of elasticity, in general, the price elasticity of imports that were used came from Valdés<sup>54</sup> (1992) that originally came from De Gregorio<sup>55</sup> (1984). In the case of textiles and apparel an elasticity of  $-1,23$  from Taplin (1973) was used and  $-4,72$  from Goldstein and Khan<sup>56</sup> (1985). In terms of the substitution elasticity, this came from UNCTAD<sup>57</sup> (1989) and is equal to 1,5.

### **IV.3. Tariffs Structure**

#### **Structure and levels**

Chile grants at least MFN treatment to all its trade partners. The Chilean tariff classification is based on the Harmonized Commodity Description and Coding System (HS 2002). In March 2003, Chile's tariff schedule contained 7,903 lines at the eight-digit level. The average applied MFN tariff is 5.9% (Table III.2). Agricultural goods (WTO definition), including those subject to the price band system, are levied an average of 6.0%, while non-agricultural products excluding petroleum face an average tariff of 5.9%.

All import duties are applied to the c.i.f. value of goods. With the exception of 36 tariff lines that are subject to specific duties within a price band system (section (v)), Chile applies only *ad valorem* tariffs. It does not apply seasonal tariffs.

Through Law No. 19.589 of 14 November 1998, Chile has been reducing its applied tariffs unilaterally by one percentage point annually since 1999; since January 2003 it has been applying a uniform tariff of 6%, which applies to more than 98% of tariff lines. The authorities indicated that currently no further tariff reductions are envisaged. All changes in the tariff structure must be approved by Congress.

With the exception of the agricultural goods subject to the price band system, the only applied rates are 6% and 0%. Since Chile's last Review in 1997, the number of goods entering duty-free has increased, from 21 to 95 tariff lines at the eight-digit level. Goods

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<sup>54</sup> ESTRATEGIA COMERCIAL CHILENA PARA LA DECADA DEL 90 Elementos para el Debate, Eds. Andrea Butelman y Patricio Meller; CIEPLAN, "Una metodología para evaluar el impacto cuantitativo de una liberalización comercial: aplicación al ALC entre Chile y EE.UU.", Rodrigo Valdés, 1992

<sup>55</sup> De Gregorio José, 1984, "Comportamiento de las Exportaciones e Importaciones en Chile, Un Estudio Económico", Colección de Estudios CIEPLAN N° 87.

<sup>56</sup> Goldstein M. y Khan M., 1985, "Income and Price Effects in Foreign Trade", en Handbook of International Economics, R. Jones P. Kenen eds., North-Holland.

<sup>57</sup> UNCTAD - WORLD BANK, 1989, A user's manual for SMART, Software for Market Analysis and Restrictions on Trade.

that enter at a zero tariff include fire-fighting vehicles, helicopters, aircraft, cargo and fishing vessels, various computer products, and books.

Used goods bear a surcharge of 50% above the relevant import duty, resulting in a combined duty of 9%. Goods exempt from this additional duty include used ambulances, armoured cars, public-road-cleaning vehicles, mobile homes, prison vans, and cement-making vehicles. The customs duty payable on goods admitted under the temporary admission system is based on the number of days for which the merchandise is admitted. For temporary admission of 1 to 15 days the duty is 2.5% of the normal duty, for 16 to 30 days 5%, for 31 to 60 days 10%, for 61 to 90 days 15%, for 91 to 120 days 20% and for more than 121 days 100%. An additional tax of 10% on the customs value is levied upon application for an extension of the period.

Government revenue from import tariffs decreased from US\$1.6 billion in 1997 to US\$0.7 billion in 2003. Fiscal revenue from foreign trade (tariffs plus VAT and specific taxes on imports) fell from over 40% in 1996 to just over 37% in 2003.

### **Tariff bindings**

In the Uruguay Round, Chile bound all its tariff lines contained in Chapter 1 to 97 of the Harmonized System at a uniform rate of 25%, with the exception of various agricultural products and of six tariff lines that already had lower bound rates as a result of pre-Uruguay Round Commitments. A number of agricultural products are subject to a bound rate of 31.5% at the end of the implementation period; this list, in Section 1 of Chile's Schedule, includes: dairy products, wheat and wheat flour, oil-seeds and oleaginous fruit, vegetable fats and oils, and beet or cane sugar. Six tariff lines carry bound rates lower than 25%: one line is bound at 0% (bone ashes), one at 3% (ships over 3,500 tons or 120 metres in length), and one at 15% (various worked carving material); and three lines (various types of turbines) are bound at 23%. As at March 2003, all applied tariffs were below or equal to bound levels.

After the conclusion of the Uruguay Round, Chile pursued Article XXVIII renegotiations for sugar to allow it to amend its Schedule of Commitments. In September 2001, Chile notified that it had completed the process of renegotiation concerning the rectification of its Schedule, resulting in an increase in the final bound rate for sugar to 98%, up from 31.5%, together with the introduction of a 60,000 ton tariff quota with a zero tariff (section (iv)).<sup>58</sup> Chile has on three occasions reserved the right under Article XXVIII:5 of GATT 1994 to modify its Schedule of Commitments; the most recent communication refers to the three-year period commencing 1 January 2003.<sup>59</sup>

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<sup>58</sup> WTO document G/MA/TAR/RS/82, 30 October 2001.

<sup>59</sup> WTO documents G/MA/24, 8 January 1997; G/MA/91, 16 December 1999; and G/MA/126, 16 December 2002.

## **Tariff preferences**

The importance of preferential tariffs in Chile's trade regime has continued to increase. As at June 2003, Chile granted preferential tariff treatment under free-trade agreements to imports from Canada, Costa Rica, El Salvador, the European Union, and Mexico, The European Union and the United States. Furthermore, under LAIA partial scope agreements preferential treatment is granted to imports from Bolivia, Colombia, Ecuador, the members of MERCOSUR, Peru, and Venezuela. Chile gives preferential treatment to imports within the Global System of Trade Preferences among Developing Countries (GSTP).

Applied tariffs vary significantly across preferential agreements and sectors, generally as a result of the specific schedules of tariff reductions and the dates of entry in force of each agreement. Tariff phase-outs for sensitive products, which are in most cases agricultural products, should be completed by 2013 for products from the EU; 2014 for goods from Canada and El Salvador, and MERCOSUR; and 2015 for products from Costa Rica. No phase-outs are pending in Chile's agreement with Mexico or in its partial scope agreements.

## **Tariff concessions**

Section 0 of Chile's tariff establishes tariff concessions for, *inter alia*, public entities, benevolent and educational institutions, religious communities, maritime and air transportation companies, and automotive parts.

### **IV.4. Effects on Imports**

In the case of imports, in a situation where tariffs on Chinese imports were reduced from 6% to zero percent, and taking into consideration the Chinese and global import data from 2003, imports from China would increase in 168 million dollars, thus representing an increase of 3% on imports from China. The latter considers the sum of both trade creation and trade diversion.

In the case of trade creation, given that trade diversion basically means importing from China instead of importing from the rest of the world, the application of a zero tariff would imply an estimated increase in imports of 118 million dollars. In other words Chilean global imports would be raised by 0,7% due specifically to a tariff reduction towards Chinese products.

It is necessary to point out that in terms of imports, what is significant for the importing country is trade creation given that these surges imply greater competition within the internal market and will expose national producers to greater competition, thus to a more efficient allocation of productive resources.

**Table IV.1**  
**Assessment of the Impact on Imports of an FTA Between Chile and China**  
*(dollars CIF)*

Sector	ISIC Sub-Sector	Trade Creation	Trade Diversion	Total Trade Expansion
<b>I. Agriculture, Fruit, Livestock, Silviculture and Extractive Fishery</b>	<b>100</b>	<b>82.006</b>	<b>114.760</b>	<b>196.766</b>
	110 Agriculture, Fruit and Livestock	79.077	107.245	186.321
	120 Silviculture	2.417	6.159	8.575
	130 Extractive Fishery	513	1.357	1.870
<b>II. Mining</b>	<b>200</b>	<b>233.012</b>	<b>192.695</b>	<b>425.707</b>
	230 Extraction of other mineral	230.855	189.808	420.663
	231 Other minerals	10.441	13.742	24.183
	232 Non mineral mining	220.414	176.066	396.481
	240 Others	2.157	2.886	5.043
<b>III. Industry</b>	<b>300</b>	<b>117.801.609</b>	<b>49.783.952</b>	<b>167.585.561</b>
	310 Foodstuff and beverages	392.014	278.584	502.592
	320 Textiles and apparel	38.451.870	12.742.246	51.194.116
	330 Forestry and Furniture	1.023.293	712.358	1.735.651
	340 Cellulose, paper and by-products	295.450	314.004	609.454
	350 Processed and unprocessed chemicals	17.380.974	8.114.767	25.495.741
	360 Glass, clay and porcelain products	2.903.034	920.770	3.823.804
	370 Basic steel and iron industry	720.826	481.997	1.202.823
	380 Metal products, machinery and equipment	49.932.130	23.590.664	73.522.794
	390 Non specified manufactures	6.702.018	2.628.562	9.330.580
IV. Others	900	5.182	5.525	10.708
<b>V. TOTAL</b>		<b>118.121.809</b>	<b>50.096.933</b>	<b>168.218.742</b>

Source: Economic Research Unit, DIRECON (August 2004), based on data from Banco Central de Chile.

#### IV.4.A. The Effects of Tariff Reduction by Sector<sup>60</sup>.

##### *i. Agriculture.*

This sector, as a whole, is estimated to be the least benefited by tariff reduction, foreseeing a possible increase of only 196 thousand dollars, where 114 thousand dollars consists of are trade diversion and 82 thousand dollars represents trade creation. This, in comparison to actual 2003 import data, would imply an increase in 7% in agricultural imports.

The latter would represent a minimum effect on global imports and trade patterns in this sector. It would mainly be trade diversion from other suppliers. The reasons behind this is, on the one hand, that exports of China to Chile of agricultural products only accounts for 0,2% of total imports, but also, on the other hand that Chile is not a great buyer of these types of products, given that the internal productive sector is competitive in most agricultural products, the latter being supported by the fact that Chile is a net exporter of agricultural goods.

<sup>60</sup> As in Chapter II, sectoral analysis is based on the ISIC Classification.

ii. *Mining.*

As in the agricultural sector, the effects on the mining sector of a reduction in tariffs brought about by the subscription of an FTA would be relatively small, amounting to an increase of 425 thousand dollars, which in turn would represent a 10% growth rate of mining imports from China.

However, unlike the agricultural sector, trade creation in mining sector (233 thousand dollars) would exceed that of trade diversion (192 thousand dollars). The latter is due to the fact that sectoral imports would increase in those minerals that belong to the non ferrous minerals subsector, where Chile is a net importer, and therefore a tariff reduction would encourage greater demand from the internal market that would exceed the substitution effect brought about by the artificial price differential that tariff reduction would create.

iii. *Industry*

This sector will have the greatest impact of an FTA between Chile and China. The model estimates that imports in industrial goods would increase in 167 million dollars, concentrating 99,6% of the total growth of imports. Trade creation in this sector amounts to 117 million dollars (99,1% of total trade creation) and trade diversion to 49 million dollars (98% of total trade deviation). In terms of trade creation, this increase in imports would imply that Chilean total imports from the world would grow in 0,7%, *ceteris paribus*.

Within the industrial sector, the largest increases are focused in metal products, machinery and equipment sub-sector, that would grow in 49 million dollars, basically due to the rise in imports of electrical products (26 million dollars) and machinery and equipment (12 million).

The second sub-sector where imports would benefit most from tariff reduction would be the textile and apparel sub-sector. In this case, total trade expansion would reach 51 million dollars, representing a rate of growth of 10% of trade in this sector from China, of which 38 million dollars are trade creation and 13 million are trade diversion. Within this sub-sector the greatest surges are in textiles (18 million), confection and garments (11 million) and footwear (2,6 million).

In third place ranks the higher imports of products originated in processed and unprocessed chemical sub-sector that would reach, in terms of trade creation, 17 million dollars, which represents 15,5% of the total creation of trade in the industrial sector. Within this sub-sector the major increases are focused in rubber products (US\$ 9 million, 53% of total trade creation in the sub sector), plastic products (US\$ 3,7 million, 21,8%) basic chemicals (US\$ 3,4 million, 17%) and prepared chemical products (US\$ 1 million, 5,9%).

In general, the results are not surprising, given the nature and structure of imports from China as well as Chile's role as a net importer of industrial goods. It is also necessary to point out that in the majority of the industrial goods, trade creation well surpasses trade diversion, to the extent that it overcomes all the effects in all the other sectors. This can be

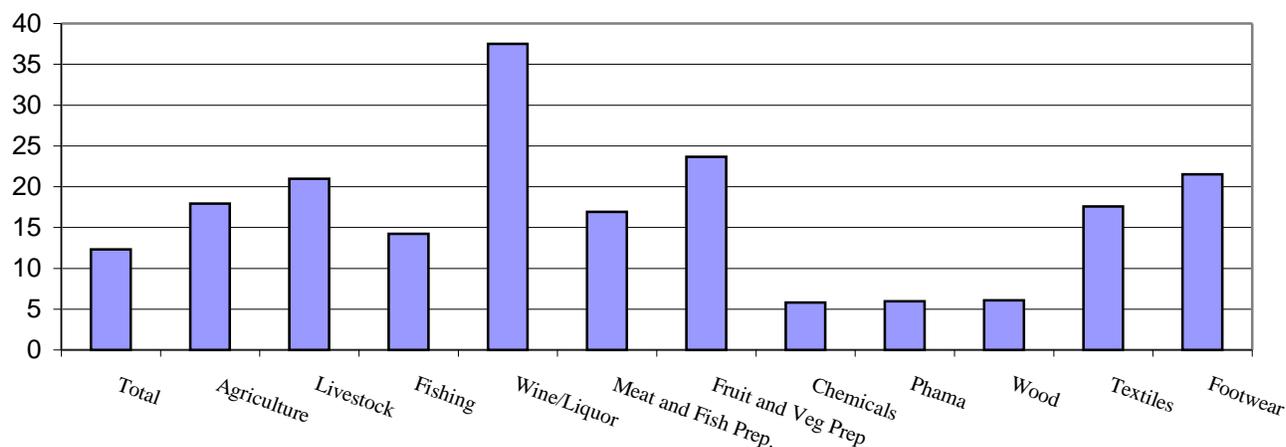
explained by a high substitution elasticity that this sector has, thus a small reduction in the price in the internal market will bring with it a change in demand in favor of that supply that has a smaller price.

#### IV.5. Results on Exports

The exporting challenge for the Chilean economy, in the Asian region, is to expand its exports not only in value but also in the amount of products that are sold to the Asian market. In general, the latter has been difficult for the positioning of non-traditional and emerging products of the Chilean export supply, especially in the agricultural, fishing, wood and foodstuff sectors. With the exception of Japan and recently Korea, given the new scenario of the bilateral FTA has brought about, none of the Asian countries has figured in the last few years within the 15 main export markets of non-traditional goods. China is a clear example of the projections and limitations of economic relations with the Asia Pacific region. The immediate benefits of a Free Trade Agreement derive from the opening of China and other Asian markets that are becoming more integrated to this economy, towards a greater array of Chilean exports, that in general represent at present a small percent of total imports.

As it has been said before, the models used to estimate the impact of trade liberalization are very limited in their results; this is even more so if we take into account export analysis given the actual patterns of exports to the Chinese markets. Chile on average has an export supply that covers over more than 5.231 different tariff lines, but only 253 are exported to China, thus the model will only take into consideration what would happen to these 253 products disregarding probable trade creation in the approximately 4.900 other export lines that would also benefit from tariff reduction and other issues addressed in the agreement that also affect directly trade flows.

Average Chinese Sectorial Tariffs



The Chinese economy still presents tariff and non tariff barriers that have contributed to circumscribe the amount of Chilean products towards a reduced amount of products that are mainly concentrated in natural resources, such as copper, fish meal and cellulose. China still maintains a system of tariff scaling that raise the market price of goods originating from the agriculture sector and industrial products derived from the mining and forestry sector. China has applied high basic tariffs on products of greater added value form the forestry sector and an ample gamma of products from the fishery, agro-industrial and fruit sectors. Finally China also imposes very restrict SPS measures that eliminate any possibility of competing let alone entering that market.

As a whole, these measures have impeded that Chiles's export offer can be extended towards products with higher aggregate value, that come from the mining and forestry sectors, and in the same way allowing market access in the Chinese market of emerging exports from the agro industrial and foodstuff sector.

**Table IV.2**  
**Main Exports to Japan by Sector**  
**that are not Exported to China**  
(dollars FOB and %)

H.S.	Product	Export Value	Chinese Tariff
<b>Fishery</b>			
16042090	other canned fish preparations	14.466.389	12%
03054919	Other trout	13.478.720	14%
03042051	Salmon	10.861.142	10%
<b>Chemicals</b>			
28417010	Ammonium Molydate	3.269.981	5,5%
28257010	Trioxide of Molydate	2.588.690	5,5%
29181200	Tartaric Acid	781.352	6,5%
<b>Livestock</b>			
02032990	Other swine meat fresh or refrigerated	82.716.175	12%
02032930	swine meat with no bone	61.052.542	12%
02032920	Bacon	8.202.313	12%
<b>Forestry</b>			
44121910	Other plywoods	4.015.349	4%
44081010	Plywood boards	2.599.796	8%

Source: Central Bank of Chile

To illustrate the above, tables IV.2 and IV.3 show products from the fishing, chemical, meat and forestry sectors that compile the bulk of Chilean exports to other Asian markets with a similar demand structure, mainly South Korea and Japan. As it can be seen, the majority of these products face high tariffs when entering the Chinese market. The latter allows to assume that an FTA between Chile and China will generate a significant broadening in the variety of the products exports towards that market, specially en products that belong to sectors such as: agricultural, forestry, fishery, agro-industry (foodstuff) and inorganic chemicals. This assumption is supported by the important surge in the number of products

exported to Korea (pig meat, sardines, king crab, paper, etc.) brought about by the coming into force of the FTA in April of 2004.

**Table IV.3**  
**Main Exports to South Korea by Sector**  
**that are not Exported to China**  
(dollars FOB and %)

H.S.	Product	Export Value	Chinese Tariff
<b>Fishery</b>			
03037960	Sting Rays	5.893.123	10%
03037111	Sardines, Whole	1.233.158	12%
03037971	Common Sardines, Whole	441.600	10%
<b>Chemicals</b>			
29051100	Methanol	125.853.591	5,5%
28417010	Ammonium Molydate	271.129	5,5%
<b>Livestock</b>			
02032920	bacon	35.150.234	12%
02032990	Other swine meat fresh or refrigerated	11.396.472	12%
02032290	Other swine edible parts	2.365.353	12%
02032930	swine meat with no bone	2.184.713	12%
<b>Forestry</b>			
44102100	Wood boards	1.375.684	4%

Source: Central Bank of Chile

On the other hand, it has to be taken into account that an additional benefit of a bilateral FTA would be to offset the fact that many of the products that Chile exports to China, at present or in the future, face distorted competition, in terms of tariff preferences that China gives to Chile's main competitors in an important number of products, be this by trade agreements that are in force or that will be negotiated in the near future. The above specifically refers to the agreements that China has with ASEAN countries (mining, forestry, chemical products and fishing), the broadening of preferences towards the economies of central Asia, the negotiations that will be undertaken with New Zealand (lumber, fruit – apples) and, presumably, with Australia (wine, fruits, meat and lumber), according to what is shown in Table IV.

In terms of the results of the model on Chilean exports, a tariff reduction on behalf of China would imply a growth estimated in 69.6 million dollars, which means an increase of 3,7% in exports to China, and in terms of total exports to the world, a raise in 0,3%, *ceteris paribus*. It must be stressed that these results only apply to the present 253 products that are at present being exported to China. Therefore, the following sections, even though they reflect the results given by the model, also take into account other factors that must be considered that go beyond the model and would reflect a more comprehensive result of trade liberalization not only in tariffs but also in other aspects of non tariff measures

**Table IV.4****Assessment of the Impact on Exports of an FTA Between Chile and China***(dollars FOB)*

Sector	ISIC Sub-Sector	Trade Expansion
<b>I. Agriculture, Fruit, Livestock, Silviculture and Extractive Fishery</b>	<b>100</b>	<b>19.743.122</b>
	110 Agriculture, Fruit and Livestock	16.469.268
	120 Silviculture	12.677
	130 Extractive Fishery	3.261.178
<b>II. Mining</b>	<b>200</b>	<b>3.030.287</b>
	220 Copper	2.841.074
	230 Other	189.213
<b>III. Industry</b>	<b>300</b>	<b>46.857.294</b>
	310 Foodstuff and beverages	37.271.740
	320 Textiles and apparel	530.486
	330 Forestry and Furniture	944.947
	340 Cellulose, paper and by-products	807.697
	350 Processed and unprocessed chemicals	6.909.487
	360 Glass, clay and porcelain products	2.512
	370 Basic steel and iron industry	339.513
	380 Metal products, machinery and equipment	50.513
390 Non specified manufactures	420	
<b>V. TOTAL</b>		<b>69.630.703</b>

Source: Economic Research Unit, DIRECON (August 2004), based on data from Banco Central de Chile.

**IV.5.A. The Effects of Tariff Reduction by Sector.***i. Agriculture, Forestry and Fishing.*

Chile's agriculture sector (excluding the processing of agricultural goods) is important in terms of production, employment, and trade. Its contribution to GDP was 4.1% in 2003, about the same as in 1996. Depending on the season, Chile's agriculture sector employs between 12.5% and 13.8% of the economically active population.

In 2003, Chile exported agricultural goods (WTO definition) to a total value of US\$1,995.6 million, equivalent to some 9.5% of its total exports. Chile is an important exporter of grapes, apples, and berries. Its main export markets for agricultural products are the United States, the European Union, and Japan.

According to the 1997 National Agricultural Census, Chile had almost 330,000 farms, including just over 100,000 subsistence farms and 176,000 small farms. While the small-farming sector tends to specialize in vegetables, flowers, and dairy farming, Chile's 17,000 medium-sized farms and 9,500 large agricultural operations, which together control 77% of usable farmland, tend to focus on forestry, fruit growing, and cattle raising. Chile's total

area used for farming, stock-breeding, and forest plantations is about 17.7 million hectares. The authorities note that, as a consequence of trade liberalization, a diversification in agricultural production has taken place over the last few years, including a shift from annual crops to fruit and vegetable production and stock-breeding.

Chile is one of the world's largest exporters of fresh and processed fruits. It has about 7,800 fruit producers, farming over 211,000 hectares in 2003, up from 187,000 hectares in 1996. Production is concentrated on grapes, apples, avocados, and pears; industry output expanded to 3.8 million tons in 2003.

Besides benefiting from a favorable climate and geography, Chile's location in the southern hemisphere allows producers to target off-season northern hemisphere markets, giving exporters, especially of fresh fruits, an important competitive edge. Furthermore, about 35% of Chile's cropland is irrigated, compared with an average of 13.7% in Latin America.

Farming in northern Chile (Regions I to VII), which and relies on artificial irrigation is export-oriented. On the other hand, producers in southern Chile (Regions VIII to XII), where cattle farming and annual crops predominate, cater mostly for the domestic market. Foreign direct investment in farming and stockbreeding averaged US\$30 million annually between 1996 and 2003. Foreign investors are granted the rights laid down in the Foreign Investment Statute (Chapter II(4)). The presence of overseas companies has helped to increase the sector's productivity, contributing to far-reaching modernization that has included not only production methods but also marketing and branding techniques, and has increased the industry's integration into international trading and distribution circuits. Foreigners may own agricultural land without limit.

In the case of forestry, Chile has large softwood plantations, consisting mostly of pine trees and eucalyptus. Its forest plantations cover 2.1 million hectares, equivalent to 18% of the total surface covered by forests and 2.8% of the national territory.

According to estimates provided by the authorities, the forestry sector contributed about 0.7% to GDP in 2001. In addition, the processing of wood and wood products contributed about 1.4%, and the production of paper accounted for another 1.9% of GDP. Chile is the world's third-largest exporter of woodchips and also exports nearly 50% of its saw timber, panels, and softwood pulp production. Paper production is mostly consumed domestically. Chile's forestry sector is regulated by the National Forest Corporation (CONAF) of the Ministry of Agriculture, in accordance with the Forest Law (Supreme Decree No. 4363) of 1931, Decree Law No. 701 of 1974, and Law No. 19.300 of 9 March 1994. In addition, the Forest Institute (INFOR) of the Ministry of Agriculture undertakes research with a view to promoting a sustainable use of Chile's forests.

Pursuant to Decree Law No. 701, CONAF must authorize the use of land for forest plantations following a request by an enterprise and an analysis of the territory. The Law also provides for re-forestation requirements for the exploitation of planted forests. There are special provisions for small-scale enterprises engaging in forestry; for example they are exempt from providing re-forestation studies and utilization plans but not from re-forestation

requirements. Law No. 19.300 lays down the principles of environmental protection in Chile. In addition, the authorities indicate that legislation is before Congress, with a view to make a more sustainable use of Chile's native forests.

In terms of fishing and aquiculture, The contribution of these products to GDP increased from 1.2% in 1996 to 1.5% in 2003. Compared with other sectors of the economy, foreign direct investment is relatively limited in the fishing sector, with annual FDI averaging less than US\$27 million between 1996 and 2003. While the importance of aquaculture has tended to increase, the Chilean catch has decreased since the mid-1990s. According to the authorities, this decline reflects overexploitation of dwindling stocks in some highly migratory species, mainly due to fleets from third countries operating near Chilean territorial waters; more stringent controls; and shrinkage in the national large-scale fleet to 370 boats from around 900 at the beginning of the 1990s.

Aquaculture has become increasingly important; by 2001 more than 2,250 concessions had been issued for the cultivation of fish, mollusks, and seaweed. Fish cultivation (711 concessions) takes place mainly in Regions X and XI in southern Chile; salmon and trout are the most important cultivated species. The cultivation of mollusks (740 concessions) and seaweed (693 concessions) is concentrated in Region X. Based on a favorable geographic location and low-cost inputs, Chile has become the world's second-largest producer of farmed salmon after Norway, with a world market share of 20%.

In accordance with the Law on Fisheries and Aquaculture of 21 January 1992, the fisheries sector is regulated by the Sub-secretary of Fisheries, a dependency of the Ministry of Economy. The National Fisheries Service (SERNAPESCA) is responsible for issuing and enforcing technical regulations and sanitary requirements in the fisheries sector.

In order to attain a sustainable level of exploitation of the existing resources, the Law on Fisheries and Aquaculture establishes specific systems to limit access to fishing: (i) a general access regime; (ii) a regime for species in full exploitation; (iii) a regime for fisheries that are replenishing; and (iv) a regime for incipient fisheries. Permits to exploit species classified under the general access regime or the full exploitation regime are generally granted automatically, but may not be if, *inter alia*, the request is made by a factory ship. Licenses to exploit species that are incipient or in the process of regeneration are granted for ten years through public bids. The licenses are transferable and are specified as a share of a global quota.

According to the estimates based on the model, exports of agricultural goods would grow in 19.7 million dollars (28% of total expansion of Chilean exports). This figure may appear relatively small, but compared to the present level of agricultural exports; this figure represents an increase of 95%. The impact would be highly concentrated in the exports of fruits, which would explain around 70% of the sector's gain. As a whole, this sector represents the largest proportional gain in exports given a situation where tariffs would be reduced to zero.

The latter result by all means underestimates the probable effects that an FTA would bring about. At present this sector exports 39 products (tariff lines) to the Chinese market, facing tariffs beyond the general average of the Chinese tariff schedule and even the agricultural sector in particular. However it must be considered that this export structure is very restricted compared to this sector's exports to the world.

China considers all components of the agricultural sector as sensitive, given that around 60% of the Chinese population base their subsistence on agricultural activities, with a very low productivity yield; thus the foreign trade administration has been applying a system that is based on quotas, where tariff within the quota are relatively low but the tariffs that lay beyond the quota can reach tariff peaks of up to 60%. However with China's WTO accession, there has been a period of aggressive reform; reforms that should be enhanced bilaterally with a bilateral FTA between China and Chile.

It is clear that in this sector, the major benefits of a Free Trade Agreement would not come from tariff reduction, given the actual position of competitiveness of the Chilean economy in this sector as well as counter seasonal factors, rather, the real benefits would come from clearer and more transparent regulations on non tariff barriers that should be considered in a comprehensive FTA.

In terms of calculating probable results from a comprehensive FTA, this is impossible, however the potential for the sector can be approximated given the results of other FTAs that Chile has signed. The best approximation given the size of demand from the Chinese

market would be to consider a potential that the Japanese market represents for the sector, given the degree of competitiveness of the Chilean market and the counter seasonal consideration, however in terms of short term results the best benchmark would be the Korean market given the market conditions in the sense of structure and demand, as well as the preliminary results of the bilateral FTA that came into force since April of 2004.

The latter would imply that the agricultural sector would probably see a raise not only in the value of trade flows but also the extension of exports supply to products otherwise barred from the market due to the application of non tariff barriers that where substantially eliminated or regulated though the agreement.

## *ii. Mining*

The mining sector contributed 7.1% to Chile's GDP in 2003, up from 6.7% in 1996. Employment in the sector decreased from 1.8% of the labor force to 1.3% over the same period, reflecting a strong increase in the sector's labor productivity. Foreign direct investment in mining is substantial; annual FDI flows averaged over US\$1.3 billion between 1996 and 2003. Chile's mining exports amounted to US\$8.7. billion in 2003, equivalent to 42% of total exports.

With a wide variety of high-quality minerals, and well over a century of mining experience, Chile has one of the largest and most-developed mining industries in the world. Chile is the world's leading supplier of copper and copper ores and concentrates, with 165 million tons of proved copper reserves. Chile is also an important producer of gold, manganese, molybdenum, silver, and zinc.

Chile's total copper production reached around 4.6 million tons in 2003. Exports of copper products in 2003 totaled US\$ 7.5 billion, including US\$ 4.2 billion of copper cathodes and US\$ 2.5 billion of copper concentrates. Chile's main export markets for copper are the United States, Japan, China, Italy, and France.

The State still plays a crucial role in Chile's mining sector, especially in the production of copper. State participation in production is through the National Copper Corporation (CODELCO) and the National Mining Company (ENAMI); these state-owned enterprises are the world's first and the eighth exporters of copper products. According to the authorities, there are no plans to privatize these enterprises.

CODELCO continues to be the world's largest single producer of copper; it is also one of the main producers of molybdenum. In 2003, CODELCO produced 1.7 million tons of copper (Table IV.8), equivalent to about 12.5% of world output, up from 1.2 million tons in 1996. A fixed 10% of the value of CODELCO's external sales is allocated to the Armed Forces, whereas CODELCO's profits are paid into the general State budget. CODELCO also has joint ventures both with national and foreign companies, in Chile and abroad, for exploration, production of electricity, production of mining equipment, and production of manufactured products such as metal wires.

As in other sectors, foreign investors in Chile's mining industry can opt to conclude a contract with the State of Chile under Decree Law No. 600, which authorizes and protects the investment (Chapter II(4)). Under this statute, investors in the mining sector have eight years to bring in the capital; in other sectors the period is three years. The period may be extended by the Foreign Investment Committee to up to twelve years when prior exploration is required.

Without a doubt, the mining sector is the most significant sector in terms of exports to China, it is also the sector that has most benefited by the elevated demand of raw materials by the Chinese economy in the past three years. Although China is a large copper producer and in the past has been self-sufficient with minor imports from Asia, mainly Mongolia, and some African suppliers. Given the huge increase in demand these sources have no longer been enough, in the case of African suppliers given the political and economic instability of the region that has affected supply through reduction in production, and in the case of China the elevated cost of new explorations. Thus, China has been increasingly buying copper from Chile so as to feed its refineries and its industries with refined copper.

Although mining exports explain around 74% of Chile's exports to China, this sector would not be the most favored by an FTA. According to the model, mining exports would grow in 3.0 million dollars (4% of total expansion of Chilean exports), representing only a small increase of 0,2% in mining exports, concentrated mainly in copper or copper related products.

This relatively small growth is due to the fact that the present tariff that mining products face in the Chinese market are relatively low compared to other sectors, meaning that a reduction in the present tariff will not substantially reduce prices in that market.

### *iii. Manufacturing Industry*

Although its value added in real terms has increased, the contribution of manufacturing to GDP has declined, from 17.5% in 1996 to 17.0% in 2003. The authorities indicate, however, that this percentage does not include the activities of smelting, refining, and alloying, which are imputed to the value added of the mining sector. Employment in the sector decreased from 16.3% in 1996 to 14.2% in 2003. Chile's manufacturing sector makes intensive use of local natural resources, specifically within the fishing, forestry, and mining sectors. The most important manufacturing activities include agricultural processing and packaging and production of chemical goods, paper, and steel products. Annual foreign direct investment in the manufacturing sector averaged US\$567 million between 1996 and 2002.

Based on the ISIC classification of goods, Chile exported manufactured goods for US\$ 9.7 billion in 2003, it must be noted that the ISIC classification take into consideration for industrial goods all exports that have some degree of industrial process.

The most important export destinations for Chile's manufactures include the United States (20.9%), Argentina (10.6%), Peru (9.1%), Mexico (8.9%), and Brazil (8.7%). Manufactured

imports originate mainly in the United States (28.7%), Brazil (8.9%), Germany (5.5%), and Argentina (5.3%). Chile is a net importer of all major categories of manufactured goods; its most important manufactured exports are chemicals and other semi-manufactures. Imports center around machinery, transport equipment, and chemicals.

Chile has generally restricted the use of trade policy measures as instruments of industrial policy. Based on the ISIC definition, the average tariff for the manufacturing sector is 5.9% (as of March 2003). With the exception of 95 tariff lines that are duty-free, all manufactured goods are subject to an MFN tariff of 6%. In the Uruguay Round, Chile bound all its manufactured goods at a uniform rate of 25%, with the exception of six items that already had lower bound rates as a result of pre-Uruguay Round Commitments (Chapter III(2)(iv)(b)). Like other activities, the manufacturing sector is eligible for two duty drawback systems and a system of deferred payment of customs duties and tax benefits (Chapter III(3)(v)).

Like on imports, this sector shows the greatest effects of tariff reduction, in actual value terms, and is second to the agricultural sector in relative increase. In the case of industrial exports these would experience an increase of 46.9 million dollars (67%). In terms of present trade, the latter would mean an increase of 10,0% in manufacturing exports, all things being equal.

Once again it must be stressed that these results represent what would happen to actual trade in the sector. The latter is not minor, specially considering that in this sector Chile has an export basket that spans more than 4.898 tariff lines, and at present Chile only exports 203 tariff lines from this sector to China.

It is clear that this sector would be most benefited from tariff reduction, and is of great interest to the Chilean export sector, given that it is the sector where actual tariffs are higher than in other sectors. However, as the agricultural sector this section no only faces higher tariffs due to greater aggregate value of its products, but it also faces non tariff barriers such as SPS measures that affect the foodstuff sub sector and measures that affect importation and commercialization, such as quotas and import and distribution licensing.

Therefore, in light of a comprehensive agreement that strives towards tariff reduction as well as seeking to eliminate import quotas, the creation of clear and transparent procedures that integrally affect trade and commercialization, would create conditions second to none and thus enhancing current trade and expanding trade not only in value but also the scope of products in the Chinese market.

The disaggregated analysis shows that the main source of growth can be found in foodstuff and beverages with US \$ 37.1 million (79% of total expansion of this industry exports). This is not surprising given that this is one of the sectors that in the case of an FTA, would be most benefited by tariff reduction, due to the fact that at present it is, in terms of Chilean export structure, this sub-sector where tariffs are higher or at least above average.

In general terms, and given the potential of Chilean exports in this sector, it can be said that transversal tariff reduction in this sector would open up windows of opportunities for other products that are being exported to Asian markets such as Japan and Korea but not to China, given tariff restraints, that would be eliminated through an FTA, as well as SPS and licensing issues. Such is the case of certain types of beverages, like wine, that at present have an interesting base in the Chinese market, but have greater potential if current commercialization restrictions were lifted.

The latter would also apply to certain meat products that face harsh SPS measures, and given excellent demand conditions within the Chinese market for these products, and also taking into consideration current trade flows to the Japanese market and Korean market as a benchmark, a comprehensive FTA that tackle actual constraints would bring about interesting results in trade in these goods.

In second place ranks the processed and unprocessed chemical sub-sector, with greater exports reaching an amount of 6.5 million dollars, 14% of the total expansion of industrial exports. This result, equivalent to a growth of 9.6%, may seem surprising considering the fact that this same sub-sector in terms of imports of Chinese products would also see an important growth. The reason would be that certain specific products within the sub-sector would be highly benefited from tariff reduction, thus evidencing the high-level trade complementarity in this sector.

Specifically, the benefits to this sector would come about in terms of competitiveness gains compared with other markets. At present Chile has not been able to enter the Chinese market in certain products as it is crowded out by imports from countries like Thailand, in certain light oils, or by Russia in terms of mineral fertilizers. The competitive advantage of tariff reduction over these economies would substantially enhance exports, specially considering that Chilean exports of these products to the world reach a value of over US\$ 100 million, with a potential that would exceed all expectations.

The sub-sector of forest products, cellulose, paper and by-products would be the third most benefited, and would see a growth of 1.7 million dollars (4% of total expansion of manufacturing exports), distributed evenly between cellulose and paper products and forest products.

Within this sub sector, other products that would be benefited, and are overseen by economic modeling, would be manufacture woods such as certain plywood's as well as strips and moldings of wood for furniture, and frames. At present their importance within the Chinese market is fairly marginal, given that China is, in certain products, a net exporter. However, with a significant tariff reduction, present tariffs that are above average on most products, this sector would see a boost in competitiveness in that market in certain niches, where Chilean exports are at present crowded out by imports from neighboring Asian countries. Thus, given the degree of export to other Asian countries, as well as markets with similar demand structures as the Chinese economy, it can be foreseen that increases in demand would be quite interesting for this sub sector.

In terms of other sub sectors within the industrial export sector, the model analysis show marginal increases as a result of tariff reduction. The latter is not strange given the limited amount of products that are being exported to the Chinese market. However, if the same rationale that applies to the other major sub sectors is applied, in terms of transversal tariff reduction as well as comprehensive reduction in non-tariff barriers, it can be said that the results would see some interesting gains, especially in certain niches where Chile would gain competitiveness versus other suppliers to the Chinese market.

#### **IV.6. Conclusions**

In general, it should be stressed that the results portrayed by the model underestimates the effects of a tariff reduction on Chilean exports. This is explained by the fact that according to the 2003 data, Chile only exported 253 products<sup>61</sup> to China out of 5.231 of products that Chile exports to the world. So, as the model is a static model, it only contemplates or answers what would happen to the 253 products that are actually traded, and therefore not taking into consideration that a tariff reduction will induce trade in other products that are not actually being traded due to high tariffs.

Unfortunately, the latter is impossible to quantify with the existing mathematical or econometrical methods. However, a qualitative analysis that takes into account the latest trends in the Chinese economy, so as to understand how demand has evolved in the past five years, as well as a description of Chinese tariffs according to each economic sector, may allow to estimate the possibilities that will arise from tariff reduction and thereof give a better picture of the real effects of a bilateral FTA.

In terms of the latest trends in the Chinese economy, it can be said that in the past five years there has been a sharp change in the economic fabric of Chinese society, which together with a great increase in urban population has bought about an increase in the middle class, reaching about 300 million people. These two factors have marked the trend in consumption, especially of foodstuffs. The latter is not minor variable, specially considering that it is calculated that around 50% of per capita income in China is spend on food, which has to satisfy tastes that day on day are becoming more refined in accordance to a growing middle class.

In the same sector, there is the fact that internal supply has to meet the challenge of satisfying an increasing demand given the growth of population. In the last decade the latter has grown in 10,3%. To be able to quantify the impact of population growth it should be taken into account that in China each hectare must feed, on average, ten people whereas the world average is 4,4, people.

On the other hand, in terms of Chinese tariff structure, although at present Chilean supply of goods to the Chinese market face fairly low tariff rates, if one looks at the Chinese tariff structure as a whole, it can be seen that on average tariffs on commodities are fairly low in comparison to manufactured products. The latter is more apparent if it is considered than on

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<sup>61</sup> When we refer to products we are considering an 8 digit HS tariff line.

average, 63% of all tariff lines face duties that range from 7% to 30% *ad valorem*, where 80% of these correspond to manufactured goods.

Thereof, under this scenario, in the case of an FTA negotiation that would bring tariff down in all sectors, given the above mentioned demand conditions in the Chinese market, Chilean products could become fairly competitive because of the extra edge of tariff reduction.

An example of the latter would be products in the foodstuff sector, where on average more than two thirds of the products in this sector face tariffs that ranges between 7% and 30% *ad valorem*. The same would probably occur in the agricultural sector, where around one third of the products that belong to this sector have tariffs that range between 7% and 40%.

In general, it can be said that once tariffs are reduced, there would be no question about the opportunities in terms of trade creation towards the Chinese market for products that are at present not being sold to China. In the short and medium run there will be an increase in production to cover demand in those traditional markets as well as the new opportunities in China.

#### **IV. 7. Trade In Services**

In 2003, the service sector contributed around 53% to GDP, up from 51% in 1996.<sup>62</sup> Employment in the sector grew faster than in others; in 2003, 63% of the economically active population worked in the services sector, up from 57.9% in 1996. In 2001, Chile's services exports amounted to Ch\$2,342 billion and imports amounted to Ch\$1,884 billion.

According to figures provided by the Foreign Investment Committee, annual foreign direct investment in the services sector averaged US\$1,762 million between 1996 and 2003. Foreign investment in Chile's services sector is subject to the provisions of the Investment Law or of Chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulations (Chapter II(4)). Sectoral exceptions to market access remain in maritime transport.

As a consequence of Chile's long running privatization policy, state involvement in services is limited. The State retains ownership of BancoEstado, the postal and railway services, and public television. The State also owns major seaports and airports; however, these have been increasingly given in concession to private operators. The authorities indicate that involvement of the State in any of the sectors mentioned does not in any way preclude private participation.

In the context of preparations for the 1999 Ministerial Conference, Chile, together with Australia and New Zealand, proposed that the services negotiations should improve market access significantly for developed and developing countries. To this end, the negotiations should achieve higher levels of liberalization in all services sectors, including air and

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<sup>62</sup> Following the UN System of National Accounts, the construction, electricity, and water industries are part of the industrial sector.

maritime transport; simplification of schedules, and greater transparency in commitments; limitation of scope and number of MFN exceptions; and the development of binding rules on domestic regulation.<sup>63</sup>

In the ongoing negotiations on services, Chile has emphasized the importance of eliminating the lack of symmetry in the commitments undertaken by Members in respect of the different modes of supply recognized by the GATS.<sup>64</sup> It noted with concern that commitments in mode 4, i.e. the supply of services through the presence of natural persons, are primarily horizontal and these horizontal commitments are subject to many kinds of limitations. Further, they are bound for only a small subset of service personnel related to commercial presence and at higher levels, and very few commitments extend to independent movement. Chile indicated as main sectors of interest: professional services, construction and engineering, transport services, telecommunication services, distribution services, and energy services.

- **Financial services**

In 2003, financial services (including rent of buildings) accounted for 14% of GDP, up from 12.1% in 1996. Employment in financial services increased from 6.8% of the labour force in 1996 to 7.7% in 2003. Foreign direct investment plays a crucial role in the sector and totalled US\$12.9 billion between 1996 and 2000.<sup>65</sup> According to the Central Bank, Chile's imports of financial services were Ch\$684 billion in 2001, equivalent to about US\$1.08 billion; exports amounted to Ch\$274 billion (about US\$432 million).

- b. **Banking**

As of December 2002, Chile's banking system held about US\$63 billion in assets, equivalent to about 98% of GDP. Chile's banking sector comprises fifteen private banks (of which six are controlled by foreign banks), one Government-owned bank (BancoEstado), and nine branches of foreign banks. Foreign-owned or controlled banks and branches account for about 45% of total deposits and loans. BancoEstado is a commercial bank subject to the same regulatory environment as privately owned banks; it seeks to ensure banking services to all regions, maintaining a large volume of passbook savings accounts and making a substantial amount of low-income housing loans.

Chile's banking sector has undergone significant changes in recent years, most notably various mergers and acquisitions, which has led to increasing concentration in the sector. The ten largest banks account for some 85% of deposits and loans. Interest rates have been decreasing since 1998. The average spread between lending and deposit rates has ranged between 3.7% and 5.7% since 1996. As at March 2003, the lending rate stood at 5.7% and

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<sup>63</sup> WTO document WT/GC/W/204, 14 June 1999.

<sup>64</sup> WTO document S/CSS/W/88, 14 May 2001.

<sup>65</sup> Due to the use of different methodologies, Central Bank figures do not match those provided by the Foreign Investment Committee.

real interest rate at about 1.6%. Dollarization of Chile's banking system remains relatively low; by the end of 2002, 10% of bank deposits were dollar-indexed.

Chile's banking sector is regulated by the Superintendency of Banks and Financial Institutions, an autonomous institution linked to the Ministry of Finance, and the Central Bank of Chile.

b. Insurance

At the end of 2002, there were 55 insurance companies operating in Chile, of which 23 were providers of property insurance and 32 were life insurance companies. Since 1997, three new general and nine life insurance companies have been incorporated, and four general and nine life insurance companies have closed down or were absorbed through mergers and acquisitions.

Chile's insurance sector is governed by the Insurance Law (Decree with Force of Law No. 251 of 1931). The Superintendency of Securities and Insurance is responsible for the enforcement of the Law and for regulating the Chilean sector.

Licences for insurance and reinsurance providers are granted by the Superintendency of Securities and Insurance. Any interested legal or moral person must meet a minimum capital requirement of U.F. 90,000 (equivalent to US\$2.7 million) for an insurance company, and U.F. 120,000 for a reinsurance company (US\$3.6 million). The Superintendency must be informed of the identity of any shareholders with a participation of 10% or more, who must fulfil the requirements of integrity and solvency. Foreign insurance providers that wish to offer insurance or reinsurance services in Chile must incorporate a Chilean company. In addition, foreign providers establishing a Chilean reinsurance company must have an international risk rating of at least BBB. Companies providing life insurance are not allowed to offer property insurance and vice versa. Insurance premiums are set freely by the individual companies and are not subject to approval by the Superintendency.

c. Capital markets

Since 1997, the Government has taken a number of measures aimed at modernizing the domestic capital market and allowing for greater financial integration. In particular, Law No. 19.769 of 11 October 2001 introduced a number of institutional and fiscal reforms. The law provides for a deregulation of the rules governing mutual funds, most notably by improving the flexibility of investment limits and thus allowing the design of more efficient portfolios. It also created the post of the General Fund Administrator, which allows asset managers to simultaneously manage mutual funds, investment funds, and housing funds. The law introduced various tax reforms, reducing stamp taxes, capital gains taxes, and interest taxes for foreign investors.

## Telecommunication

The Chilean telecommunications industry has expanded rapidly in recent years. The contribution of the communications subsector to Chile's GDP increased from 1.9% in 1996 to 3.1% in 2002. Growth rates have been particularly high for mobile connections, which increased more than 17-fold between 1996 and 2003. There are 14 fixed-net service providers, five providers of mobile services, and 20 companies providing international telecommunications services. Telefónica CTC has a dominant market position as a fixed-net provider in 10 of Chile's 13 regions. Since the early 1990s, Chile's telecommunication sector has been fully privatized; the State is not involved in the provision of telecommunications services.

## Transport

Chile's transport sector accounted for 7% of GDP in 2003, up from 4.5% in 1996. The Ministry of Public Works, through the Subsecretary of Transport is responsible for regulating Chile's transport sector.

Chile's GATS commitments for transport services are relatively limited, but no limitations are listed on market access and national treatment for the commercial presence of foreign suppliers for a number of services related to air transport. In the ongoing WTO negotiations on services, Chile expressed its hope that substantial progress would be achieved in the liberalization of air and maritime transport services, which have remained subject to weaker disciplines with little or no liberalization.<sup>66</sup>

## Assessment of Impacts of an FTA

In terms of assessing the possible impacts that a bilateral FTA between Chile and China would have on services, unfortunately the absence of a quantitative model as well as reliable data on bilateral trade in services, only allows us to undertake a qualitative analysis.

In the case of service imports, Chile at present does not have substantive restrictions on trade in services, thus an FTA that covers bilateral trade in services would have little direct impact on service imports from China.

However, given that the actual pattern of bilateral trade in services is directly related to trade in goods, it can be said that growth in trade would bring about a growth in services related to supporting that trade, specially in trading, financial services, transport services and professional services related to trade in goods.

In the case of China, it can be said that present restrictions on trade in services are quite substantial, thus a reduction in these restrictions would present interesting opportunities within the sector, and not only in those services trade related.

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<sup>66</sup> WTO document S/CSS/W/88, 14 May 2001.

Specifically, a substantial reduction in restrictions allowing a greater degree of market access as well as an adequate and transparent judicial framework would create opportunities in professional services, in particular those related to the financial sector and pension funds, the latter due to structural reforms in the pension system that will probably take place in the Chinese economy in the near future.

Also, in the case of services related to trade, it would be expected that greater trade would come hand-in-hand with a greater demand for services that would support this trade, specifically in transport services, be it maritime or air transport, as well as insurance brokerage, certification, marketing and distribution etc.

#### **IV.8. Investments**

Chile has achieved widespread recognition for its strong track record in attracting FDI. Between 1974 and 2003, materialized foreign investment totaled US\$ 64.4 billion, of which 86.6% entered the country after 1990. According to the World Investment Report 2003, published by the United Nations Conference on Trade and Development (UNCTAD), the stock of FDI in Chile reached almost 70% of GDP by 2002, up from just 33.2% in 1990.

During the 1990's, FDI inflows represented an annual average 6.4% of Chile's GDP, rising to 8.3% between 1995 and 2000. After the surge of FDI in the 1990's, and after reaching a US\$ 9.9 billion record-high in 1999, foreign investment inflows have been dropping, falling by 33% in 2002 and by an additional 35.5% in 2003. Although disappointing, these results do not reflect a change in Chile's competitiveness, but are the consequence of a sharp downturn in international economic conditions, which has affected FDI in almost all countries, with the exception of China (In fact, China displaced the United States as the largest recipient of FDI inflows for the first time in 2002).

As from 2001, the mergers and acquisitions market -previously the driving force of FDI around the world and in Chile- collapsed in the face of global economic uncertainty, a drop in share prices, and weaker corporate earnings, while multinational companies cut back their expansion budgets. To some extent, this trend represented a return to more sustainable and realistic levels of FDI, after the so-called "investment bubble" of the 1990's during which global capital flows reached record levels.

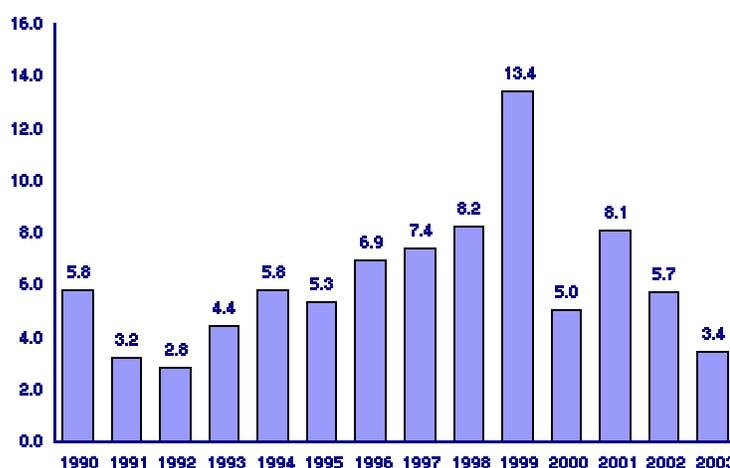
Moreover, FDI flows into Latin America have also been affected by instability in some of the region's countries, and the heavy losses sustained by a number of investors. As a result, risk aversion -accentuated by shareholder pressure in firms that have experienced difficulties- also helps to explain weaker FDI in the region. While there has been no scale withdrawal from Latin America, investment are being delayed and some investors, specifically foreign banks, have left the region.

In the case of Chile, FDI figures have also been distorted in recent years by a trend towards greater use of the local capital market by foreign investors. Encouraged by the high liquidity and dynamism of the country's financial sector and its historically low interest rates, an increasing number of overseas companies are sidestepping exchange rate risk by raising

finance locally, either borrowing from local banks or placing bonds on the local market. This trend, although very positive for Chile's financial market, is reflected negatively in the figures for incoming FDI.

The local debt market has proved particularly attractive to the infrastructure concessions companies that are developing long-term projects in Chile. The consortium that holds the concession contract for the new Autopista Central expressway in Santiago, formed Spain's Dragados and Sweden's Skanska, has, for example, raised US\$ 367 million in local inflation-indexed bonds. Similarly, the consortium, led by Italy's Impregilo, which is building the city's Costanera Norte expressway, has raised US\$ 265 million.

**Foreign Direct Investment in Chile\***  
As % of GDP: 1990 - 2003



\*Includes investment through Chapter XIV, Chapter XIX and the Foreign Investment Statute (D.L. 600)

Sources: Central Bank of Chile, Foreign Investment Committee

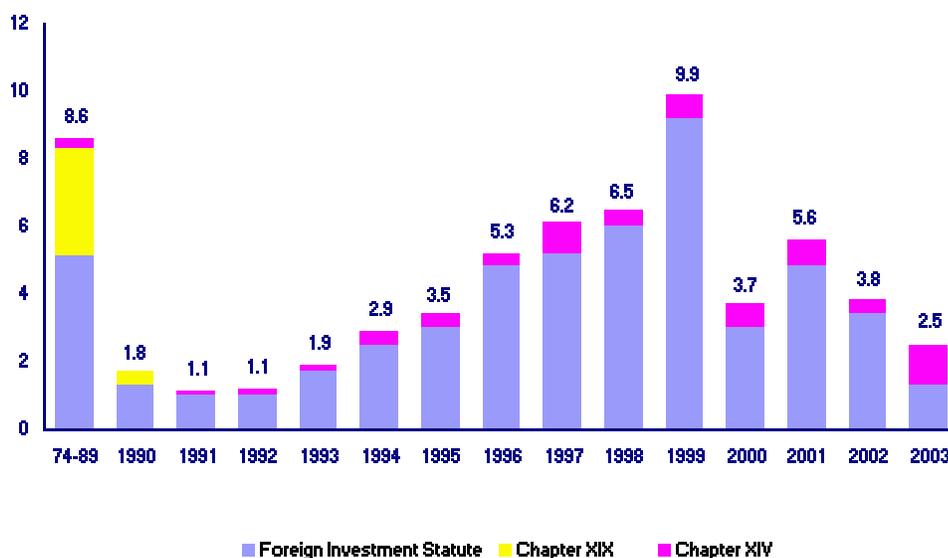
## • Investment Mechanism

Since 1974, when the Foreign Investment Statute (D.L. 600) came into force, the vast majority of foreign investors have chosen to use this mechanism, under which an investor signs a legally binding contract with the State for the implementation of an individual project and, in return, receives a number of specific guarantees and rights (set out in the Policies, Regulations and Procedures section of this website). Between 1974 and 2003, investments worth US\$ 53.3 billion, representing 83% of the total FDI inflow, used this mechanism.

However, a simpler investment mechanism, Chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulations (CFER), also exists. Under this mechanism, foreign investors need only comply with registration procedures.

A third mechanism, Chapter XIX of the CFER played an important role between 1985 and 1991, when it was used for investments totaling US\$ 3.6 billion, mainly in the manufacturing and services sectors. However, this debt conversion mechanism is no longer in operation.

### Foreign Direct Investment in Chile, 1974 - 2003 (US\$ Billion)

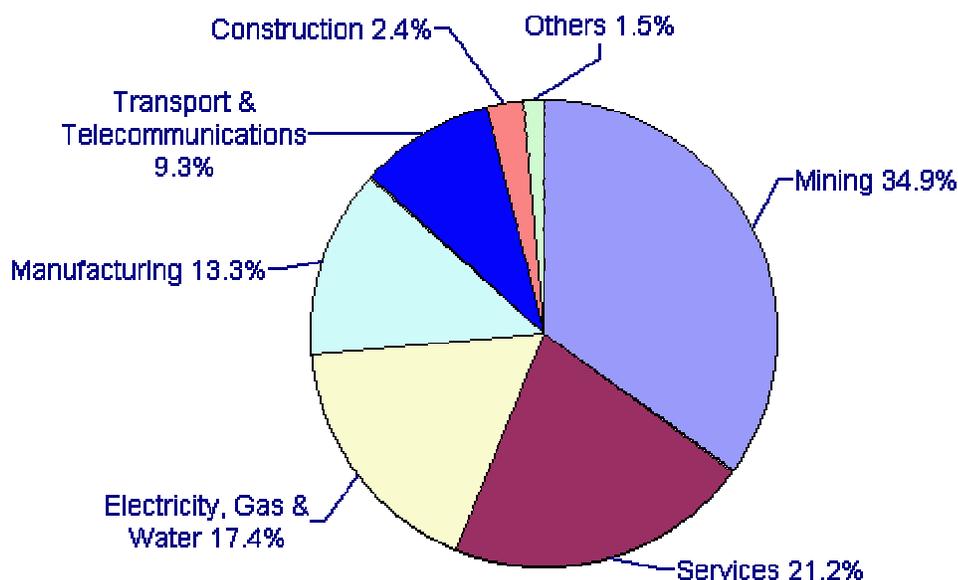


Sources: Central Bank of Chile, Foreign Investment Committee

#### • Investment By Sector

Between 1974 and 2003, Mining accounted for 34.9% of foreign investment materialized via D.L. 600, followed by Services (21.2%); the Electricity, Gas and Water industries (17.4%); Manufacturing (13.3%); Transport and Communications (9.3%); Construction (2.4%); and Agriculture, Forestry and Fishing (0.5% each). In the Services sector, the most important segments were Banking (22.3%), Investment Companies (20.7%), Insurance (16.9%), and the Wholesale and Retail Trade (11.3%).

### Foreign Investment Statute (D.L. 600) Breakdown by Sector



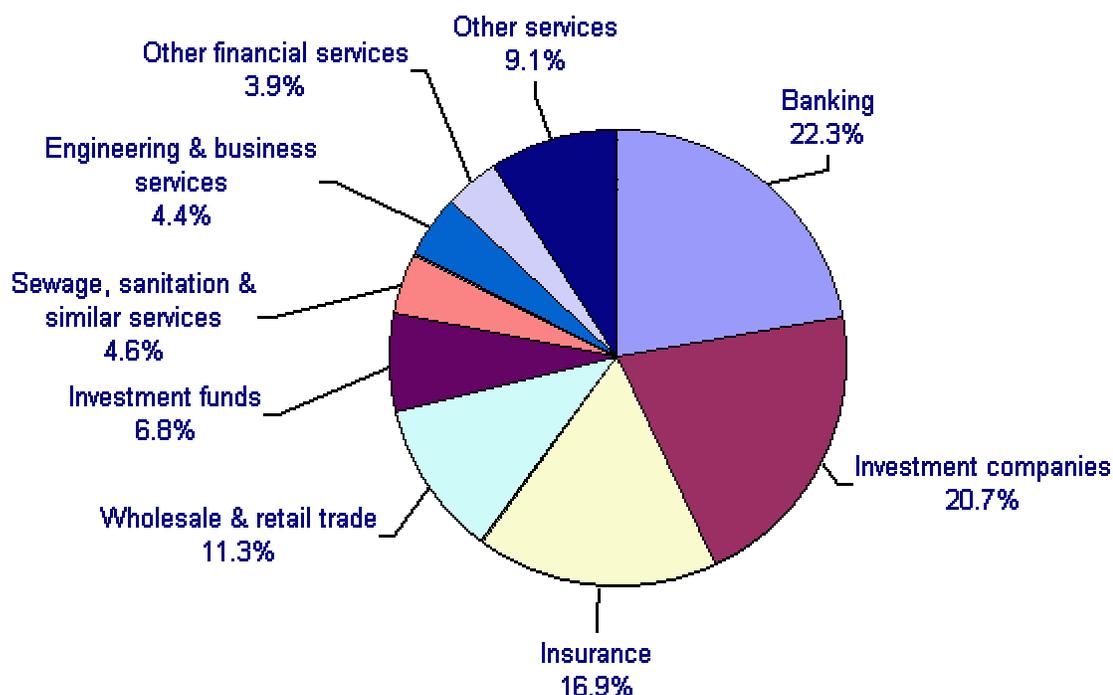
Source: Foreign Investment Committee

Until 1990, mining projects represented 47% of D.L. 600 investment, boosted by the government's decision to lift restrictions on private investment in the exploration and exploitation of mineral deposits. Similarly, investment in financial services was encouraged by the deregulation of the financial sector.

Since 1990, however, other sectors have gained in importance and the mining's share of D.L. 600 investment gradually diminished to an average 15% in 1999-2001. However, in 2002, it was again the largest recipient sector with 59.2% of materialized FDI -due mainly to the US\$ 1.1 billion acquisition of Exxon's La Disputada mine by UK-based AngloAmerican- and, in 2003, represented 30% of the total.

The relative decrease in the preeminence of mining investments was counterbalanced mainly by higher investment in the Transport and Communications industries (including telecommunications) and in the Electricity, Gas and Water sectors. This was mainly the result of privatizations in the energy and telecommunications sectors and of the intense competition that followed the deregulation of mobile and long-distance telephone services. In addition, an infrastructure concessions program, launched in 1995, opened the way for the participation of private capital, mostly from abroad, in the construction and operation of roads and airports. Water privatizations and a concessions program for water treatment services have also captured important inflows of FDI in recent years.

**Foreign Investment Statute (D.L. 600)**  
**Services Sector: Breakdown by Sub-sector (1974-2003)**  
**(Total Services: US\$ 11.3 Billion)**



Source: Foreign Investment Committee

From 1997 to 2001, in line with a worldwide trend, Chile saw a dramatic surge in M&A activity, mainly in the services, electricity and telecommunications sectors. In 1999, for example, Spain's Endesa paid US\$ 3.2 billion for local electricity company Enersis, while other large M&A operations included the acquisition between 2000 and 2001 of the Gener power producer by US-based AES Corp. and, in 2001, Telecom Italia's acquisition of the Entel telecommunications company.

Since 2001, the trend has again changed, shifting towards projects that require smaller amounts of capital but have a high impact in terms of job creation and the transfer of technology. In addition, projects of this type have reinforced Chile's position as a regional business center from which to export goods, or provide services, to other countries. This has, in turn, attracted new investment in service sectors, such as the hotel and office property markets.

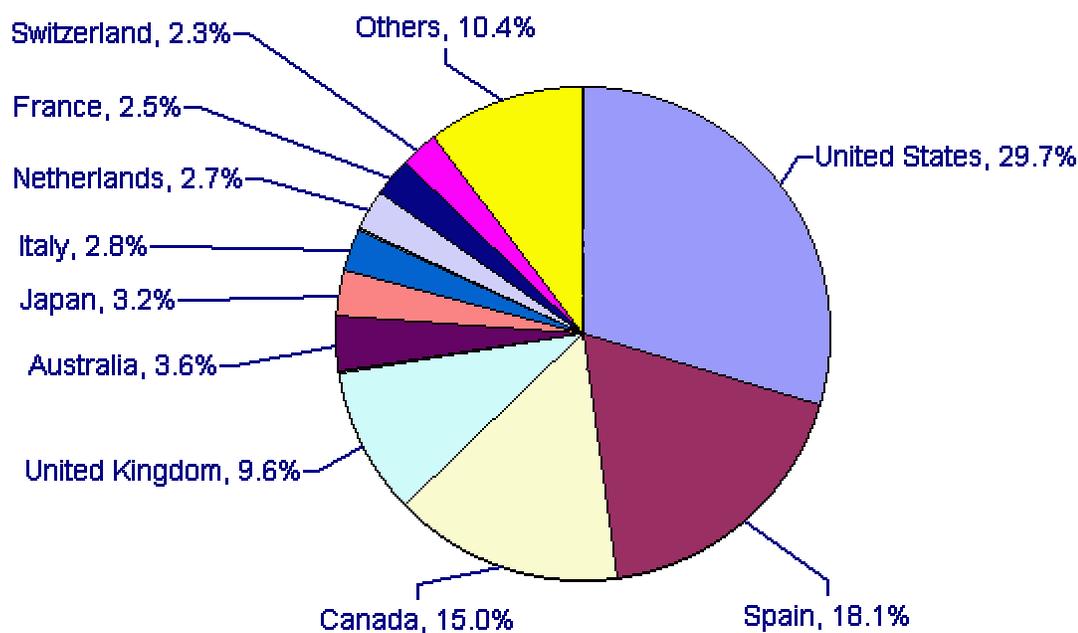
These smaller, high-impact projects are numerous and diverse, ranging from software development initiatives, call centers and shared services centers to new investment in the manufacturing and agribusiness sectors. Examples of the latter include a US\$ 25 million

breakfast cereal plant in Santiago, launched in April 2004, from which Switzerland's Nestlé supplies regional and international markets, and a new salmon feed plant, also representing an investment of US\$ 25 million, inaugurated in southern Chile by Netherlands-based Nutreco.

- **Origin of Investment**

Between 1974 and 2003, 29.7% of D.L. 600 investments in Chile originated in the United States, followed by Spain (18.1%), Canada (15.0%), the United Kingdom (9.6%), Australia (3.6%), and Japan (3.2%). During that period, the 15 pre-enlargement European Union member states accounted for 38.6% of total FDI materialized through D.L. 600, while, as a group, the OECD countries accounted for 93.7% of the total.

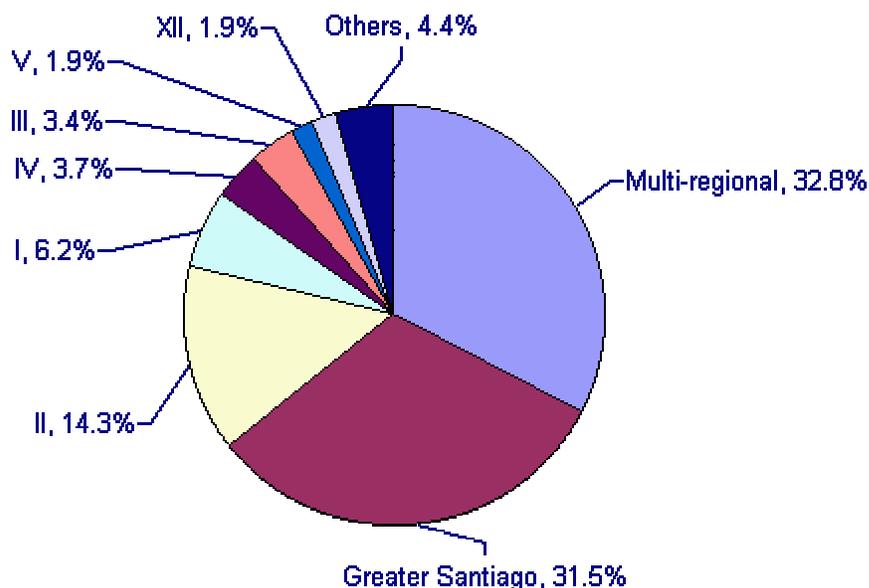
**Foreign Investment Statute (D.L. 600)  
Breakdown by Country of Origin (1974-2003)**



Source: Foreign Investment Committee

As regards the geographic destination of FDI within Chile, 32.8% of materialized FDI between 1974 and 2003 was invested in multi-regional projects, while 31.5% went to Greater Santiago, followed by Region II and Region I in the north of the country, which accounted for 14.3% and 6.2% of total inflows, respectively.

**Foreign Investment Statute (D.L. 600)  
Breakdown by Chilean Regions (1974-2003)**



- **Assessment of Impacts of an FTA**

In terms of investment one of the most important aspects of an eventual negotiation of a FTA between Chile and China, that includes investment issues, is the enhancement of judicial certainty for investors from both countries and their investments in the other party's country. That certainty would be reached through the establishment of different levels of market access in both countries, as the result of the consolidation of the restrictions and limitations that are applied regarding investment flows.

The latter, in terms of Chilean investment in China, together with greater trade flows, would probably bring about greater flows of capital towards the Chinese market in sectors that would be fostered by trade expansion and the necessity to count on adequate distribution channels within the Chinese market.

In terms of Chinese investment in Chile, given actual conditions in the world markets, the necessity for Chinese companies to guarantee the supply of their inputs becomes crucial. Thereof one could expect that an FTA that considers investment regime would become yet another incentive for Chinese companies to invest in natural resources as well as industrial commodities.

## V. ECONOMIC COOPERATION AND INFORMATION EXCHANGE ON OTHER ISSUES

### V.1. Intellectual Property Rights

#### V.1.A. Legal and Institutional Framework

The Chilean legal and institutional framework for Intellectual Property Rights (IPRs) follows the continental system, in consequence, it confers a wide and strong protection to human creations, distinctive signs, geographical indications, patents, and other forms of intellectual property. In accordance to this, Chile has been a member of the World Intellectual Property Organization (WIPO) since June 1975, and has signed a number of intellectual property rights (IPR) conventions (Table I). The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) was incorporated into Chilean law as a result of the ratification of the Marrakesh Agreement.

**Table I**

#### *Chile's participation in international IPR agreements*

<b>Agreement, convention or treaty (latest Act in which Chile participates)</b>	<b>Date on which Chile became party (date it became party to an Act)</b>
Berne Convention for the Protection of Literary and Artistic Works (Paris Act)	June 1970 (July 1975)
Convention Establishing the World Intellectual Property Organization	June 1975
WIPO Copyright Treaty	March 2002
WIPO Performances and Phonograms Treaty	May 2002
International Convention for the Protection of New Varieties of Plants	January 1996
Paris Convention for the Protection of Industrial Property (Stockholm Act)	June 1991
Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations	September 1974
International Convention for the Protection of New Varieties of Plants (UPOV 1978)	January 1996
WIPO Performances and Phonograms Treaty (WPPT)	March 2003
WIPO Copyright Treaty (WCT)	August 2003

Many steps have been made towards improving Chile's IPRs regime. The ratification of the WIPO Internet Treaties; new commitments in bilateral treaties (with the EU, the US, EFTA, Central America, Canada, Mexico and Korea); implementation laws; new legislation which will increase penalties and also border measures, have intended to incorporate to our legislation modifications that are necessary to fulfil the obligations assumed by Chile by means of the ratification of the WTO Agreements and by means of the Free Trade Agreements with USA, Canada and Mexico. In fact, in late 2003, two sets of amendments were made to the copyright law to implement TRIPS and the Free Trade Agreements.

The main dedicated domestic statutes for the protection of intellectual property rights in Chile are the Intellectual Property Law (Copyright Law) (Law No. 17.336 of 2 October 1970) and its Regulations, the Regulations on the Distribution of Related Rights (Supreme Decree No. 4.764 of 8 January 1985), and the Law establishing Rules Applicable to Industrial Privileges and Protection of Industrial Property Rights (Law No. 19.039 of

25 January 1991) and its Regulations. These statutes cover the major areas referred to in the TRIPS Agreement.

The Department of Industrial Property of the Ministry of Economy is in charge of granting industrial property rights and will also be in charge of registering geographical indications. The Copyright Department of the Library, Archives and Museums Directorate is in charge of the Copyright Register. The Seeds Department of the Agriculture and Cattle Service administers applications for the protection of new plant varieties, while plant-breeder rights are granted by the Qualifying Committee of Plant Varieties.

#### V.1.B. Trademark

Chilean national law, provides for 10 years protection to trademarks right-holders, which may be renewed indefinitely. Right holders may initiate civil and criminal procedures when their rights are violated, and may collect costs and damages. The court may destroy tools and implements used for falsification or copying.

An industrial property bill<sup>67</sup> is in its final stage in Congress. This bill will implement a complete system of protection of foreign and national geographical indications, a system of protection of Layout Designs of Integrated Circuits and another one for Undisclosed Information. Among others, the bill establishes a system of international exhaustion of industrial property rights; clarifies exceptions to patentability; corrects the definition of trademarks; and modifies the structure of the appeal court of industrial property.

#### V.1.C. Copyrights and Related Rights

Regarding copyrights and related rights, right holders may also initiate civil and criminal procedures, and infringers may be forced to pay damages, fines and may also be imprisoned. The Customs Service may also enforce intellectual property rights at the border.

In 2003, Congress enacted a law called the Omnibus Bill and also an implementation bill of the Chile and US FTA. These laws deal with copyrights issues adding to the legal system a definition of computer programs. Original compilations of data and textiles designs were also incorporated as protectable subject matter. They clarified a presumption of ownership and set new rights for performers, as well as established a framework for the exceptions and limitations of the Law (three step test). They increased the term of protection from 50 to 70 years<sup>68</sup> and regarding the distribution right, established the international exhaustion of rights after the first licit flow.

Finally, a bill was introduced in Congress in January 12<sup>th</sup>, 2004, which improves the current laws for civil and criminal enforcement of IPRs, providing for high monetary penalties not currently included in the law, plus a dramatic increase of penalties for those who finance or are the heads of organizations infringing IP, as well as an increase of penalties in relation with the amount of monetary damages for those who are second infringers. Penalties for

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<sup>67</sup> The new law 19.039 was endorsed by the last competent committee of the Senate and was set as one of the legislative priorities for 2004 by the Government in March 2004.

<sup>68</sup> Life of the author plus 70 years. For works created by legal persons: 50 years from the date of the first publication

infringements without commercial gain are also included. In general, it facilitates the prosecution of such infringements, with new causes of preliminary injunctions among other facilitating provisions.

#### V.1.D. Geographical Indications

Nowadays, there is a special law to protect Chilean wine-growing areas and various types of Chilean alcoholic beverages. At international level, Chile, together with Canada, Japan, and the United States, presented a proposal for a multilateral system of notification and registration of geographical indications for wines.<sup>69</sup> The proposal calls for interested Members to submit to the Secretariat a list of domestic geographical indications for covered products recognized as eligible for protection under their national legislation, thus leading to a voluntary database of all notified geographical indications.

Some of Chile's preferential agreements also contains provisions on IPR protection. In the agreement with Canada and the European Union the geographical indication of Chilean "Pisco" has been specially recognized and a new framework, as it was mentioned before, is in its last stage to be approved for the National Congress. This new legal framework will implement a complete system for protection of foreign and national geographical indications.

#### V.1.E. Undisclosed Information

A whole chapter on undisclosed information has been introduced to the IP bill, both for trade secrets and for data submitted to government agencies for approval of pharmaceutical and agricultural chemical products. This information will be protected for 5 and 10 years respectively.

#### V.1.F. Patents and Utility Models

Economic models and business plans, discoveries, scientific theories and mathematical methods, surgical, therapeutic or diagnostic methods, plant varieties and animals may not be protected by patents or utility models. This system covers compulsory licences in cases of monopoly abuse, but the bill will provide for other causes, such as health crisis, national emergencies or public non-commercial use.

The abovementioned bill increases the term of protection of patents from 15 years from the granting of the patent, to 20 years from the filing; it also allows for parallel imports.

#### V.1.G. Industrial Designs

Designs that are novel are protected for 10 years from the date of filing. This period is non-extendable. This protection will be complemented with the new bill.

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<sup>69</sup> WTO document IP/C/W/133/Rev.1, 26 July 1999.

### V.1.H. Varieties of Plants

Chilean legislation is homologated to UPOV 1978 Act. Nevertheless, Chile committed to adhere to UPOV 1991 by the year 2009.

### V.1.I. Enforcement

Firstly, there are specific procedures for the suspension of release by customs authorities of any goods that infringe upon any rights established in the IP Law (Law 19.039) and the Copyright Law (Law 17.336), at the request of the right holder. Moreover, it also allows for ex-officio action for suspending the release of counterfeit merchandise and pirated goods. This expeditious and detailed procedure will, on the one hand, safeguard the rights of right holders, and on the other hand, it will avoid unnecessary barriers to importers of legitimate goods. This will be achieved, among others, by requesting from the person lodging the application for suspension, to provide a security or equivalent assurance to protect the defendant from abuses, that he identifies himself as the right holder and that he files suit after a brief period of time after the request of suspension. The applicant will also have to provide reasonable evidence and identify to the extent possible, the place through which the goods will presumably be imported.

Secondly, the Department for Industrial Property, the Arbitration Court for Industrial Property and, for issues related to plant varieties, the Agriculture and Livestock Service, are responsible for preventive and protective administrative action. The infringements of copyrights are prosecuted before ordinary judges; criminal cases related to copyrights are dealt with by ordinary courts. The National Customs Service is responsible for taking measures at the border.

Additionally, the bills currently in Congress<sup>70</sup> establish that persons convicted of offences against the owners of trade marks, patents, utility models and industrial designs, are required to pay costs and damages to the rights holder. Together with the modifications of the Industrial Property Law, which deals with improvements to the administrative system and the increase in penalties, it will regulate the granting of preliminary injunctions in civil and criminal procedures and under the above mentioned new frame for industrial property, the penalties will be increased. In case of trademark, patent, utility models and industrial designs infringement fines will be raised from a maximum of 100 UTM<sup>71</sup> (approximately US\$ 5.000) to a maximum of 1.000 UTM (approximately US\$ 50.000). And in the case of copyright and related rights, tools and implements used for falsification or copying must be destroyed and the objects produced illegally must be seized on behalf of the rights-holder.

Finally, in the year 2000 Congress passed new legislation for an overall modification of Chilean criminal system. This reform, which has been implemented in every Chilean

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<sup>70</sup> The new Law 19.039 and a bill on enforcement of copyright and related right law.

<sup>71</sup> UTM: Monthly Tax Unit, for its acronyms in Spanish.

Region, save for Santiago, is expected to introduce efficiency both to criminal courts and to the police.

#### V.1. J. Conclusions

Considering that every single FTA negotiated by Chile includes provisions on IPRs, we do not reject the idea of having an IPRs chapter in an eventual agreement.

### V.2. **Movement of Business Persons**

#### V.2.A. Mobility of Business Persons

Chilean migration laws are contained in Decree Law No. 1,094 of 1975, on foreign citizens, and regulations there under established in D.S. No. 597 of 1984. Furthermore, this matter is governed by provisions contained in international treaties and agreements subscribed by our Government.

These legal texts vest the power to issue visas and resident permits for foreigners in the Ministries of Interior and Foreign Affairs.

The Ministry of Interior exercises these powers through the Department of Migration and Alien Affairs at central level, and through interior government offices at regional and provincial levels. In turn, the Department of Consular Affairs and Immigration of the Ministry of Foreign Affairs is responsible for foreign citizens affairs and issues consular authorizations and residence visas through Chilean Consulates abroad.

The migration legislation contains the following migration categories:

#### a. Tourists

Tourist is any individual entering the country for a period not exceeding 90 days, for recreation, sports, health, study, business, family, religious and other similar reasons, but not for purposes of immigration, residence or development of remunerated activities.

In some cases, for reasons of national interest or based on the principle of international reciprocity, individuals should obtain a consular authorization (visa) from the concerned Chilean Consulate abroad prior to their entry to Chile. However, holders of the APEC Business Travel Card do not require consular authorization.

#### b. Residence

- Residence Subject to a Labor Contract permit is granted to foreigners who enter the country under a work contract. This type of residence visa is subject to the performance of the activities agreed with the employer (who must be domiciled in Chile) and is issued for a maximum period of two years, and may be extended for similar periods while the contract duration.

- Student Residence permits are granted to foreigners who enter the country in the capacity of registered students in State or State-recognized educational institutions or a private institution recognized by a latter, or in a higher or specialized educational centers or institutions provided they can substantiate their corresponding enrollment. This permit only allows to do the relevant studies and is issued for a maximum period of one year, and may be renewed until completion of the relevant study program. I In the case of scholarships, the permit is issued for the duration of the scholarship.
- Temporary Residence permit is granted to foreigners with proven family ties or interests in the country whose residence is deemed useful or convenient.

Generally, this type of visa allows its holder to carry out any activity in Chile, to the extent that such activities are permitted by the laws. It is issued for a maximum period of one year, and may be renewed for like period.

- Asylum or Refugee is granted to foreigners who seek protection for reasons of political, religious, racial and other events prevailing in their countries of origin or residence, and request political asylum in Chile or at Chilean diplomatic representations abroad. It is furthermore granted to anyone accorded the status of refugee under international instruments subscribed by Chile. This type of visa is granted for a maximum period of two years, renewable, and enables the holder to carry out any lawful activity in the country.

c. Permanent Residence Permit (granted for an indefinite time)

This permit granted to aliens to live indefinitely in the country and undertake all kinds of activities, without any restrictions other than those established in all legal and regulatory bodies.

d. Residence for Business Persons

It should be noted that, although ordinary migratory legislation does not provide for any specific type of residence permit for business persons, the rules governing tourism, temporary residence permit and residence subject to a labor contract are extremely broad and allow to include there under the different categories of business persons, i.e. investors, traders and service providers.

V.2.B. Free Trade Agreements

The Free Trade Agreements (FTA's) Chile has negotiated, among others with: Canada, Mexico, the United States and Korea, represent a decisive step into a global foreign relations policy, including cultural, social and economic aspects. Consequently, the facilitation of entry for business persons (mobility) has become a relevant priority of Chile's foreign policy.

As a general rule, FTA's specific Chapter on "Temporary Entry of Business Persons", provides four different categories of persons. These categories are:

1. Business Visitors
2. Professionals
3. Intra – corporate Transferees, and
4. Traders and Investors.

Only Chilean nationals, and the national of the other Party (entered into the agreement) are the beneficiaries of the preferential terms of "entry" provided by the agreement.

The "entry" or "mobility" benefit can not be used to obtain "permanent residency" in Chile. In other words, the preferential "visa" terms, apply only to the circumstances in virtue of which the benefit was extended.

Business persons seeking to obtain a "business persons visa" to enter Chile, shall apply for the benefit at any Chilean General Consulate worldwide (Chinese business person shall approach to any General Consulate of Chile in the China). Notwithstanding, such qualification may be obtain in Chile, in which case, the national of the other party (Chinese business person)" shall approach the Migration Department of Chile located in Santiago or Provincial Governors in regions.

If the petitioner qualifies under any of the four categories described (above), a "temporary resident visa" will be extended to him/she. Such document contains an "entry permit" *per se*.

The "temporary residency" status allows the beneficiary to work in Chile without an additional "work permit". Working for two or more employers simultaneously is allowed, as long as, both activities relate to the same category of business person under which the "temporary residency visa" was extended, and the were included on the "visa petition".

The FTA's provisions do not replace, under any circumstances, the specific requirements related to, licensing, accreditation or certification provided by the domestic norms regulating the specific professional activity to be performed (i.e., engineers, lawyers, accountants, etc).

Neither, the FTA's provisions modify or supersede the general requirements related to, public order, national security, sanitary measures, and passports.

Relatives under custody of the business person entering Chile, may join the BP in his/her trip as long as they satisfy the Chilean immigration requirements. Additionally, relatives under custody are allowed to "study" at any educational institution, but they are not allowed to work under wage.

There is no limit in the "number of entries" for business persons and their dependent relatives during the period covered by the "temporary residence visa".

Once the visa has expired, the business person and his/her dependent relatives may apply for an extension of the residence, or apply to be considered under any of the migratory categories described by the Chilean Law, subjected to the specific requirements and regulations.

#### EXTENDED VISAS 2003

<b>BENEFIT</b>	<b>Beneficiary (BP)</b>	<b>Dependents</b>
STUDENT	14	0
UNDER CONTRACT	224	20
TEMPORARY	204	39
TEMPORARY ART. 10 N°3	1	0

#### V.2.C. APEC

Chile participate actively in APEC through the Mobility of Business People Group, becoming part mostly of the activities undertaken by this group.

In 1998 Chile joined the APEC Business Travel Card pilot project, receiving foreign applications. As of August 1999, Chile adhered to the ABTC scheme on a permanent basis. In 2001 the Chilean ABTC applications have been set up after the administrative arrangements, as the Exempt Decree N° 1101 of 11 August, 1999 and Exempt Decree N°1477 of 28 December, 2000, that contains the regulation of the ABTC system. On the other hand, was signed the Agreement of Collaboration between Chilean Government and National Chambers of Commerce, more representative Chilean business community. They are in charge of qualifying business persons.

A special immigration and emigration lane at Santiago's International Airport for the APEC Business Travel Cardholders and accompanying persons, as well, is facilitating the entry of ABTC holders through other entry points.

Chile is meeting the 30 days service standard through all over Chilean Consulates overseas and Department of Migration when those temporary entries are applied in Chile.

#### V.3. **Transparency**

Transparency is one of the basic principles in Chilean administrative law and in Free Trade Agreements.

### V.3.A Transparency in the Administrative Law

Law N° 19.880, “On the Basis of Administrative Proceedings”, published in the Official Gazette in 2003, sets the basis of the administrative proceedings that rule the acts of the organs of the Administration of the State. This law establishes the general rules that govern the administrative proceedings. However, in case that any special law establishes another special proceeding, the latter shall prevail.

In addition, the law decrees that Publicity and Transparency are the principles of the administrative proceedings. This means that the administrative proceeding shall be accomplished with transparency, in a way that allows and promotes the knowledge, content and basis of the decisions adopted therein. Therefore, unless the law or regulations otherwise dictate, the administrative acts of the organs of the Administration of the State are public, as well as the documents that sustain or complement them.

Other principles of the administrative proceedings related to transparency established by Law N° 19.880 are: writing; gratuitousness; procedural economy; impartiality and refutability.

Finally, the law establishes a group of rights which are related to Transparency, regarding the relations of the individuals with the Administration: the right at any stage of the proceeding to learn about the state of it; to obtain a legal copy of the documents; to identify the authorities and the personnel of the Administration in charge of the proceedings; to have access to the administrative acts and to related documents, according with the law.

### V.3.B. Transparency in Free Trade Agreements

Its main purpose is to facilitate communication between the Parties and to make available measures concerning any issue covered in the Agreement.

Transparency involves that Governments should provide the necessary means for individuals to become acquainted with the rules and thus allow compliance with them.

Its intended purpose is that laws, regulations, procedures and administrative rules of general application should be published without delay and that the other Party is afforded the opportunity to make observations there on. Additionally, transparency seeks that, to the greatest extent possible, one state notifies the other state of any actual or proposed measure that may affect the functioning of the Agreement or the interests of any Party there under.

Furthermore, this Chapter includes rules on due process in matters concerning administrative procedures, which may affect aspects covered in the Agreement.

Finally, it provides for the creation of information centers with a view to facilitating communication between the Parties in matters concerning the Agreement.

Free Trade Agreements signed by Chile with Canada, Mexico, Central America, Korea, the US, the European Union and with EFTA contain regulations concerning transparency. In this regard, all of these FTAs have a special chapter on “Transparency”, with the exception of the FTA with Canada. In this particular case, the general rules are included in Part four on Administrative and Institutional Provisions, under Chapter L, which establish “transparency” commitments.

#### **V.4. Previous Bilateral International Agreements Between Chile and China**

The disciplines covered in an FTA require that those bilateral agreements which cover matters ruled afterwards by the FTA between the Parties shall cease, if appropriate.

#### **V.5. Trade and Investment Promotion**

The main target of Chilean policy in the two last decades has been the expansion and deepening of financial and trade exchanges. Chilean strategy to promote trade and investments, is based on three instruments that are intended to simultaneously achieve a broader liberalization and improved quality for the country’s integration to the international economy. Specifically, these instruments are: 1) unilateral programs for tariff reductions, liberalization and deregulation processes; 2) multilateral agreements to open up the country to the international economy; 3) the negotiation of trade agreements with individual countries or groups of countries. The main goals, policies and modalities of unilateral liberalization of tariffs and non tariff barriers has been explained and analyzed in chapter III, as well as Chilean policy and approach towards multilateral processes - in particular the WTO – and its bilateral agreements.

Chilean strategy to promote trade in services and investments, at the three levels (unilateral, multilateral and bilateral), has also been analyzed and detailed in chapter III. In synthesis the main goal is to establish the basis for a modern, transparent and competitive domestic market, integrated into a world with improved conditions of access and transparency, through the rule of international law commonly agreed, at the multilateral or bilateral level. In investments, to its coverage in the most of the FTAs, Chile has added 39 BITs, including one with China.

Chile has adopted several initiatives to facilitate access to customs laws, regulations and guidelines, in particular through digital procedures and internet. The web site of Chilean Customs, [www.aduanas.cl](http://www.aduanas.cl), offers the possibility to fulfill many custom procedures through internet, as well as information, laws, rules and statistics.

ProChile, the Chilean Export Promotion Bureau, is an agency of the Ministry of Foreign Affairs and its mission is to promote the development of Chile's exports of goods and services by providing the necessary support for the development of the export industry. ProChile has access to innovative export promotion tools such as: 1) to perform studies and develop methods to guide and train entrepreneurs in using new information technologies; 2) organizing international trade fairs and business missions; 3) developing programs to help SMEs enter the global marketplace; 4) conducting national calls for proposals for export promotion programs.

At present, having the support of a global network is a major advantage for conducting business in the world market. Because of its global presence, ProChile offers a major asset to Chilean exporters for doing business in the global marketplace through its trade bureaus in five continents and throughout Chile. ProChile's trade offices - strategically located in 56 markets - are run by specialized teams that use their market expertise to support Chilean export companies by helping them conduct their international operations. Among many other services, this network provides market data and makes it easier to establish business contacts. Through its 13 regional offices and its head office in Santiago, ProChile encourages the development of the range of export goods produced by national producers. Regional offices provide guidance and important and up-to-date information on international markets. In addition, they offer the strategic technical assistance needed to prepare and carry out Export Promotion Programs and other necessary actions for trade.

The Foreign Investment Committee is the agency that represents the State of Chile in its dealings with those investors who elect to use the Foreign Investment Statute (D.L. 600) as the legal mechanism to bring FDI into the country. The Foreign Investment Committee is formed by the Ministers of Economy (who acts as President of the Committee), Finance, Foreign Relations and Planning, plus the President of the Central Bank. Additionally, ministers who represent economic sectors to which a specific investment will be devoted to are required to participate at the Foreign Investment Committee's sessions.

The Foreign Investment Committee aims to consolidate Chile's position as an attractive destination for foreign investment. It conducts all operational tasks related to the management of the legal framework that regulates foreign investment; engages in promotional activities of various sorts; and participates in international negotiations that pertain to investment issues. The main tasks of the Foreign Investment Committee is: 1) to provide a stable and secure environment for foreign investments through the administration of the legal framework stated in D.L. 600; 2) to conduct all appropriate activities aimed at informing, promoting, coordinating and executing actions that foster the entry of foreign investment into Chile at the national, sector-specific and regional levels; 3) to participate in the international negotiations of BITs and of the investment chapters included in FTAs. If requested, it represents the State of Chile in cases of investment-related disputes before international dispute-resolution entities; 4) to maintain an up-to-date and accurate statistical database of FDI in Chile authorized and materialized under the D.L. 600.

The Foreign Investment Committee is managed and administered at the operational level by the Executive Vice-President, who is appointed by the President of the Republic. The Executive Vice-Presidency provides general guidance to any foreign investor regarding the country, its economic and social environment, legal framework and policies towards FDI. When requested, it gives information on how to begin the process of setting-up businesses in Chile as well as orientation on procedures and regulations that must be completed and fulfilled by any investor, whether they sign a D.L 600 contract or not, at the national, regional and sector-specific levels.

In order to promote Chile as an attractive place to invest, the Executive Vice-Presidency of the Foreign Investment Committee coordinates business missions abroad, organizes seminars and conferences, and publishes regular reports on Chile's business climate and investment opportunities, both in print and in electronic form. In these promotional activities, it works closely with other ministries and state agencies as well as with the local and foreign private sector.

## **V. 6. Other Trade Facilitation Measures**

Chile strongly believes in the benefits of addressing trade facilitation issues in multilateral agreements, such as those contained within WTO. Moreover, Chile also foresees benefits from initiatives at WTO that have not taken place because of a number of reasons. Specifically, Chile supports in consolidating the grounds for negotiations of the so-called Singapore Issues. Within this context, business and trade facilitation play a key role in obtaining economic benefits from economic liberalization and coordination.

Within the aforementioned framework, Chile has performed and undertaken several initiatives in customs procedures. These advancements have been undertaken unilaterally or within cooperation fora, such as APEC-SCCP, where Chile is an active member and has fulfilled all Collective Action Plans set out in this Sub Committee.

As an example, Chile has fully implemented WTO's Customs Valuation Agreement since 2002, establishing the Regulations for the Application of Article VII of GATT. It should be noted that this is despite the fact that Chile could have exercised the rights of a five-year implementation period granted to developing countries.

Likewise, Chile has fully implemented the 2002 Harmonized System from January 1<sup>st</sup>, 2002. Furthermore, Chile is also working with other Spanish and Portuguese speaking countries in obtaining a WCO approved interpretative notes of the HS in Spanish. This has vastly improved the knowledge of Chilean technician in regards to the HS.

One of the main objectives of business facilitation through costumes procedures relates to paperless trading and automatization. In this regard, it should be pointed out that Chile has a 24-hour, electronic import/export declaration system (EDI), which has contributed to the fact that over 98 % of these declarations are done electronically. Moreover, the National Customs Service of Chile is ready to implement a "single window" procedure for all pre-requisites needed in foreign trade transactions, such as tax payments, sanitary certificates, dangerous materials certificate, etc. This system will be known as ISIDORA, according to its Spanish acronym.

Within this same framework, Chile is fully implementing the Revised Kyoto Convention in all of its areas, as any full participating signing members of that Agreement. Chile strongly believes in the benefits granted by the application of the Revised Kyoto Convention, and plans to fully implement any modification that may arise in the Agreement.

Chile has also moved forward in other issues relating to trade facilitation such as competition policies. The institutions and recent reforms on this matter are addressed in Chapter 1.

## **V.7. Other Economic, Technological and Development Partnerships**

The overall objective of comprehensive initiatives in this field should be to facilitate and encourage Chilean and Chinese partnership in the pursuit of increased competitiveness, therefore fostering innovation and creating new opportunities for trade and joint ventures, including mutual consultation and cooperation on labor and environmental issues.

That is the case of Canada, the first FTA, where, based on the new commercial opportunities opened by the FTA, Fundación Chile signed agreements to acquire licenses for the application of biotechnology to radiata pine. In the present negotiations with New Zealand and Singapore parties are discussing the content of a chapter that will identify initiatives for a Strategic Economic Partnership Agreement, in the fields of joint R&D and educational projects. With Mexico, both parties are exploring ways to expand the FTA already in force to the field of Cooperation.

The Economic and Cooperation Agreement of Chile and the EU also has a special section on cooperation. The Agreement explores new areas where actions should contribute to reinforce the positive impact of the agreement on trade, through cooperation, on technical regulations, customs procedures, and intellectual property rights. The Agreement with the EU also foresees an increased participation and consultation of civil society in matters of cooperation and establishes as main criteria for implementing projects its impact in social development, economic growth and environmental protection. Specifically, the cooperation and joint projects section includes: science, technology, and information society; culture, education and audio-visual sector; State reform and public administration; cooperation in social issues; and other fields of cooperation.

The present Chilean and Chinese relationship has covered fields of cooperation in environmental-related issues. In agriculture, it should be mentioned, in particular, the implementation of an experimental and demonstration farm close to Beijing with the deep involvement of Chilean fruit entrepreneurs.

The interest of the Chilean government, in the context of a broad and comprehensive set of strategic initiatives, including the possible FTA, is to reinforce partnerships on the above-mentioned issues, with a vision that encompasses three main elements:

4. ***Cooperation in Human Resource Development***, through institutional agreements for initiatives aimed at training human resources, developing professional and technical consultancy and fostering the exchange of experiences in selected areas

5. Identifying projects, institutions and professionals for developing a ***Partnership on Research, Development and Innovation (R+D+I)***, for mutual benefit and with a concrete long-term vision to develop joint capacities in international markets. These initiatives would require the involvement of governmental R&D entities, private companies, social organizations, or could combine them.. As examples of these kind of initiatives we can mention: access to Chinese experience in biotechnology, specially in non commodity productions (e.g., tomato, pepper, and similar species); joint research teams on climate change and plague control; antipollution techniques; and irrigation systems for precision agriculture.
6. Common actions undertaken in order to implement a ***long term forward looking partnership*** and common visions in targeted areas, such as consultation on labour and environmental practices.

In labour areas, cooperation could be envisaged with special activities defined by both Parties by mutual consensus with ministries and agencies concerned with government to government programs and projects with domestic consultation and involvement as decided by each Party, in order to better understand each other systems, improve linkages and human capital/resources for economic development and share best practices.

## **VI. CONCLUSIONS**

### **VI.1. The Strategic Framework**

An on-going goal of Chilean governments throughout the 90s has been to expand and enhance commercial and financial trade. Chilean trade policy has crafted three instruments to simultaneously achieve greater opening to and better insertion into the world economy, namely: unilateral liberalization and facilitation of trade and investments; active participation in the multilateral system and negotiations, and opening up on an equal basis with Chile's most important partners in the world economy through FTAs. By implementing policies conducive to unilateral opening, Chile has sought to improve the allocation of productive resources, making domestic economic activities more efficient and competitive. At the multilateral level, Chile has actively participated in discussions and decisions in the WTO, and has modernized its economy to comply with the WTO's obligations.

Over the last ten years, the strategy of integration via bilateral or regional agreements has spread out at global and regional levels in response to the stagnation of multilateral negotiations. Thus, Chile has substantially improved its access conditions to an extended market of 1,3 billion people, covering 53% of total exports recorded in the first six months of this year, while the domestic economy has been opened up to foreign businessmen, products and services. FTAs recently concluded and enforced with the European Union, the United States of America and the Republic of Korea, have contributed to cementing the international integration of Chile in three highly relevant economic arenas and to strengthening its position as a trade platform. Initiatives adopted in this direction with East Asia and Oceania would enable Chile to cover its four most important international trading and financial centers.

Bilateral and regional comprehensive agreements have enabled Chile to address and move forward in key globalization issues, namely services, investment, trade remedies, intellectual property and competition policies, and also to address in a proper way new strategic issues such as labor standards, environment, and economic, technological and development partnership. In this sense, trade exchanges have been expanded and diversified, creating conditions to improve competitiveness, attract new investment and technology, and generate new jobs.

### **VI.2. Why China?**

Today, China, a huge market comprised of a population of more than 1,3 billion, has consolidated its position as one of the biggest industrial and commercial power in the sector of traditional labor intensive manufactures and is becoming an increasingly important market for other economies through trade complementarity, achieved under trade and investment facilitation and liberalization. China is also, fast becoming, the largest exporter in the Asia Pacific region and the world of fully assembled high technology products, relocating some stages of its productive processes in other economies and becoming in this

way an active agent of productive and financial integration. Economic, technical and development partnership is becoming a valuable tool to build closer economic relations with its main business partners.

The Chinese economy is going through a stage of liberalization and deregulation in response to a proactive policy implemented within the framework of the accession of China to WTO. Within this framework, authorities have modernized the guiding principles of China's international economic policy, adopting the strategy of bilateral and multilateral agreements. Today, China is negotiating an FTA with ASEAN, will initiate negotiations with New Zealand and is on the stage of the feasibility study of an FTA with Australia. The preferential treatment that this country would accord under these FTAs would translate into a strong advantage for their business partners against competitors.

### **VI.3. Achievements and Challenges of Economic Relations with China**

China, after the United States and Japan, has become Chile's main business partner, a position that has developed dynamically in the past five years. China, however, is not an important foreign investor in specific sectors of the Chilean economy, such as mining, where potential for joint ventures and individual ventures are very high.

Trade between Chile and China has grown at high rates in the last five years, close to an average annual increase of 42%, boosted by an average annual growth of imports of Chinese products close to 40%, and by the expansion of Chilean exports, close to an annual average growth of 104%. Balance of trade has leaned in favor of Chile in the last three years, generating surpluses ranging from US\$8,1 million to US\$575,2 million.

The dynamism of Chilean exports to China has been pegged to exports of copper and cellulose. The list of most important exports also includes foodstuff and beverages products and inorganic chemicals, but copper and cellulose concentrated more than 82% of shipments in 2003. Chilean exports to China have not expanded to products that have accessed other North East Asian markets, such as exports of forestry products, fruits, fishery and aquiculture, and non copper mining industries.

Traditionally, economic relations between Chile and China have been marked by high levels of transactions in goods while, in comparison, direct investment figures are minor. Chile does not have a strong presence of Chinese investors. Chinese investment from 1974 to 2003 has accounted for 0.2% of all FDI received by Chile. Chinese investment of US\$85 million in this period has concentrated in forestry, services (distribution) and fishery. China has not recorded any direct investment since 2000.

Traditionally, China has few investments abroad, but in the recent years China is increasingly implementing investment projects. The small size of the Chilean economy has conspired against a stronger role of Chinese businessmen in the Chilean economy, but the new patterns of China's integration into the world economy open encouraging prospects for investment projects that seek to ensure the quality, continuity and price stability of the supply of strategic raw materials. Copper mining ranks in the first place, but the Chilean

web of FTAs, in addition, has enhanced its attractiveness as a production platform oriented to regional markets and its insertion in more advanced and higher added value links in the global production chain, in the service sector: air transportation, maritime transportation, tourism, and trade-related services.

#### **VI.4. Effects of a Free-Trade Agreement between Chile and China**

##### **VI.4.A. General Effects**

###### **a. Trade in goods**

An FTA between Chile and China will have a positive impact on bilateral trade and economic welfare. The elimination of tariffs would increase bilateral trade in US\$259 million, based on estimations obtained through the use of static partial equilibrium models, which do not capture the dynamic effects of trade liberalization, namely, the expansion of trade towards new products and the positive impact of more efficient allocation of resources. In Chile and China, trade creation will exceed trade diversion, and thus have a positive impact on economic welfare.

A comprehensive FTA would mostly contribute to increased economic exchange with commonly agreed trade facilitation measures, namely customs procedures, rules of origin and SPS, which will reduce transaction and administrative costs.

###### **b. Trade in services**

Trade in services would improve the scope of coverage of an agreement, through new foundations for legal certainty. Chilean exports of services to China have concentrated in maritime transportation and occasionally in insurance and banking. Direct Chinese investment in the Chilean service sector, on the other hand, is volatile and has failed to reach consolidation, while Chilean sectoral investment in China is almost non-existent.

Chile and China apply very different commercial policies to the service sector. Provisions concerning services to be included in a FTA would contribute to generating a better business environment generally, by making effective regulations more transparent and by committing the Parties not to adopt restrictive measures. Like in the field of investment, the visibility and assurances provided by the negotiation and subscription of a Free-Trade Agreement would contribute to fostering sectoral trade.

The actual pattern of bilateral trade in services is closely related to trade in goods and would benefit directly from the expansion of bilateral commerce, in particular in trading, air and maritime transportation and professional services related to trade in goods. Enhanced transparency for Chile achieved by a modern chapter on services including the different modes, would be a valuable contribution for expanding trade of services. The latter necessarily implies the adoption of mechanisms that would allow integral licensing for business operations, in other words, a transparent licensing process that covers the complete scope of operations.

### c. Investment

The Chilean-Chinese business environment would improve as a result of investment-related provisions that would be adopted under a broad FTA. Chile's experience in other FTAs indicates that the mere fact of subscribing an agreement of this nature ascertains the image of the country among new investors, more so if the counterpart is an economic world power that has not yet subscribed any bilateral free trade agreements. It is estimated that higher Chinese investment in Chile may be encouraged through an FTA, together with investment diversification into higher added value activities.

Due to the existing openness of the Chilean foreign investment system, there would be no effects attributable to the elimination of currently existing barriers, such as foreign investment controls or performance requirements.

Considering the experience of other FTAs subscribed by Chile, the support that any such Agreement lends to Chilean foreign investment policies would contribute to improving the positioning of the Chilean economy in Chinese investors' plans, particularly among corporate businesses that are today investing abroad for purposes of supplying the Chinese market with processed natural resources, mainly products from the mining sector.

In any case, considering the profile of Chinese investment abroad (i.e., low as compared with China's participation in world trade and focused on raw materials supply), the encouragement of Chinese investment in new sectors of our economy is recommended. Such initiative should include technological cooperation and partnerships. *Service complexes* built around transport, intermediation and sales of large volumes of goods, appear to be a promising area. Tourism, both business-related and traditional, is also a sector of great prospects.

#### VI.4.B. Effects on Sectoral Trade

##### a. Agriculture, Fruit, Livestock, Forestry and Extractive Fishery

China was the destination of sectoral shipments amounting to US\$21 million in 2003, representing only 4,8 percent of total Chilean sectoral exports. Cellulose and fish meal shipments accounted for 85% of sectoral exports in 2003.

Chilean exports of agricultural products, in particular counter-seasonal shipments of fruits, agroindustrial products related to the foodstuff sector and meat and edible meat products, will benefit from a comprehensive elimination of tariffs brought about by a bilateral FTA.

However the full benefits of tariff reductions, will be appreciated only if there is a significant reduction in non tariff barriers, such as, import quotas, SPS and licenses, as well as clear and transparent customs procedure disciplines. Thereof, the best way of allowing a bilateral FTA to reach its full potential, in terms of creating greater and more robust trade flows, is that the FTA addresses the establishment of a greater elimination of import quotas,

the establishment of clearer and more transparent regulations on SPS measures through ad-hoc mechanisms, sound rules related to efficient and less bureaucratic customs procedures and mechanisms of comprehensive licensing that includes import and commercialization procedures.

Chile has not been able to place in the Chinese market higher added value processed wood products, such as construction items and furniture, although these have successfully penetrated other world markets, including Asia. Trade liberalization and facilitation embodied in an FTA would contribute to enhance joint opportunities.

Average tariffs stand at 10,4 percent, while the average tariff applied to agriculture is 15,1 percent, with a peak of 70 percent. In addition to ad valorem or specific duties (poultry), Chinese tariffs applicable to agricultural products include a number of other duties, which seek to protect the sub-sector from sharp international price fluctuations or cheap imports. Finally, as regards trade-related services, it is alleged that practices and regulations governing the Chinese distribution sector make access thereto difficult for foreign producers.

In conclusion, there is a wide range of Chilean export products that would benefit from an FTA, provided tariffs are lowered or eliminated, tariff peaks are reduced, and import procedures are expedited. China is an important importer of food in the world, and Chilean shipments are counter-seasonal. Notwithstanding, Chile supplies only an insignificant part of the Chinese market's demand. An FTA would contribute to diversify the range of agricultural products traded between Chile and China. Based on Chilean agricultural and livestock products exported to Japan and South Korea, fruit (pears, apples); other frozen fruit; and more elaborated products, such as processed fruit and vegetables, tomato paste and juice, apple juice and nectar, canned peach, other fruit or vegetable juices, canned cherry, and wine, which presently face the highest tariffs.

A comprehensive FTA should also contribute to formalizing procedures related to the management of internationally accepted sanitary standards on food and similar products. Chile has become competitive in pork meat and poultry, but being a country free from foot and mouth disease, it could also export beef meat to the Chinese market, although high tariffs do not allow it.

China is competitive in East Asian markets of fishery products, recording a favorable trade balance of US\$ 1,47 billion, but China is also a big market for foreign business, importing US\$ 1,87 billion in 2003. Protection to local production through tariffs ranges from 8% and 18%, and implies trade liberalization would benefit Chilean exports.

Chile and China's prospective patterns of specialization reveal high potential for increased bilateral trade and partnership, based on the specialization of China in non ocean water aquiculture and Chile in ocean water aquiculture. Therefore, the scope of products could increase and include frozen salmon, algae, sea urchin, frozen shellfish, agar-agar, and canned seafood. Trade liberalization and facilitation benefits reaped under an FTA, if

complemented with other initiatives concerning promotion of investment, and joint research and development, could build the basis for future partnership in fishery and aquiculture.

b. Mining Sector

In the mining sector, trade relations between Chile and China are very close but concentrated in copper. China is the most important market for Chilean copper exports and 73,7% of total Chilean exports to China comprised primary mining shipments. Chile and China share a complementary economic bilateral relationship in this sector, but it should be noted that although many tariffs applied by China to imports from Chile are null, a 2% tariff faced by products such as copper cathodes, does have a relevant impact for exports of this commodity.

An FTA would indeed have a positive effect on Chilean non copper mining exports to China. In metal and non-metal industrial minerals segment, a great market growth potential is observed, based on China's interest in looking for strategic supplies.

c. Industrial, Textile, Footwear and Other Manufactures

Bilateral exchange in this sector records a clear surplus in favor of China of US\$ 814 million in 2003 and China's exports to Chile are concentrated in this sector, which represented near 95%.

The impact of an FTA between Chile and China for imports of Chinese products into the Chilean market will concentrate in 99,6% in industrial goods. The largest increases are focused in metal, machinery and equipment products, basically due to the rise in imports of electrical products and machinery and equipment. In second place ranks the imports of textile and apparel sub-sector, in particular textiles, clothing and footwear. Finally, imports of products originated in processed and unprocessed chemical sub-sector would also increase, mainly rubber products, plastic products, basic chemicals, and prepared chemical products.

Chilean exports to China of industrial products will also benefit from tariff elimination, the elimination of tariff escalation, and the removal of non-tariff barriers, increasing by an estimated annual growth rate of 10%. Shipments of foodstuff and beverages, together with basic chemical products, would figure amongst the most important, concentrating an estimated 92% of the increase of industrial exports. It should be noted that a comprehensive FTA will contribute to expand exports towards foodstuff products based on fishery, meat and edible meat, where Chile has consolidated comparative advantages. Shipments of non organic chemicals would also increase. Potential exports face a wide range of tariffs, from low levels under the Chinese quota system, to 16%, and in general, Chile has a low market share in inorganic chemical products where it is competitive, such as light oils, petroleum ether preparations, mineral fertilizers, boric acid and by-products, molybdenum oxide, and methanol.

In conclusion, the Chilean and Chinese chemical industries are, generally, complementary. Chile exhibits comparative advantages in the inorganic area, while China has comparative advantages in the petrochemical area.

## **VI.5. Evaluation of a Comprehensive FTA on Trade-Related Issues**

### **VI.5.A. Intellectual Property Rights**

From the standpoint of Intellectual Property, no inconveniences are foreseen for the application of an FTA with China, as Chile has adjusted its national legislation concerning this matter, to bring it in line with international protection measures, particularly those established in the TRIPS Agreement.

Considering the above, an FTA with China would be an additional tool to reassert the effective protection and respect for intellectual property rights, according to international rules, seeking a balance between the rights of right holders and the legitimate interests of users and the community with respect to protected subject matter. This would be particularly useful to promote and encourage coordination between the Parties in order to develop both compliance with intellectual property legislation and at the same time avoiding over-protection. Lastly, an agreement would promote cooperation between the respective local intellectual property agencies, for instance, through the exchange of information and experiences in the implementation of international commitments, with a view to harmonizing a common approach to the different areas of concern and achieving a more uniform and consistent application of international rules.

### **VI.5.B Competition Policy**

Competition Policy is an important component of an FTA and aims at ensuring that the potential benefits of the liberalization process contained in such agreement are not diminished or cancelled out by anti-competitive business conducts, undertaken by public or private enterprises.

The interface between trade and competition policy becomes more important in a process of ever increasing economic cooperation and globalization. However, globalization may enhance competition by opening markets on the one hand, but may also increase the risk of anti-competitive practices on the other.

Therefore, it becomes highly important that the Parties undertake to duly apply competition laws and practices in a consistent manner so as to avoid that anti-competitive practices affect the expected benefits of the FTA.

Each Party should adopt or maintain competition practices that proscribe anti-competitive business with a view to preventing distortions or restrictions stemming from anti-competitive agreements, concerted practices or arrangements that would result in a dominant position that would affect the legitimate interest of the other Party.

Each Party should establish or maintain a competition authority responsible for enforcement of measures to proscribe anti-competitive business conduct. The enforcement policy of each Party's competition authority should include: not discriminating on the basis of the nationality that operate within the territory of both Parties or that negatively affect the interests of the other Party; ensure due process in any anti-competitive investigation; and ensure transparency in all decisions that might affect the competitive position of the other Party.

In order to facilitate the application of competitive practices to actions that may affect the interest of both Parties, the Parties should agree to cooperate and coordinate between their competition authorities through a process of notifications; consultations and exchange of information, including the possibility of requesting investigations in the territory of the other Party for conducts that may affect the interest of a given Party.

With regard to public enterprises and enterprises to which special or exclusive rights have been granted, the Parties shall ensure that no measure is adopted or maintained that distort trade in goods and services between the Parties, which is contrary to the objectives of this Agreement and contrary to the Parties' interests, and that such enterprises shall be subject to the rule of competition.

#### VI.5.C. Standardization

##### a. Sanitary and Phytosanitary Measures

In the area of agricultural, livestock, meat, edible meat, forestry and aquiculture products, the Chinese market is of high interest for Chilean exporters. Chile has a high phyto and zoosanitary level, being free from plagues and diseases that may constitute a restriction to exports. A direct bilateral relation with China in these areas could mean a more agile market opening for products of interest.

In the areas where no smooth relations have yet been established, closer ties arising from this type of negotiations would lead to a deeper understanding of Chilean technical departments, control systems, certification, epidemiological surveillance, and others, and thereby Chilean processes would achieve recognition and credibility in China. Thus, equivalence could be established for certain procedures, thereby facilitating the access of Chilean product to that Asian market. In recent years, a good bilateral relation has been built between the Chilean SAG and the Chinese AQSIQ, with excellent results as regards the authorization of new agricultural products, based mainly on the recognition of sanitary conditions in Chile and compliance with the standards contained in the SPS-WTO Agreements.

A formal instrument concerning the SPS area - such as a chapter on cooperation between competent authorities with regard to animal and plant health, and hydrobiological products and foodstuff safety - could be convenient to review progress made and problems still to be solved in connection with compliance with the principles arising from the SPS-WTO Agreements.

Moreover, given the experience of Chile in this area, the importance of formal instruments foreseen within the agreement to address SPS issues is of great importance. However, the latter must be complemented by the creation of ad-hoc mechanisms that have the mandate of finding efficient solutions to the problems that both Parties face in this area, under the guidelines that the agreement hands down.

The organizational structure, in China, in these areas is rigidly hierarchically arranged and the technical decision-making powers of competent agencies are not equivalent to those of Chilean agencies. Therefore, we consider that matters under discussion would be swiftly settled in Chile, a situation that favors China as regards, for instance, plague-free country or region recognition, certifications, control and surveillance.

b. Technical Barriers to Trade

Technical standards related measures can play an important role as non-tariff measures, it is therefore convenient to include disciplines in this regard in order to promote free-trade. Chile has followed this principle in the recent FTAs that it has agreed.

Although the WTO already establishes the framework to deal with standards related issues, to include them as a chapter of an FTA with China would certainly facilitate bilateral trade, and it is very likely to increase the export of industrialized Chilean products to China.

If adequate disciplines are negotiated, i.e. disciplines that go beyond WTO, this chapter would enable exporters to become familiar with the Chinese system, and most important, conformity assessment should be facilitated, allowing exporters to certify that their products meet Chinese technical requirements in a cheaper, more efficient and less trade restrictive way than it does today. It is also very important to define a framework to deal with eventual problems that might arise, in order to seek mechanisms to resolve them.

c. Government Procurement

For any agreement covering public sector procurement, and following the spirit of Chile's policy regarding government procurement in national laws and regulations and FTAs, a chapter regulating government procurement must provide market access with widest coverage to Chilean goods, services and suppliers in a non-discriminatory and transparent manner.

Bearing in mind that Chile and China are members of APEC, there is enough common ground for a mutually satisfactory understanding on matters of government procurement and therefore, Chile looks forward to the possibility of initiating discussions with China on this topic.

d. Movement of Business Persons

In general terms, the provisions of Temporary Entry of Business Persons are intended to facilitate business travel between the territories of the Parties as a necessary complement to

achieve the FTA objectives of liberalizing investment regulations and reducing barriers to trade in goods and services. These provisions simplify procedures for temporary entry of business persons and ensure border security, protect the domestic labor force and permanent employment in the territory of the Parties.

For this reason and considering the trading relationship between Chile and China, it is convenient to include a Chapter of Temporary Entry of Business Persons.

#### VI.5.D. Trade Remedies

Chile considers that, in the context of a Bilateral FTA negotiation with such an important potential trade partner, the Anti-dumping and Countervailing duties mechanisms must be maintained under the provisions of Article VI of the GATT of 1994, the WTO Agreement on Antidumping and the WTO Agreement on Subsidies and Countervailing Measures. The same criterion should be observed with regard to the Global Safeguards Regime in which both Parties to the FTA confirm their rights and obligations under Article XIX of the GATT of 1994 and the WTO Agreement on Safeguards.

In order to facilitate the negotiation and adoption of a meaningful and rapid process of tariff reduction and elimination that leads to a significant increase in trade flows on goods, it is necessary to rely on conditions that give assurances to domestic producers that they will have the adequate time, conditions and special mechanisms to adapt to the new situation of trade competition.

#### VI.5.E Dispute Settlement Mechanisms

A dispute settlement mechanism is essential for ensuring the proper functioning of an FTA. Dispute settlement rules have a wide scope of application which provide for a secure, impartial and according to the rule of law, settlement of any dispute that may arise between the Parties related to trade issues ruled by the disciplines of the FTA.

FTAs establish the endeavor of the Parties to arrive at a mutually satisfactory resolution of any dispute, through cooperation and consultations. Additionally, these rules determine the scope of application of the system and optional forums. Generally, a dispute settlement system comprises four well-defined stages, namely consultations, intervention of the Free-Trade Commission (good offices, conciliation and mediation), initiation of proceedings before an Arbitral Panel, and compliance with the Final Report, which is binding for the Parties.

#### VI.5.F. Transparency

The main purpose of addressing transparency in FTAs is to facilitate communication between the Parties and to make available measures concerning any issue covered in the Agreement. Transparency contributes to assure that Governments provide the necessary means for individuals to become acquainted with the rules and thus allow compliance with them.

Its intended purpose is that laws, regulations, procedures and administrative rules of general application should be published without delay and that the other Party is afforded the opportunity to make observations there on. Additionally, transparency seeks that, to the greatest extent possible, one State notifies the other State of any actual or proposed measure that may affect the functioning of the FTA or the interests of any Party thereunder.

In addition this Chapter includes rules on due process in matters concerning administrative procedures, which may affect aspects covered in the FTA, and, finally, it provides for the creation of information centers with a view to facilitating communication between the Parties in matters concerning the Agreement.

Based on these arguments, an FTA with China would benefit from a special chapter on Transparency.

## **VI.6. Elements for Building a Strategic Economic Partnership**

### **VI.6.A Economic, Technical and Development Partnership**

The full dynamic effects of FTAs are enhanced by incorporating in a global perspective a framework on economic, technology and development partnership initiatives, in order to facilitate and encourage bilateral joint ventures in the pursuit of increased competitiveness. The strategic objective is to foster innovation and create new opportunities for trade and joint ventures. The framework provided by FTAs allows to target new areas where actions should contribute to reinforce the positive impact of the agreement on trade. FTAs can facilitate increased participation and consultation of civil society in matters of cooperation, and contribute to implement projects with a positive impact in social development, economic growth and environmental protection. A section on partnerships and joint projects should include: science, technology, information society and human capacity building.

The present Chilean and Chinese partnership has covered fields of cooperation in agriculture and dialogues on social issues (labor relations and social security systems). The interest of the Chilean government, in the context of a broad and comprehensive set of strategic initiatives with China, including the possible FTA, is to reinforce partnership on the above-mentioned issues. The global framework should allow to identify projects for engaging partnership on research, development and innovation, for mutual benefit and with a concrete long-term vision to develop joint capacities in international markets. These initiatives would require the involvement of governmental R&D entities, private companies, and social organizations, in areas such as biotechnology, joint research on climate change and plague control, exchange of antipollution techniques, and irrigation systems for precision agriculture, among others.

### **VI.6.B Labor Standards and Environment**

FTAs negotiated by the Chilean government are cornerstones for achieving sustainable economic development lead by international trade and investment. The strategic goal is to

improve the integration of Chile to the global economy and build the foundations for the participation of the Chilean population and social actors to the benefits of economic growth and development, while simultaneously laying the basis for sustainable development.

The policy of Chilean governments has been to address labor and environment issues, although according to different templates, so as to show the commitment of the country to these issues and to Chilean enforcement of its own laws, while at the same time adopting a realistic approach to the specific relationship with each trade partner. Chile has also sought to encourage participation of its civil society, as well as public access to procedures for the enforcement of the Parties labor and environmental laws.

In issues related to environment and labor, the Chilean government aim at harmonizing trade and environment and labor policies, based on an approach that recognizes the right of each Party to establish domestically its own levels of protection, its policies and priorities and to adopt or modify its own legislation.

In recent years, China and Chile had exchanges about its labor relations and social security systems, including health, safety and pensions systems. The interest of the Chilean government, in the context of a broad and comprehensive set of strategic initiatives with China, is to address labor issues together with environmental issues in a proper way, based on each Party's own reality, laws and systems, sharing mutual commitments already established by both countries and specially based in cooperation and transparency so as to allow the opportunity for both countries to develop their trade, investment and economic and social development.

Environment and labor cooperation could be envisaged by mutual consensus with participation of the respective ministries and agencies with government to government programs and projects with domestic consultation and involvement as decided by each Party, in order to better understand each other systems, improve linkages, enhance human capital/resources for economic development and share best practices in these areas.

## **VI.7. Conclusions**

The conclusion of a comprehensive and broad FTA with China, under the assumption that a broad and comprehensive agreement addresses both a substantial proportion of bilateral trade, with no economic sector excluded, as well as it covers the complete scope of issues that relates to bilateral economic relations between Chile and China, would have a very positive effect for the Chilean economy, enhancing the scope of economic relations, with a leading industrial power and consolidating the presence of the Chilean economy in East Asia and its role as a transpacific business platform.

The global effect of an FTA, with a view to substantially improve the business environment with one of the leading economies in the world, would consolidate the role of Chile as a productive and business platform to South America, thus generating greater potentials for Chinese investment, interested in optimizing its industrial and financial presence in one of the most important markets in the world.

Considering the structure of Chilean imports from China, intensive in equipment and capital goods, an FTA would, through tariff reductions, favor competitiveness in a wide range of industrial activities, thereby consolidating their export potentials.

The subscription of an FTA with China would contribute to minimizing trade deviations induced by agreements that Chile has negotiated with the European Union, the United States and Korea. Thus, the positive effect of all the agreements that Chile has been negotiating with its main trade partners would be synergized.

Considering the extension and depth of economic relations with China, a broad and comprehensive FTA would be an essential contribution to the consolidation of a second stage in Chilean exports, based on activities in which it has developed comparative advantages. Mining, in particular, emerges as a promising field for related services and supporting industry. Likewise, trade, agroindustry and food manufacturing-related services appear as areas for cooperation and exchange, which could be greatly developed under an FTA, permitting the exchange of technology, with a view to boosting competitiveness.

An FTA with China would have a positive impact on the Chilean economy and would further strengthen bilateral trade and investment. Therefore, it is suggested that the maximum effort should be made to conclude an broad and comprehensive bilateral FTA.

