

# CHILE

The 1998 U.S. trade surplus with Chile reached \$1.5 billion, a half billion decrease from 1997. U.S. imports from Chile in 1998 totaled \$2.5 billion, while U.S. exports to Chile in 1998 were \$4.0 billion. Chile is the 28th largest export market of the United States. In 1997, U.S. foreign direct investment (FDI) was \$8 billion.

## IMPORT POLICIES

Chile has a generally open trade regime. In January 1999, Chile's uniform *ad valorem* tariff decreased from 11 percent to 10 percent for imports from all countries that have not already negotiated free trade agreements with Santiago. The uniform tariff is set to decline by one percentage point per year until it reaches six percent in 2003. Imports of used goods, however, are assessed a 16.5 percent tariff, while computer products enter Chile duty free. Virtually all of Chile's tariffs are bound at 25 percent *ad valorem*, with the exception of tariffs for wheat, flour, vegetable oil, and sugar, which are bound at 31.5 percent. Despite Chile's relatively progressive trade regime, some significant barriers still exist.

Chile maintains a complex price band system for certain agricultural products that keeps domestic prices within a predetermined range. Due to low international wheat prices in 1998, the price band system led to applied import duties as high as 45-50 percent, well above Chile's WTO bound rate of 31.5 percent. In the case of wheat flour, the price band system serves to protect Chilean millers from low-priced MERCOSUR flour imports.

Chilean law also permits the government to impose minimum customs value requirements for imports of agricultural products in response to low world prices. While Chile is not obligated to terminate this program until the year 2000, when its transition period for implementation of the WTO Agreement on Customs Valuation expires, it has not applied the law since 1995. In addition, the importation of used automobiles is prohibited.

## STANDARDS, TESTING, LABELING AND CERTIFICATION

Chile's strict animal health and phytosanitary requirements prevent the entry of some imports. In addition, announcement of proposed rule changes, notifications of proposals to other members via the WTO Secretariat and opportunity for public comment often fail to precede the actual promulgation of new requirements. As a result of efforts by the U.S. Government on sanitary and phytosanitary issues, Chile has begun to open its market to some trade in horticultural products. Chile has granted approval for citrus, table grapes, kiwis, apples, and pears from the U.S. West Coast. In addition, U.S. exports of fresh and frozen poultry are effectively blocked from the Chilean market by a sanitary requirement that the United States considers unjustified. The U.S. Government has protested this requirement to the Chilean Government and has raised the issue in the WTO Sanitary and Phytosanitary Committee. According to U.S. and Chilean industry sources, U.S. dry peas exported to Chile are subject to Chilean fumigation requirements although Canadian dry peas are not. U.S. beef exports have been affected by restrictive and rigid Chilean labeling and grading regulations. Chile does not permit U.S. beef in

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consumer cuts to enter the market without being graded to Chilean standards, which are incompatible with the U.S. grading system. 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.

### **EXPORT SUBSIDIES**

Chile employs a number of export promotion measures to help non-traditional exports, including through the Chilean Government's active export promotion agency. In addition, the Chilean forestation subsidy program was reinstated in 1998. Chile provides a simplified duty drawback program for non-traditional exports which does not reflect actual duties paid on imported components. In general, Chile's export promotion measures are 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. Chile has announced that, in accordance with its WTO commitments, the drawback program will be phased out; legislation to effect this change is anticipated in 1999.

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

#### **Patents and Trademarks**

Chile implemented a patent, trademark and industrial design law in 1991 that provides product patent protection for pharmaceuticals and a limited form of pipeline protection. While the law is generally strong, deficiencies exist, including: a term of protection that is not consistent with the TRIPs term of 20 years from filing; a lack of provisions for restoring patent terms for delays in marketing due to regulatory approval processes; inadequate industrial design protection; and a lack of full "pipeline" protection for pharmaceutical products patented in other countries prior to the time product patent protection became available in Chile. The Government of Chile has announced its plans to introduce legislation in early 1999 to make its intellectual property laws fully TRIPS-consistent.

Another concern with Chile's intellectual property regime is a backlog of patent applications, which the Government of Chile has begun to address. Also of concern is the lack of adequate and effective protection of proprietary test data; Chile does not provide a term of protection for test data consistent with international standards.

Chile's trademark law is largely consistent with international standards, but contains deficiencies, including: no requirement of use to maintain trademark protection; a "novelty" requirement for trademark registrations; unclear provision for trademarking figurative marks, color or packaging; and no provisions for protection of "well-known" marks. Some U.S. trademark holders have complained of inadequate enforcement of trademark rights in Chile.

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### Copyrights

Chile revised its copyright law in 1992, extending the term of protection to the author's life plus 50 years, the standard in the TRIPs Agreement. While the copyright law provides protection that is nearly consistent with international standards in most areas, deficiencies remain. The Chilean law does not clearly protect computer software as a "literary work," does not provide clear rental and importation rights, allows for inadequate penalties, has no provision for *ex parte* civil searches, is uncertain as regards the availability of injunctions and temporary restraining orders, and places unnecessary constraints on contractual rights. Despite active enforcement efforts, piracy of computer software remains significant.

### SERVICES BARRIERS

Chile's relatively open services trade and investment regime stands in contrast to its relatively limited GATS commitments. In particular, Chile maintains a "horizontal" limitation (a restriction applying to all sectors in Chile's GATS schedule), under which authorization for foreign investment in service industries may be contingent on a number of factors, including employment, the use of local inputs, and competition. This limitation appears to undermine the commercial value and predictability of Chile's GATS commitments.

Chile has already made WTO commitments on most basic telecom services, adopted the WTO reference paper on regulatory commitments and ratified the GATS Fourth Protocol in June 1998. Despite this progress, U.S. companies complain of regulatory delays. Chilean telecommunications officials indicate that access surcharges for incoming international calls to Chile will be reviewed in the spring of 1999. These charges are discriminatory by reason of their application only to incoming, but not outgoing, international calls.

### INVESTMENT BARRIERS

While Chile welcomes foreign investment, controls and restrictions do exist. Under a 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 subject to pro forma screening by the Government of Chile. Until mid-1998, all funds entering Chile as ordinary foreign capital were subject to a non-interest bearing reserve deposit requirement that significantly raised the financial cost of these capital flows. This reserve requirement, which applied to foreign capital introduced into Chile for most lending purposes, for investment in government securities, and for other so-called non-productive or "speculative" purposes, was reduced from 30 percent to 10 percent in June 1998, and to zero two months later. There is no tax treaty between Chile and the United States, so the profits of U.S. companies are subject to taxation by the governments of both nations.

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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. 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.

Chile has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs). The measures deal with local content and trade balancing in the automotive industry. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Chile therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO members meet these obligations.

### **ELECTRONIC COMMERCE**

Although electronic commerce is in its infancy in Chile, there is a growing recognition of its vast potential in an economy characterized by an export and services orientation and rapid growth in computer telecommunications and Internet use. There is evidence of a growing consensus between market participants and policy officials that the regulatory treatment of the industry should promote the sector's competitiveness.

Similarly, while there is an awareness of the myriad privacy, security, contract law, etc., issues raised by electronic commerce, there is also recognition that the eventual creation of national policies addressing such issues will have to move hand-in-hand with developments internationally.

### **OTHER BARRIERS**

#### **Distilled Spirits Tax**

Chile's tax regime historically has imposed higher taxes on distilled spirits imports than on *pisco*, a spirit necessarily manufactured in Chile. The U.S. has consistently indicated its concern regarding the inconsistency of the taxes with Article III:2 of the General Agreement on Tariffs and Trade (GATT). In November 1997 the Chilean Congress passed a bill to modify the liquor tax system. The modification took effect December 1, 1997, with a three-year phase-in period. The amended system still burdens U.S. exports. The European Union instigated the formation of a WTO panel to review this discriminatory practice; the United States is a third party participant to the panel proceeding. A preliminary panel determination was made in February 1999 and the final determination is due in April 1999.

#### **Luxury Tax**

In addition to the 10 percent import tariff and the 18 percent value-added tax, automobile imports are subject to additional taxation. An "engine tax," which is scheduled to be phased out in 1999, applies to

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vehicles with engines of over 1,500 cc. A "luxury tax" of 85 percent is also levied on CIF value above a certain price level (around \$10,000 in 1999). These taxes discourage sales of larger, more expensive vehicles, including most U.S.-made automobiles, which usually include expensive safety features. In early 1999, the Government of Chile announced that it would seek to modify -- but not eliminate -- the automobile luxury tax regime.

