

# CHILE

In 1996, the U.S. trade surplus with Chile was \$1.9 billion, an increase of \$194 million from the U.S. trade surplus of \$1.7 billion in 1995. U.S. merchandise exports to Chile were more than \$4.1 billion, an increase of \$519 million (14.4 percent) from the level of U.S. exports to Chile in 1995. Chile was the United States' twenty-seventh largest export market in 1996. U.S. imports from Chile were about \$2.3 billion in 1996, an increase of \$325 million (16.8 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Chile in 1995 was \$5.5 billion, an increase of 25.7 percent from the level of U.S. FDI in 1994. U.S. FDI in Chile is concentrated largely in the financial and manufacturing sectors.

## IMPORT POLICIES

Chile has a generally open trade regime. Chile applies a uniform ad valorem tariff of 11 percent on imports from all countries with which it has not already negotiated free trade agreements. Chile's tariffs are bound at 25 percent ad valorem. However, some significant barriers do exist.

Chile's major border measure barriers are in the agricultural sector. Chile maintains a price band system for wheat, wheat flour, vegetable oils, and sugar. This variable tariff system is designed to maintain domestic prices for these commodities within a predetermined band, delaying the impact of changes in international market prices on Chilean producers and consumers. Chile also imposes minimum customs value requirements for imports of agricultural products on occasion, in response to low world prices. Further, imports of used automobiles are prohibited.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

Chile uses animal health and phytosanitary requirements to restrict or prevent some imports. Even though Chile is a member of the World Trade Organization (WTO), announcement of proposed rule changes, notification of proposals to other members via the WTO Secretariat, and opportunity for public comment often fail to precede the actual promulgation of new requirements. U.S. exports of poultry are effectively blocked from the Chilean market through a sanitary requirement that the United States considers unjustified and discriminatory. The U.S. Government has protested this requirement to the Chilean Government and has raised the issue in the WTO Sanitary and Phytosanitary Committee. U.S. fruit exporters have found it extremely difficult to penetrate the Chilean market due to phytosanitary barriers. U.S. beef exports have been restricted by Chilean labeling and grading regulations. Chile does not permit U.S. beef in consumer cuts to enter the market without being graded to Chilean grading standards. Because Chilean meat grades originate from carcass grades at the time of slaughter, this requirement effectively blocks U.S.-produced beef from the market, although meat that will undergo further processing is not affected. The United States will continue to press Chile to implement and enforce WTO-consistent sanitary and phytosanitary requirements.

## **Chile**

### **EXPORT SUBSIDIES**

While Chile does not generally subsidize exports, it does employ a number of export promotion measures to help non-traditional exports. Chile provides a simplified duty drawback program for non-traditional exports which does not reflect actual duties paid on imported components. This program has been determined to be countervailable under U.S. law.

Chile's export promotion measures are primarily intended to expedite and simplify the paperwork involved in the export process. The Government of Chile also provides exporters with quicker returns of value-added taxes than it provides to other producers. One such export promotion measure lets all exporters defer import duties for up to seven years on imported capital equipment or receive an equivalent subsidy for domestically produced capital goods. The Government of Chile has announced that, in accordance with WTO commitments, the drawback program will be phased out over time. Chile also has an active export promotion agency which has planned expenditures of up to \$10 million a year, half from government funds and half from industry contributions, for agricultural export promotion alone.

### **LACK OF INTELLECTUAL PROPERTY PROTECTION**

#### **Patents**

Chile implemented a new patent, trademark, and industrial design law in 1991. This law provides product patent protection for pharmaceuticals. However, deficiencies exist in the law, including: a term of protection that is not consistent with international standards of 20 years from filing; lack of protection for plant and animal varieties; lack of provisions for extending patent terms for delays due to regulatory approval processes; inadequate industrial design provisions; and a lack of "pipeline" protection for pharmaceutical products patented in other countries prior to the time product patent protection became available in Chile.

The shortcomings in Chile's patent regime are amplified by its discriminatory registration process. The registration procedures required by the Chilean Health Ministry to market new drugs discriminate markedly against the first-to-file (generally foreign firms) by enforcing a longer waiting period and higher standards of documentary evidence than are required for subsequent registries of a theoretically-similar product. This gives copies a strong commercial advantage and exacerbates the lack of patent protection for pharmaceutical products because of the lack of pipeline protection.

The trade gains from remedying these deficiencies for the pharmaceutical industry alone are estimated to be in the range of \$50-100 million annually.

#### **Copyrights**

Chile revised its copyright law in 1992, extending the term of protection to the author's life plus 50 years (the Berne Convention standard). Chile's law does not protect computer software as a "literary work" as required by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Chile's copyright law also has some deficiencies including: unclear rental and importation rights; inadequate

penalties; lack of provision for ex parte civil searches; unclear provision for injunctions and temporary restraining orders; no provisions for "works for hire;" and unnecessary constraints on contractual rights. Despite active and effective enforcement efforts, piracy of computer software remains significant. Industry sources have estimated that pirated goods constituted 68 percent of the software market in 1995, with potential gains of as much as \$74 million if piracy were reduced to zero. Though relatively low, piracy of video tapes also exists and is estimated by industry sources to affect some 25-30 percent of the market, with potential trade gains of around \$5 million a year. Sound recording piracy is estimated at about 25 percent of the market; potential trade gains from its elimination would approach \$10 million.

### **Trademarks and Other Issues**

Chile's trademark law provides a degree of IPR protection, but also contains deficiencies, including: no requirement of use to maintain trademark protection; a "novelty" requirement for trademark registrations; no provision for trademarking figurative marks, color or packaging or for certification or collective marks; and no provisions for protection of "well-known" marks. In addition, Chile does not provide protection for semiconductor mask works or for encrypted program-carrying satellite signals.

### **SERVICES BARRIERS**

In the recently concluded WTO negotiations on basic telecommunications services, Chile made commitments on most basic telecom services and adopted the reference paper on regulatory commitments. However, Chile has made no commitment for local telecommunications services.

### **INVESTMENT BARRIERS**

While Chile welcomes foreign investment, controls and restrictions do exist. Under the law that regulates nearly all foreign direct investment, profits may be repatriated immediately, but none of the original capital may be repatriated for one year. Foreign direct investment is also subject to pro forma screening by the Government of Chile. The government has recently begun to reject "speculative" investments from qualifying as foreign direct investment, although the funds can enter as ordinary foreign capital. In addition, foreign capital introduced into Chile for most lending purposes, for investment in government securities, and for other so-called non-productive purposes is subject to a non-interest bearing reserve deposit requirement, thereby significantly raising the financial cost of such capital transactions. There is no tax treaty between Chile and the United States, so the profits of U.S. companies are taxed by the governments of both nations.

Royalty contracts must be approved by the Central Bank. Contracts may set fees and royalties only as a percentage of sales. Payments are usually limited to one percent of sales for the use of trademarks, three percent for the use of trade secrets and proprietary processes, and five percent for the use of patents. Remittances above these levels may be denied access to the inter-bank foreign exchange market and may be disallowed as expenses by the tax authorities. Trade-related investment measures are also applied in the automobile industry, with the government granting tax benefits in return for meeting local content requirements, and for exporting.

## **Chile**

In the petroleum sector, oil and gas deposits are reserved for the state. However, private investors, whether foreign or Chilean, are allowed concessions in this area.

### **OTHER BARRIERS**

#### **Distilled Spirits Tax**

Chile maintains an excise tax on spirits, based on the alcohol content, that favors locally produced "pisco" by taxing it at 25 percent ad valorem while whiskey is taxed at 70 percent. The United States has urged Chile to adopt a more equitable distilled spirits tax system. New legislation to amend the current system, anticipated in 1997, would not meet U.S. concerns in its current form.

#### **Luxury Tax**

In addition to the 11 percent import tariff and the 18 percent value-added tax, automobile imports are subject to a "luxury" tax of 85 percent of c.i.f. value above roughly \$10,300. This tax discourages sales of larger, more expensive vehicles, including most U.S.-made automobiles, which incorporate expensive safety features. Despite these taxes, sales of U.S.-produced vehicles are rising.