

CHILE

TRADE SUMMARY

In 2001, the U.S. trade deficit with Chile was \$424 million. U.S. goods exports to Chile were approximately \$3.1 billion, a decrease of \$329 million (9.5 percent) from the level of U.S. exports to Chile in 2000. Chile was the United States' 32nd largest export market in 2000. U.S. imports from Chile were about \$3.6 billion in 2001, an increase of \$286 million (8.7 percent) from the level of imports in 2000.

U.S. exports of private commercial services (i.e., excluding military and government) to Chile were \$1.6 billion in 2000 (latest data available), and U.S. imports were \$862 million. Sales of services in Chile by majority U.S.-owned affiliates were \$1.8 billion in 1999 (latest data available), while sales of services in the United States by majority Chile-owned firms were \$174 million.

The stock of U.S. foreign direct investment (FDI) in Chile in 2000 was \$10.8 billion, an increase of 7.3 percent from the level of U.S. FDI in 1999. U.S. FDI in Chile is concentrated largely in the finance, manufacturing and banking sectors.

IMPORT POLICIES

Tariffs

Chile has a generally open trade regime and has been reducing its applied tariffs unilaterally by one percent per year since 1999. On January 1, 2002, the uniform tariff was lowered from 8 percent to 7 percent for virtually all imports. The uniform rate is set to decline further to 6 percent in 2003, concluding the process of reductions. To compensate for lower tariff revenues, in 1998 the Chilean Congress agreed to increase taxes gradually on a variety of products, including tobacco, cigarettes, gasoline, stamps and seals, and alcoholic beverages. Virtually all of Chile's tariffs are bound at 25 percent ad valorem.

There are several exceptions to the uniform tariff. Imports of used goods are assessed a 16.5 percent tariff, while importing used automobiles is prohibited. Computer products and books enter Chile duty free. In July 2000, a 16 percent provisional safeguard duty was imposed on imports of all dry milk powder and liquid UHT milk. This measure was lowered to 12 percent effective January 11, 2001. On December 18, 2001, the Chilean Government National Commission for Price Distortions initiated a study to determine whether to apply safeguard measures on imported steel. The investigation was prompted by a request presented by two Chilean companies, Gerdau AZA and Compania Chilena del Pacifico (CAP). Gerdau AZA and CAP claimed that the Chilean steel industry would be severely impacted by world oversupply that could be generated by increased protection of the U.S. steel market. Both companies are calling for a 25 percent to 35 percent tariff surcharge for steel imports. Chile currently applies a 7 percent tariff for most steel imports.

On August 2001, Chile formally registered its new consolidated sugar import tariff with the WTO, which increased from the current level of 31.5 percent to 98 percent. The Chilean Congress must first approve this modification in order for it to take effect. In order to increase the import tariff, Chile was obliged to offer quotas in compensation to its three principal suppliers, Argentina, Guatemala and Brazil.

Import Controls

Customs authorities must approve and issue a permit for all the imports greater than \$3,000. Imported goods must generally be shipped within 30 days from the day of the import permit, but authorities may establish a different period. Commercial banks may authorize imports less than \$3,000. All imports must be reported to the Central Bank. Commercial banks may sell foreign currency to any importer to cover the price of the imported goods and related expenses, as well as to pay interest and other financing expenses that are

CHILE

authorized by the import permits. Legal entities and individuals may import any type or amount of goods either through the formal or informal exchange market, except for goods specifically prohibited.

Non-Tariff Barriers

Chile's obligations under WTO Custom Valuation Agreement (CVA) took effect on January 1, 2000, but WTO records do not indicate that Chile has notified its legislation or the Customs Valuation Checklist to the WTO Committee on Customs Valuation as yet.

Chile maintains a complex price band system for wheat, wheat flour, edible vegetable oils and sugar. The price band system was created in 1985 and is intended to protect the domestic production of the above goods. Under this system, specific duties based on the reference prices of imported goods are imposed on top of ad valorem tariffs to keep domestic prices within a predetermined range. Even though Chile is gradually reducing ad valorem rates, the specific duties can effectively keep tariffs on these agricultural products quite high. For example, due to low international wheat prices in 1999 and 2000, effective tariff rates rose as high as 90 percent, well above Chile's WTO bound rate. However, on May 17, 2001, the price bands applicable for sugar, oil seeds and their derivatives were lowered for the following harvest season, extending through March 2003. Chile adopted a provisional safeguard measure on imports of mixtures of edible oils, consisting of an ad valorem tariff surcharge of 48 percent on January 11, 2001. Argentina subsequently initiated a case before the WTO Dispute Settlement Body, charging that the safeguard measure was incompatible with Chile's obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards and that the price band mechanism was inconsistent with Article II of the GATT 1994 and the Agreement on Agriculture. Chile suspended the price band for oils on April 25,

2001 when the Government lifted the 48 percent safeguard tariff, which in practice left the sector without protection. The WTO case against the price band mechanism itself remains pending. In the case of wheat, wheat flour and vegetable oil, the United States has a significant export interest.

STANDARDS, TESTINGS, LABELING AND CERTIFICATION

Chile's strict animal health and phytosanitary requirements prevent the entry of numerous products, such as Northwest cherries and some citrus. As a result of efforts by the U.S. Government on sanitary and phytosanitary issues, however, Chile has begun to open its market to some trade in certain U.S. horticultural products, including citrus, table grapes, kiwis, apples, and pears from the U.S. West Coast. In October 2000, the Chilean government published final rules providing market access for avocados and walnuts from California, and has drafted proposed rules, which would allow entry of certain citrus fruits from California and Arizona.

U.S. exports of fresh and frozen uncooked poultry are effectively blocked from Chilean market by salmonella inspection requirements. In December 1999, Chile issued emergency regulations that restricted all U.S. exports of fertilized salmon eggs in 2000, despite the disease free status of U.S. salmon eggs. In 2000, Chile issued draft regulations, which are not based on Organization International des Epizooties (OIE) international standards. On February 9, 2001, the United States signed a Letter of Agreement with Chile that will allow U.S. officials to certify U.S. salmon egg exports as disease free while Chile finalizes its regulation and implements international standards. Last year imports were permitted to resume but under rules that will strongly discourage trade. The U.S. Government is urging changes to these rules.

Both poultry and red meat imports from the U.S. are severely constrained by Chile's failure to

CHILE

recognize the U.S. meat and poultry inspection systems, thus limiting access only to those plants that pay for Chilean inspectors to travel to the U.S. to inspect and certify them. The same rule applies to and constrains U.S. trade in other livestock products. Further, Chile does not permit U.S. beef in consumer cuts to enter the market without being graded and labeled to Chilean standards, which are incompatible with U.S. grading and labeling systems.

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. The Chilean government is studying a rule proposed by the Health Ministry to require mandatory labeling of food products containing transgenic ingredients. The U.S. continues to press Chile to implement and enforce WTO-consistent sanitary and phytosanitary requirements.

EXPORT SUBSIDIES

Chile has a range of export promotion measures which are not necessarily export subsidies, but which in some instances, depending on the specifics of application, might constitute an export subsidy. Chile's Ministry of Foreign Affairs promotes the country's exports by providing grants to private companies or industries for export promotional activities that go beyond what would be considered general export promotion. The goal of ProChile, the Export Promotion Bureau of Chile, is the promotion of specific products to targeted exports markets. ProChile provides direct financial assistance to participating firms. Chile also provides a simplified duty drawback program for nontraditional exports. Rather than rebate actual duties paid on imported components, the program refunds a percentage of the value of the export. Companies purchasing capital equipment domestically can borrow up to 73 percent of the amount of customs duties that would have been paid on the capital goods if they had been

imported. If the capital goods are ultimately used in the production of exports, the loan balances and any unpaid interest are waived and the producer is not required to repay the loan. Another 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 "Country Image" Program is intended to enhance Chile's image among the population and opinion leaders in target export markets. The program is a "joint venture" between the Chilean public and private sector. The program's beneficiaries include all companies that currently export, as well as those with export potential.

Export Controls

The Customs Authority must approve and issue export reports. Exported goods must generally be shipped within 90 days from the date of the export report, but this period may be extended under certain conditions. Exporters may freely dispose of hard currency derived from exports. As with imports, exporters may use the formal or informal exchange market. All exports must be reported to the Central Bank, except in the case of copper, where the Chilean Copper Commission authorizes exports. Duty free import of materials used in products for export within 180 days is permitted with prior authorization. Free-zone imports are exempt from duties and value-added tax if re-exported.

INTELLECTUAL PROPERTY RIGHTS (IPR) 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

CHILE

term of protection inconsistent with TRIPS term of 20 years from filing; no provisions for extending the patent term in appropriate circumstances; inadequate industrial design protection; and a lack of full “pipeline” protection for pharmaceutical products patented in other countries prior to the time in which product patent protection became available in Chile. The Government of Chile introduced legislation in 1999 intended to make this and other Chilean intellectual property laws fully TRIPS consistent. However, this legislation was not passed prior to January 1, 2000, when Chile’s TRIPS obligations came into effect and still has not been approved by the Chilean Congress. The U.S. Government has urged the Government of Chile to ensure that TRIPS consistent intellectual property protection be provided as soon as possible. The Chilean Congress should address the draft bill in early 2002. Amendments to the draft law would substantially improve protection for undisclosed data, including test data confidentiality.

U.S. pharmaceutical firms and other applicants for patents continued to face significant delays in patent approval owing to extensive case backlogs in Chile’s patent office. In addition, in November 2001 the Chilean Institute of Public Health announced that it would issue marketing approval for drugs without regard to whether a patented version of the drug already exists. Marketing approvals are routinely granted on the basis of unauthorized use of confidential test data. In practice there is no effective link between health authorities and the patent office so as to guarantee effective protection of intellectual property rights. The marketing of unauthorized copies of patented drugs remains a serious problem in Chile.

Chile’s trademark law is generally consistent with international standards, but still contains some deficiencies, including: no requirement of use to maintain trademark protection; a “novelty” requirement for trademark registration; unclear provisions 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 implementing regulations and enforcement of trademark rights in Chile. According to a major U.S. apparel manufacturer, the seizure rate for counterfeit goods is extremely low. This problem is exacerbated by the fact that the vast majority of counterfeit products on the market in Chile are imported from Colombia and Peru. Consequently, lax enforcement in Chile has helped fuel demand for counterfeits in the South American region as a whole.

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 WTO TRIPS Agreement. While the copyright law provides protection that is nearly consistent with international standards in most areas, shortcomings remain. The Chilean law does not provide adequate penalties for copyright infringement, has no provision for *ex parte* civil searches, is uncertain regarding the availability of injunctions and temporary restraining orders, and places unnecessary constraints on contractual rights. Despite increasingly active enforcement efforts by the police, piracy of computer software and video recordings remains significant. Attempts to enforce copyrights in Chile have met with considerable delays in the courts and weak sentences for offenders. The U.S. industry estimates losses related to video piracy alone to exceed \$2 million annually. Revision of the 1992 copyright law is also addressed in the Government of Chile’s 1999 intellectual property rights bill, but drafts of the law do not appear to provide for more effective use of injunctions in infringement cases.

Chile signed the WIPO Treaties on Copyright and Performances and Phonograms in April 2001.

SERVICE BARRIERS

CHILE

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, 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 generation, use of local inputs and compensation. This restriction undermines the commercial value and predictability of Chile's GATS commitments.

Chile has made WTO commitments on most basic telecommunications services, adopting the WTO reference paper on regulatory commitments and ratifying the GATS Fourth Protocol. Nonetheless, U.S. companies occasionally complain of regulatory delays and a lack of transparency in regulatory decisions. In particular, one U.S. company with significant investment in Chile complained about not receiving its access charge decree within the timeframe set forth in Chile's Telecommunications Law. Chile's schedule of commitments excludes local basic telecommunications services, one-way satellite transmissions of Direct-to-Home and Direct Broadcast Satellite television services and of digital audio services. It also excludes free reception broadcasting services.

During the 1997 WTO financial services negotiations, Chile made commitments in banking services and most securities and other financial services. However, Chile made commitments neither for asset management services, including the management of mutual funds or pension funds, nor for financial information services. Chile also reserved the right to apply economic needs and national interest tests when licensing foreign financial service suppliers. According to Article 46 of Decree Law (DFL) 251, the business of insuring or covering risk based upon premiums can only be undertaken in Chile by insurance and re-insurance corporations which are exclusively dedicated to carrying out insurance and other

related activities. Foreign insurance companies established in Chile have no limitation on access to the Chilean market as long as they are legally established in Chile. Foreign-based insurance companies cannot offer or contract insurance policies in Chile directly or through intermediaries.

On April 16, 2001 the Central Bank of Chile suspended its remaining controls on capital flows in an effort to encourage inward portfolio investment and help resuscitate small and medium-sized business. Among the measures is the suspension of the "encaje", a deposit requirement, which applied to foreign capital introduced into Chile for most lending purposes, investment in government securities and other short-term flows. This deposit requirement was reduced from 30 percent to 10 percent in June 1998 and to zero in 2000. In the last two years, the Central Bank has also eliminated the one-year holding period for non-direct investment. Also, outflows associated with capital returns, dividends, and other investments will no longer need government approval. Restrictions on the issuance of American Depositary Receipts, ADRs, have been lifted, and Chilean companies will be free to take out loans or issue bonds in a greater range of currencies.

On November 6, 2001, President Ricardo Lagos implemented further capital market reforms in Chile. These reforms together with the Capital Account Liberalization policy and the Law for Public Offers of Stocks (OPA) constitute a great step towards efficiency and wider access to capital. The main pillars of the Capital Market reform are two bills already approved by the Congress, the Institutional Law and the Tax Laws. The Institutional Law eases restrictions on investments in mutual funds and insurance companies and facilitates the internationalization of the banking industry. The Tax Law contemplates, among other things, the repeal of the capital gains tax on stocks and the creation of the emerging stock exchange.

CHILE

INVESTMENT BARRIERS

While Chile welcomes foreign investment, controls and restrictions exist. The Foreign Investment Committee (FIC) of the Ministry of Economy is the sole institution empowered to accept foreign investments covered by Decree Law (DL) 600 and to set terms and conditions of corresponding contracts. Foreign investments exceeding \$1 million are currently entitled to the benefits and guarantees of DL 600. Under DL 600, 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. The FIC signs a separate contract with each investor. Contracts must stipulate the time period within which the investment is to be implemented. In the case of mining investments, this period is eight years. The FIC may extend this period to 12 years if exploration activities are undertaken. In all other areas, the period is three years. In the case of investments in industrial or extractive projects (excluding mining) in amounts of at least \$50 million, the term may be extended up to eight years depending on the nature of the project. FIC approval is required for the following investments: those exceeding a total value of \$5 million; those related to sectors or activities that are normally developed by the government or carried out by public services; those involving the media; and, those made by foreign governments or by foreign public entities.

Also, under Chapter 14 of the Foreign Exchange Regulations of the Central Bank, natural or juridical persons, domiciled abroad, may bring capital in foreign currency into Chile. Chapter 14 allows the investor to freely sell his foreign currency through the formal or informal exchange market.

Chile and the United States are negotiating a bilateral tax treaty. Until the agreement takes effect, profits of U.S. companies will continue to

be subject to taxation by governments of both nations.

Chile has notified to the WTO measures inconsistent with WTO rules on trade-Related Investment Measures (TRIMS). These measures deal with local content and trade balancing in the automotive industry. Proper notification allowed developing country WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO. The Chilean Government requested and was granted an additional extension until December 31, 2000, to legislate the end of its TRIMS inconsistent laws. The request for an extension was based on the need for more time to fully dismantle the exemption from payment of customs duties envisaged in Article 3 of the Chilean Automotive Statute (Law No. 18,483), thereby bringing the statute fully into line with Chile's TRIMS commitments. Chile has not yet addressed these TRIMS inconsistencies, however.

ELECTRONIC COMMERCE

There is a growing recognition of the vast potential of electronic commerce in an economy characterized by an export and services orientation. Chile has enjoyed rapid growth in the computer/telecommunications sector 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. While there is an awareness of the myriad privacy, security, contract law, and other issues raised by electronic commerce, there is also recognition that the eventual creation of national policies addressing such issues will have to move in parallel with developments internationally. In February 2000, Chile became the first country in Latin America to sign a Joint Statement on Electronic Commerce with the United States, highlighting the countries' agreement that the private sector should take the lead on the establishment of business practices

CHILE

related to electronic commerce. On January 15, 2002 the Chilean Congress passed a law authorizing digital signatures.

Government use of the Internet (E-government) also has acquired great importance in Chile and is a priority for the Lagos administration. As part of the overall modernization of the State, the president has issued guidelines for the development of e-government. The Chilean Government has taken substantial implementation steps.

OTHER BARRIERS

Luxury Tax

In addition to a 7 percent import tariff and an 18 percent valued-added tax, (the same VAT applied domestically) automobile imports are subject to subsequent application of a "luxury tax" of 85 percent levied on CIF value above a certain price level. The Chilean Government raised this price threshold from \$10,000 in 1999 to \$15,000 in 2000, easing but not eliminating the competitive disadvantage placed on higher priced U.S.-made automobiles. This value is readjusted yearly, so, as of 2002 this tax is applied on vehicles whose price exceeds \$16,361.97.

Distilled Spirit Tax

The controversy with the European Union related to the Chilean tax on alcoholic beverages was resolved in February 2001, with the publication of Law 19.716 in the Official Gazette. The new law establishes an ad valorem tax rate of 27 percent for all liquor, which will take full effect in March 2003 following a transition period during which the rates for the different categories of alcoholic beverages (pisco, whiskey, and others) gradually converge. The tax rate applicable to pisco, a popular local liquor, was set at 27 percent from the

date of publication of the law, while the rates on whiskey and other alcoholic beverages will be gradually reduced until reaching the same level.